8-27-79
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Pages 50027-50322

Federal Register

Monday
August 27, 1979

Highlights

50314, 50321 **Lithium Sulfur Dioxide Batteries** DOT/FAA adopts a new Technical Standard Order for batteries used in aircraft; effective 9-26-79 (Part VII of this issue) (2 documents)

50072 **Propane Deregulation** DOE/ERA issues notice of availability of draft regulatory analysis; comments by 12-1-79

50140 **Improving Government Regulations** DOT/Sec'y publishes semi-annual regulations agenda and review list (Part II of this issue)

50276, 50286, 50292, 50299 **Emergency Management and Assistance** FEMA establishes basic set of administrative rules; effective 8-27-79; comments by 10-26-79 (Part V of this issue) (5 documents)

50067 **Mass Transportation** DOT/UMTA proposes rules dealing with maintenance of effort by designated recipients of funds; comments by 10-11-79

50218 **Home Insulation** FTC issues rules which prescribe standardized test methods relating to labeling and advertising; effective 11-30-79 (Part III of this issue)

50304 **Noninflationary Pay and Price Behavior** CWPS adopts form PAY-1; effective 8-27-79 (Part VI of this issue)

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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Area Code 202-523-5240

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50130 **Treasury Securities** Treasury/Sec'y announces auction of Series C-1984 notes

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50135 **Sunshine Act Meetings**

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Rules and Regulations

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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.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

Expenses of the Almond Board of California, and Rate of Assessment for the 1979-80 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final Rule.

SUMMARY: This regulation authorizes expenses and a rate of assessment for the 1979–80 crop year, to be collected from handlers to support activities of the Board which locally administers the Federal marketing order covering almonds grown in California.

DATES: Effective July 1, 1979, through June 30, 1980.

FOR FURTHER INFORMATION CONTACT: William J. Higgins, (202) 447–5053.

SUPPLEMENTARY INFORMATION: *Findings.* Pursuant to Marketing Order No. 981, as amended (7 CFR Part 981), regulating the handling of almonds grown in California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Board, established under this marketing order, and upon other information, it is found that the expenses and rate of assessment, as hereinafter provided, will tend to effectuate the declared policy of the act.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking and postpone the effective time until 30 days after publication in the Federal Register (5 U.S.C. 553), as the order requires that the rate of assessment for a particular marketing year shall apply to all assessable almonds handled from the beginning of such year which began July 1, 1979. To enable the Board to meet crop year obligations, approval of the expenses and assessment rate is necessary without delay. Handlers and other interested persons were given an opportunity to submit information and views on the expenses and assessment rate at an open meeting of the Board. It is necessary to effectuate the declared purposes of the act to make these provisions effective as specified.

Further in accordance with procedures in Executive Order 12044, the emergency nature of this regulation warrants publication, without opportunity for further public comments. The regulation has not been classified significant under USDA criteria for implementing the Executive Order. An Impact Analysis is available from William J. Higgins (202) 447–5053.

§ 981.329 Expenses and rate of assessment.

(a) Expenses that are reasonable and likely to be incurred by the Board during the 1979–80 crop year, will amount to $8,885,869.

(b) The rate of assessment for said year payable by each handler in accordance with § 981.81 is fixed at 2.75 cents per pound of almonds (kernelweight basis), less any amount credited pursuant to § 981.41 but not to exceed 2.5 cents per pound of almonds (kernelweight basis).

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

Dated: August 22, 1979.

D. S. Kuryloski,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 79-26511 Filed 8-24-79; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1421

[CCC Grain Price Support Regulations, 1979 Crop Rice Supplement]

Grains and Similarly Handled Commodities; 1979 Crop Rice Loan and Purchase Program

AGENCY: Commodity Credit Corporation, Department of Agriculture.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to set forth the: (1) Final loan and purchase availability dates, (2) maturity dates, and (3) loan and purchase rates, (4) premiums and discounts, and (5) location differentials under which Commodity Credit Corporation (CCC) will extend price support on 1979-crop rice. This rule is needed to satisfy statutory requirements and will enable eligible rice producers to obtain loans and purchases on their eligible 1979-crop rice.

EFFECTIVE: August 27, 1979.

ADDRESS: Price Support and Loan Division, ASCS, U.S. Department of Agriculture, 3749 South Building, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Merle Strawderman, ASCS, (202) 447–7973.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published in the Federal Register on December 12, 1978, 43 FR 58095, stating that the Department of Agriculture proposed to make determinations and issue regulations relative to a loan and purchase program for the 1979 crop of rice. Such determinations included determining loan rates, premiums, and discounts for grades, classes, other qualities, location differentials and other provisions as may be needed to carry out the program. Interested persons were given until January 11, 1979, to submit recommendations, views, and comments. Eight responses were received concerning the loan and purchase rates for rice. Three respondents recommended no change in the loan rate, three recommended an increase without specifying a level, one commentor reported satisfaction with current whole kernel rice differentials, while another recommended elimination of class and quality differentials.

The loan and purchase rates established by CCC are determined herein on the basis of statutory requirements.

Final Rule

The General Regulations Governing Price Support for 1978 and Subsequent Crops, and any amendments thereto, and the 1978 and Subsequent Crops Rice Loan and Purchase Program Regulations, and any amendments thereto, in Part 1421, are further supplemented, as stated herein, for the 1979 crop of rice. Accordingly, the regulations in 7 CFR 1421.325 through 1421.328 and the title of the subpart are revised, as provided below, effective as to the 1979 crop of rice. The material

previously appearing in these sections shall remain in full force and effect as to the crops to which it is applicable.

Subpart—1979 Crop Rice Loan and Purchase Program

Sec.
1421.325 Purpose.
1421.326 Availability.
1421.327 Maturity of loans.
1421.328 Loan and purchase rates and premiums and discounts.

Authority.—Secs. 4 and 5, 62 Stat. 1070, as amended (15 U.S.C. 714 b and c); secs. 101, 401, 63 Stat. 1051, as amended, sec. 702, 91 Stat. 940 (7 U.S.C. 1441 and 1421).

§ 1421.325 Purpose.

This subpart contains additional program provisions which, together with the applicable provisions of the General Regulations Governing Price Support for 1978 and Subsequent Crops, as amended, and the 1978 and Subsequent Crops Rice Loan and Purchase Program Regulations, as amended, apply to loans and purchases for 1979-crop rice.

§ 1421.326 Availability.

(a) *Loans.* Producers desiring to participate in the program through loans must request a loan on their 1979 crop of eligible rice on or before March 31, 1980.

(b) *Purchases.* Producers desiring to offer eligible rice not under loan for purchase must execute and deliver to the county ASCS office prior to April 30, 1980, a purchase agreement (Form CCC–614) indicating the approximate quantity of 1979 crop of rice they will sell to CCC.

§ 1421.327 Maturity of loans.

Loans mature on demand but not later than April 30, 1980.

§ 1421.328 Loan and purchase rates and premiums and discounts.

(a) *Farm storage loans.* The loan rate for farm storage rice shall be $6.79 per hundredweight for any class. The settlement rate shall be the applicable basis rate specified in paragraph (c) of this section, adjusted in accordance with the provisions of this section and §§ 1421.311 and 1421.22.

(b) *Warehouse storage loans and purchases.* The loan rate for rice stored modified-commingled and identity-preserved in an approved warehouse shall be the applicable basic rate specified in paragraph (c) of this section, adjusted as provided in paragraphs (e) and (f) of this section. The rate for loans on rice stored commingled in an approved warehouse and for settlement for modified-commingled and identity-preserved loans and purchases shall be the applicable basic rate specified in paragraph (c) of this section, adjusted in accordance with the provisions of this section and §§ 1421.311 and 1421.22.

(c) *Basic rates.* The basic rate per 100 pounds of rice shall be computed as follows: Multiply the milling yield (in pounds per hundredweight) of whole kernels by the applicable loan value for whole kernels (as shown in the table below according to class), and round the result to the nearest hundredth. Similarly, multiply the difference between the total milling yield and the whole kernels yield (in pounds per hundredweight) by the applicable loan value for broken rice and round the result to the nearest hundredth. Add the results (as rounded) of the two computations to obtain the basic loan and purchase rate per 100 pounds of rice and express such rate in dollars and cents.

Loan Value for Whole Kernels and Broken Rice

[In cents per pound]

Rough rice class	Whole kernels	Broken rice
Long grains	12.18	4.40
Medium grains	10.43	4.40
Short grains	10.43	4.40

(d) *Premium.* The basic rate determined under paragraph (c) of this section shall be adjusted for Grade U.S. No. 1 by the following premium:

	Cents per 100 lbs
Grade U.S. No. 1	8

(e) *Discounts.*—(1) *Grade.* The basic rate determined under paragraph (c) of this section shall be adjusted for grades below U.S. No. 2 by the following discounts:

	Cents per 100 lbs
Grade U.S. No. 3	15
Grade U.S. No. 4	30
Grade U.S. No. 5	50

(2) *Smut damage.* The rate for rice evidencing smut damage shall be further adjusted by the following discounts:

	Cents per 100 lbs
Percent smut damage:	
Trace	0
0.1 to 1.0	5
1.1 to 2.0	10
2.1 to 3.0	15
3.1 and over	25

(f) *Location differentials.* For rice produced in areas specified below, discounts for location (to adjust for transportation costs of moving rice to an area where competitive milling facilities are available) shall be applied to the basic rate determined under paragraph (c) of this section and shall be in addition to any adjustment under paragraphs (d) and (e) of this section: *Provided, however,* That if such rice is transported and stored in a rice producing area where no location differential is applicable, no discount for location shall be applied.

Differential Table

[Dollars per hundredweight]

Production areas	Discounts rice
State of Florida	$2 73
States of North Carolina and South Carolina	2 75
Counties of Lafayette, Little River, and Miller, Ark.; Bowie, Tex.; McCurtain, Okla.; and Bossier Parish, La.	1.26
Imperial County, Calif., and adjacent counties in Arizona and California	3 115
Counties of Marion, Pike, and St. Charles, Mo.	1.69

(g) *Other.* Rice that (1) contains in excess of 14 percent moisture, (2) is weevily, (3) is musty, (4) is sour, shall not be eligible for loan. However, in the event that such rice is delivered in satisfaction of loan obligations to CCC, such rice will be discounted on the basis of the schedule of discounts as provided by the Kansas City Commodity office for settlement purposes. Such discounts will be in effect at the time of delivery of rice to CCC for settlement purposes. CCC will, from time to time, adjust such discounts as CCC determines appropriate to reflect changes in market conditions. Producers may obtain schedules of such factors and discounts at county ASCS offices approximately one month prior to the loan maturity date.

Note.—This rule has been determined to be not significant under the USDA criteria implementing Executive Order 12044 and contains necessary operating decisions needed to implement the national average for 1979 rice loan and purchase rates announced on June 29. An approved Final Impact Statement is available from George Schaefer, ASCS, (202) 447–8480.

Signed at Washington, D.C., August 17, 1979.

Ray Fitzgerald,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 79–26510 Filed 8–24–79; 8:45 am]

BILLING CODE 3410–05–M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 107

Leverage to Unincorporated Small Business Investment Companies

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This final rule adopts without change the Proposed rule published April 19, 1979 (44 FR 23258). This rule sets forth SBA's policy that it will generally supply funds to Unincorporated Licensees (that is, Licensees organized as limited

partnerships) on a nonrecourse basis. SBA will usually look exclusively to the Unincorporated Licensee's assets for repayment of any debt owed SBA. However, in appropriate cases SBA may make the liability of the general partner as such a condition of its purchase or guaranty of the Unincorporated Licensee's debentures. Without this rule, SBA would have the right in every case to look to the separate (nonpartnership) assets of the general partner for payment of debts owed to SBA, for which the general partner is liable by operation of law. SBA believes nonrecourse financing for partnership SBICs would attract additional investors and capital into the SBIC program, in furtherance of Congressional policy.

EFFECTIVE DATE: This rule is effective as of August 27, 1979.

FOR FURTHER INFORMATION CONTACT: Arthur P. Cyr, Acting Deputy Associate Administrator for Investment, 202–653–6584.

SUPPLEMENTARY INFORMATION: The only comment received dealt with matters beyond the scope of this rule, but it was apparent that this rule is a step in the direction urged by the comment.

Accordingly, the proposed rule is adopted as published.

Pursuant to the authority contained in section 308 of the Small Business Investment Act of 1958, as amended, 15 U.S.C. 661, *et seq.*, Part 107 of Title 13, Code of Federal Regulations, is amended as follows:

1. Section 107.4 is amended by inserting after paragraph (d) the following paragraph:

§ 107.4 Limited Partnership SBIC.

* * * * *

(e) *Liability of general partner for partnership debts to SBA.* Subject to section 314 of the Act, the general partner of an Unincorporated Licensee shall not be liable soley by reason of its status as a general partner for repayment of any debts owed by the Licensee to SBA unless SBA, in the exercise of reasonable investment prudence, and with regard to the financial soundness of such Unincorporated Licensee, shall determine otherwise prior to the purchase or guaranty of such Unincorporated Licensee's debentures.

* * * * *

2. Present § 107.4(e) of the Regulation is redesignated as § 107.4(f).

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 14, 1978.

A. Vernon Weaver,

Administrator.

[FR Doc. 79-26541 Filed 8-24-79; 8:45 am]

BILLING 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 79-WE-8-AD; Amdt. 39-3541]

Airworthiness Directives; McDonnell Douglas DC–10 Series Airplanes

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) which requires upper wing/VHF antenna anti-ice system testing and eventual modification of the system on DC–10 series airplanes. This AD is necessary to detect possible passive failures in the right upper wing/VHF antenna anti-ice valve position monitor. The passive failure followed by a valve failure could result in asymmetric ice accretion on RH wing surfaces and/or ice ingestion in the No. 2 engine.

DATES: Effective September 29, 1979.

Compliance schedule—As prescribed in the body of the AD.

ADDRESS: The applicable service information may be obtained from: McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846. Attn: Director, Publications and Training, C1–750, (54–60).

Also, a copy of the service information may be reviewed at, or a copy obtained from:

Rules Docket in Room 916, FAA, 800 Independence Avenue, SW., Washington, D.C. 20591, or

Rules Docket in Room 6W14, FAA Western Region, 15000 Aviation Boulevard, Hawthorne, California 90261.

FOR FURTHER INFORMATION CONTACT: Jerry Presba, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536–6351.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an Airworthiness Directive requiring upper wing/VHF antenna anti-ice system testing and modification of the system on McDonnell Douglas Model DC–10 series airplanes was published in the Federal Register at 44 FR 30100. The proposal was prompted by analysis indicating that a right upper wing or VHF antenna anti-ice valve monitor could fail without knowledge of the flight crew. Under certain conditions this could result in asymmetric ice accretion on RH wing surfaces or could produce ice ingestion in No. 2 engine.

The monitor, without maintenance testing, could remain passively failed. The monitored valves have demonstrated a relatively high failure rate. A subsequent valve failure under these conditions could leave the aircraft without anti-ice protection without knowledge of the crew.

Interested persons have been afforded an opportunity to participate in the making of this amendment, and comments were received indicating that DC–10 operators had no objection to this proposed rule.

While no adverse comments were received, the FAA has amended the proposal to include clarification of the requirements for inspection to relieve operators from the undue burden of performing the maintenance tests if the aircraft is already modified.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by adding the following new airworthiness directive:

McDonnell Douglas: Applies to DC–10–10, –10F, –30, –30F and –40 airplanes. Serial Numbers corresponding to manufacturer's fuselage Numbers 1 through 257, certificated in all categories.

Compliance is required as indicated.

To reduce the possibility of an unannounced anti-ice system failure accomplish the following, unless modified per Paragraph (c) of this AD.

a. Within the next 300 hours' time in service from the effective date of this AD, unless previously acomplished within the last 3,000 hours' time in service, accomplish the tests specified below.

Test Procedure for Wing/Antenna Anti-Ice System Passive Failures

1. Remove power from all AC and DC buses.

2. Open "BATT DIRECT & LEFT EMER DC FEED" circuit breaker on overhead CB panel.

3. Disconnect P1–837 at center accessory compartment right hand (CAC–R) disconnect panel.

4. Restore power to DC buses 1 and 3. (Other buses may be energized if desired).

5. Pressurize No. 3 pneumatic system to at least 15 psig per instructions in Maintenance Manual Chapter 36–00–00.

6. Place WING & ANT ANTI–ICE switch to TEST position and verify that WING & ANT ANTI–ICE DISAGREE light comes on and goes off.

Caution

WING ICE PROTECTION MUST NOT BE OPERATED IN TEST POSITION ON THE GROUND WITH ENGINES OR APU OPERATING OR WITH PNEUMATIC GROUND SUPPLY CONNECTED FOR MORE THAN 30 SECONDS. FAILURE TO OBSERVE THIS PRECAUTION CAN RESULT IN OVERHEATING WING LEADING EDGES, CAUSING DAMAGE.

Note.—The above caution is not applicable if an external ground pneumatic source with air temperature controlled at 190°F (88°C) or less is used.

7. Release WING & ANT ANTI-ICE switch and verify WING & ANT DISAGREE light comes on and goes off.

8. Depressurize No. 3 pneumatic system, remove power from all AC and DC buses, and verify "BATT DIRECT & LEFT EMER DC FEED" circuit breaker is open.

9. Reconnect P1-837 at CAC-R panel and restore power to aircraft as required.

10. Open "WING & ANT ANTI-ICE DISAGREE LTS" circuit breaker on upper main CB panel.

11. In lower galley or forward cargo area as applicable, gain access to antenna valve.

12. Disconnect P1-2472 from antenna valve position switches.

13. Close circuit breaker listed in Step 10.

14. Pressurize No. 3 pneumatic system to at least 15 psig per instructions in Maintenance Manual Chapter 36-00-00.

15. Place WING & ANT ANTI-ICE switch to TEST position and verify that WING & ANT ANTI-ICE DISAGREE light comes on and goes off.

Caution

WING ICE PROTECTION MUST NOT BE OPERATED IN TEST POSITION ON THE GROUND WITH ENGINES OR APU OPERATING OR WITH PNEUMATIC GROUND SUPPLY CONNECTED FOR MORE THAN 30 SECONDS. FAILURE TO OBSERVE THIS PRECAUTION CAN RESULT IN OVERHEATING WING LEADING EDGES, CAUSING DAMAGE.

Note.—The above caution is not applicable if an external ground pneumatic source with air temperature controlled at 190°F (88°C) or less is used.

16. Release WING & ANT ANTI-ICE switch and verify WING & ANT DISAGREE light comes on and goes off.

17. Open circuit breaker listed in Step 10.

18. Reinstall P1-2472 connector on antenna valve.

19. Restore aircraft to normal operating condition.

Note.—Steps 1 through 7 check the integrity of the VHF antenna anti-ice valve and monitoring circuit. Steps 10 through 16 check the integrity of the right wing anti-ice valve and monitoring circuit.

b. If Steps a.6 and 7 or a.15 and 16 are not satisfactorily accomplished, repair the unsatisfactory condition, or restrict the aircraft from flight in icing conditions.

c. Within one year from the effective date of this AD provide for performance monitoring of the wing and antenna anti-ice systems by separate lights in a manner approved by the Chief, Aircraft Engineering Division, FAA Western Region.

Note.—McDonnell Douglas Service Bulletin 50-47 dated December 5, 1978 provides a satisfactory method of accomplishment.

d. Alternative inspections, modifications or other actions which provide an equivalent level of safety may be used when approved by the Chief, Aircraft Engineering Division, FAA Western Region.

This amendment becomes effective September 29, 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 11.85)

Issued in Los Angeles, Calif., on August 15, 1979.

William R. Krieger,

Acting Director, FAA Western Region.

[FR Doc. 79-26584 Filed 8-24-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 79-WE-11-AD; Amdt. 39-3542]

Airworthiness Directives; Hughes Model 369D Helicopter

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective to all persons an amendment adopting a new Airworthiness Directive (AD) which was previously made effective as to known operators of Hughes Helicopters Model 369D Helicopter by priority mail dated June 20, 1979. This AD was issued because of three reported failures of the main rotor blade root fittings. This AD requires an initial visual inspection with 5X or higher magnification glass, and repetitive visual inspections, for cracks or corrosion of the main rotor blade upper and lower root fittings and lead-lag links.

DATES: Effective August 30, 1979, except with respect to certain persons specified in the body of the AD.

Compliance schedule—As prescribed in the body of the AD.

ADDRESSES: The applicable service information may be obtained from: Hughes Helicopters, Centinela and Teale Streets, Culver City, California 90230.

FOR FURTHER INFORMATION CONTACT: Wallace M. Frei, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536-6351.

SUPPLEMENTARY INFORMATION: An emergency Airworthiness Directive (AD) was adopted on June 19, 1979 and made effective immediately upon receipt of the airmail letter dated June 20, 1979 to all known operators of Hughes Helicopters Model 369D Helicopter because of three reported failures in the main rotor blade root fittings and the main rotor blade attach lugs of the lead-lag links, due to corrosion and/or fretting. This condition could result in the loss of a main rotor blade. The AD required an initial visual inspection with a 5X or higher magnifying glass within ten (10) hours time in service for cracks in the main rotor blade root fittings and attach lugs of the lead-lag links, and also the application of zinc chromate primer for corrosion protection. In addition, a repetitive visual inspection for broken or cracked lugs, without removing the blades, is required at intervals not to exceed 25 hours time in service.

Since the issuance of the June 20, 1979 emergency airmail letter AD, it has been determined that corrosion is a major cause of crack initiation. The AD has been amended to also inspect for corrosion.

Since it was found that immediate corrective action was required, notice and public procedure thereon was impracticable and contrary to the public interest, and good cause existed for making the AD effective immediately as to all known operators of Hughes Helicopters Model 369D Helicopter. These conditions still exist and the AD is hereby published in the Federal Register as an Amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by adding the following new airworthiness directive:

Hughes Helicopters: Applies to Hughes Model 369D Helicopter certificated in all categories.

Compliance required as indicated.

To prevent failure of the main rotor blade attachment lugs, which could result in loss of a main rotor blade, accomplish the following:

(a) Within ten (10) hours time in service, after the effective date of this AD, unless already accomplished, remove the main rotor blades in accordance with Hughes Model

369D Helicopter Basic Handbook of Maintenance Instructions and visually inspect with a 5X or higher magnifying glass the area around the main rotor blade attach pins lug holes in the upper main rotor blade root fitting, P/N 369A1113, the lower main rotor blade root fitting, P/N369A1114, and the main rotor vertical hinge links (lead-lag links), P/N369H1203, for cracks and corrosion.

(1) If any cracks or corrosion are found in main rotor blade upper and lower root fitting, replace that main rotor blade, P/N369D21100, before further flight.

(2) If any cracks or corrosion are found in the main rotor vertical hinge link, P/N 369H1203, replace the main rotor hub, P/N 369D21200, before further flight.

(3) If no cracks or corrosion are found in the main rotor fittings or main rotor vertical hinge links (lead-lag links), seal all junctions between the steel bushing and lugs with a thin film of zinc chromate primer without removing the bushings.

(b) Thereafter, without removing the main rotor blades and within intervals not exceeding 25 hours time in service, visually inspect all the exposed portions of all main rotor blade upper and lower root fitting attach lugs and main rotor hub lead-lag links attach lugs for broken, corroded or cracked lugs. If any broken, corroded or cracked lugs are found, replace in accordance with (a)(1) and/or (a)(2) above.

(c) Equivalent visual inspections may be used when approved by the Chief, Aircraft Engineering Division, FAA, Western Region.

This amendment becomes effective August 30, 1979, as to all persons except those persons to whom it was made immediately effective by the airmail letter dated June 20, 1979, which contained this amendment.

(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 Los Angeles, Calif., on August 15, 1979.

William R. Krieger

Acting Director, FAA Western Region.

[FR Doc. 79-26570 Filed 8-24-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 79-WE-18-AD; Amdt. 30-3534]

Airworthiness Directives; McDonnell Douglas DC-10 Airplanes

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting an airworthiness directive (AD) which was previously made effective as to known operators of McDonnell Douglas Model DC-10-10, DC-10-10F, DC-10-40 airplanes by telegraphic message dated July 15, 1979. This AD was required because of failure of the nuts retaining the engine at the aft engine mount which could result in loss of engine retention strength capability.

DATES: Effective August 29, 1979, and was effective earlier for all recipients of the telegram dated July 15, 1979.

Compliance schedule—As prescribed in the body of the AD.

FOR FURTHER INFORMATION CONTACT: Jerry Presba, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536-6351.

SUPPLEMENTARY INFORMATION: Pursuant to the authority delegated me by the administrator, an AD was adopted on July 15, 1979, and was made effective to all known operators of McDonnell Douglas Model DC-10-10, DC-10-10F, and DC-10-40 series airplanes because of a possibility of loss of engine retention strength capability resulting from failures of the nuts retaining the engine at the aft engine mount.

Since it was found that immediate corrective action was required, notice of public procedure thereon was impraticable and contrary to the public interest and good cause existed therefore, to make the AD effective immediately as to all operators of McDonnell Douglas Model DC-10-10, -10F, and -40 series airplanes. These conditions still exist and the AD is hereby published in the Federal Register as an amendment to § 39.13 of Part 39 of the Federal Aviation Regulations to make it effective as to all persons.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by adding the following new airworthiness directive:

McDonnell Douglas: Applies to McDonnell Douglas Model DC-10-10, DC-10-10S, and DC-10-40 series airplanes certificated in all categories. Compliance required as indicated. To prevent failure of the aft engine mount barrel nuts on No. 1, No. 2 and No. 3 engines which could result in the loss of engine support, accomplish the following unless already accomplished subsequent to July 6, 1979:

(a) Before further flight after August 29, 1979, visually inspect the aft engine mount barrel nuts on No. 1, No. 2 and No. 3 engines for evidence of cracking with particular regard to the area adjacent to the protruding bolt shank.

(b) Before further flight after August 29, 1979, verify torque values of the aft engine mount bolts which mate with the barrel nuts on No. 1, No. 2 and No. 3 engines to the minimum value specified in the DC-10 Maintenance Manual.

(c) Revenue flight to the first base for the necessary equipment to accomplish (b) of this AD is authorized if such equipment is not available at the location of the aircraft on August 29, 1979.

(d) Report results of all inspections to the Chief, Aircraft Engineering Division, FAA Western Region, within twenty-four hours of accomplishment in the following format:

(1) "N" number.

(2) Hours' time-in-service and inspection.

(3) The results of inspection by reference to specific paragraph of this AD.

(e) If cracks are discovered per paragraph (a) or if minimum torque values cannot be achieved per paragraph (b), replace the barrel nut with like serviceable part prior to further flight.

This amendment becomes effective August 29, 1979, and was effective earlier for all recipients of the telegram dated July 15, 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 Los Angeles, Calif., on August 14, 1979.

Benjamin Demps, Jr.,

Acting Director, FAA Western Region.

[FR Doc. 79-26574 Filed 8-24-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 79-WE-20-AD; Amdt. 39-3535]

Airworthiness Directives; Piper Aerostar Model 600 and 601 Airplanes

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires modification of the upper main cabin door latch assemblies. This AD will require modification to prevent the possible disengagement of the door locking pins, a positive visual indication of locking pin position and replacement of the rod end fittings. This AD is necessary to prevent the loss of the upper cabin door in flight.

DATES: Effective August 29, 1979.

Compliance required within thirty (30) days after the effective date.

ADDRESSES: The applicable service information may be obtained from: The Piper Aerostar Customer Service Department, 2560 Skyway Drive, Santa Maria, California 93454.

Also, a copy of the service information may be reviewed at, or a copy obtained from:

Rules Docket in Room 916, FAA, 800 Independence Avenue SW., Washington, D.C. 20591.

or

Rules Docket in Room 6W14, FAA Western Region, 15000 Aviation Boulevard, Hawthorne, California 90261.

FOR FURTHER INFORMATION CONTACT: Kyle L. Olsen, Executive Secretary, Airworthiness Directive, Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536-6351.

SUPPLEMENTARY INFORMATION: There have been two instances of inflight loss of the upper cabin door and reports of the door latch mechanism not operating properly. In one instance, the door could not be opened by the pilot and the emergency exit was used to exit the aircraft. In other instances, the upper cabin door is left open by the pilot for ventilation during taxi and the door is not latched before takeoff. The manufacturer has issued two service bulletins which modify the door latch mechanism and add a positive visual indication to the pilot if the upper cabin door is unlatched.

Since this condition is likely to exist or develop in other airplanes of the same type design, an airworthiness directive is being issued which requires (1) installation of a spacer to prevent the disengagement of the door locking pins in the event of separation of the inner door handle from its shaft, (2) installation of a positive visual indication of door locking position and (3) replacement of the door locking rod end fittings made from tubing with those made from solid steel.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impractical and a good cause exists for making this amendment effective in less than thirty (30) days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by adding the following new airworthiness directive:

Piper: (Ted Smith) applies to Aerostar Model 600 and 601 airplanes certificated in all categories:

Compliance required within thirty (30) days after the effective date of this AD, unless already accomplished.

To prevent inflight loss of the upper cabin door and to prevent the disengagement of door locking pins accomplish the following:

(a) Install in the upper cabin door latching mechanism, spacers and the locking position visual indicators in accordance with Aerostar Service Bulletin 600-35, dated August 28, 1973.

(b) Replace the rod end fittings made from tubing with solid steel rod end fittings in accordance with Aerostar Service Bulletin 600-61, dated January 26, 1977.

(c) Alternate modifications or other actions which provide an equivalent level of safety may be used when approved by the Chief, Aircraft Engineering Division, FAA Western Region.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections required by this AD.

This amendment becomes effective August 29, 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 Los Angeles, Calif., on August 14, 1979.

Benjamin Demps, Jr.,

Acting Director, FAA Western Region.

[FR Doc. 79-26575 Filed 8-24-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 79-WE-22-AD; Amdt. 39-3536]

Airworthiness Directives; Lockheed L-1011 Airplanes

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) which requires an inspection of the No. 2 engine electrical power feeder cable and corrective action, if required.

This AD is required to prevent loss of integrity of the No. 2 engine firewall as a result of burn-through due to electrical arcing from the No. 2 engine electrical power feeder cable.

DATES: Effective August 29, 1979.

Compliance schedule—Within 400 hours' time in service from August 29, 1979.

ADDRESSES: The applicable service information may be obtained from: Lockheed California Company, Burbank, California 91520.

Also, a copy of the service information may be reviewed at, or a copy obtained from:

Rules Docket in Room 916, FAA, 800 Independence Avenue, S.W., Washington, D.C. 20591.

or

Rules Docket in Room 6W14, FAA Western Region, 15000 Aviation Boulevard, Hawthorne, California 90261.

FOR FURTHER INFORMATION CONTACT: Jerry J. Presba, Executive Secretary, Airworthiness Directive, Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536-6351.

SUPPLEMENTARY INFORMATION: The FAA has received a report that one L-1011 operator encountered grounding of the No. 2 engine generator feeder cable to the firewall at approximately Fuselage Station 2022. This inadvertent grounding produced overheating and burn-through of the firewall, and is attributed to possible excessive slack in the wire and/or missing wire clamp cushion(s).

This AD provides for inspection for these discrepant conditions and further specifies corrective action to prevent recurrence from this cause.

Since a situation exists that requires immediate adoption of this regulation it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than thirty (30) days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by adding the following new airworthiness directive:

Lockheed California: Applies to Lockheed L-1011-385 series airplanes certificated in all categories:

Compliance required within the next 400 hours' time in service from the effective date of this AD, unless already accomplished.

To prevent local structural damage and insure security of the No. 2 engine generator feeder cables, accomplish the following:

(a) Inspect the No. 2 engine generator feeder cables in the aft body area between Fuselage Station 2011 and Fuselage Station 2053 above Waterline 350 for looseness and slack, surface abrasions, discoloration of outer surface and close proximity to structure without clamps or other protective supports. Inspect feeder cable support clamps for lack of clamp cushions and bent or dislodged mount brackets or clamps. These inspections are to be made in accordance with Part 2 of Lockheed Service Bulletin 093-24-086, dated August 2, 1979.

(b) If any of the above discrepant conditions is found to exist, prior to further flight perform corrective action in accordance with Part 2 of Lockheed Service Bulletin 093-24-086, dated August 2, 1979.

(c) Alternative inspections, modifications or other actions which provide an equivalent level of safety may be used when approved

by the Chief, Aircraft Engineering Division, FAA Western Region.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections required by this AD.

This amendment becomes effective August 29, 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 Los Angeles, Calif., on August 14, 1979.

Benjamin Demps, Jr.,

Acting Director, FAA Western Region.

[FR Doc. 79-26576 Filed 8-24-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 79-NW-10-AD; Amdt. 39-3539]

Airworthiness Directives; Rockwell NA 265-60 Airplanes Equipped With Raisbeck Mark Five Modification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: On April 13, 1979, a telegraphic Airworthiness Directive (AD) was issued and made effective upon receipt to all known operators of Rockwell NA 265-60 (Sabreliner) which had been modified per Raisbeck STC SA687NW. The AD, which was amended April 16, 1979, and April 23, 1979, required deactivation of the flap system and the imposition of certain operating limitations following an incident which resulted in loss of control of a modified Sabreliner. AD 79-13-02 (Amendment 39-3499), 44 FR 36169 was published on June 21, 1979, making the telegraphic AD and Amendments effective as to all persons. Raisbeck has now developed a modification which is terminating action for the AD. This Amendment incorporates the approved terminating action.

DATES: The effective date: September 4, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. William M. Perrella, Engineering and Manufacturing Branch, FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington, 98108. Telephone (206) 767-2516.

SUPPLEMENTAL INFORMATION: The Raisbeck Group has now developed and the FAA has approved modifications which, when made, will warn of flap asymmetrical conditions prior to the flap impinging on the aileron. Since this corrects the unsafe condition which required the issuance of AD 79-13-02, the AD is further herein amended to incorporate the modifications as terminating action.

Since this amendment imposes no additional burden on any person and is relieving in nature, it is found that notice and public procedure hereon are unnecessary and the amendment may be made effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by further amending Airworthiness Directive 79-13-01 (Amdt. 39-3499, 44 FR 36169; dated June 21, 1979) by adding a paragraph D as follows:

"D. Installation of the modifications in accordance with FAA-approved Raisbeck Mark Five Sabreliner Service Bulletin No. 5 (or equivalent modifications approved by the Chief, Engineering and Manufacturing Branch, FAA Northwest Region) and incorporation of Change I of the FAA-approved Airplane Flight Manual (Raisbeck Report 76-601 for S/N 306-64 and subsequent; and 76-602 for S/Nos. 306-1 through 306-63), constitute terminating action to the requirements of this Airworthiness Directive."

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1). All persons affected by this directive who have not already received these documents from the manufacturer, may obtain copies upon request to The Raisbeck Group, 7777 Perimeter Road South, Boeing Field International, Seattle, Washington 98108. These documents may also be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108.

This amendment becomes effective September 4, 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) of the Department of Transportation Act (49 U.S.C. 1655(c); and 14 CFR 11.89))

Note.—The FAA has determined that this document involves a proposed regulation which is not considered to be significant under the provisions of Executive Order 12044 and as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Seattle, Wash., on August 15, 1979.

C. B. Walk, Jr.,

Director, Northwest Region.

Note.—The incorporation by reference provisions in the document were approved by the Director of the Federal Register on June 19, 1967.

[FR Doc. 79-26577 Filed 8-24-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 79-NW-26-AD; Amdt. 39-3533]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) to require inspection and replacement, as required, of the inboard nacelle lower diagonal strut forward fittings. Strut fitting cracking could eventually result in fitting failures.

DATES: Effective date September 4, 1979. Compliance required within 500 hours time-in-service after the effective date of this AD unless already accomplished.

ADDRESS: The Boeing service bulletin specified in this directive may be obtained upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may also be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108.

FOR FURTHER INFORMATION, CONTACT: Mr. Iven D. Connally, Airframe Section, ANW-212, Engineering and Manufacturing Branch, FAA, Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108, telephone (206) 767-2516.

SUPPLEMENTARY INFORMATION: Eight instances of cracked diagonal strut fittings have been reported at the lower strut forward attachment on Boeing 747 aircraft. The cracks are due to stress corrosion and fatigue. Loss of a support fitting would reduce the pylon structural integrity sufficiently to allow engine separation under certain flight conditions. Since this condition is likely to exist or develop in other Boeing 747 airplanes, action is taken herein to require inspection and replacement, if required, of the strut attachment fittings. Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation

Regulations (14 CFR 39.13) is amended by adding the following new airworthiness directive:

Boeing: Applies to all Model 747 series airplanes certificated in all categories listed in Boeing Service Bulletin 747-54-2062 with more than 5,000 landings. Compliance required with 500 hours time-in-service after the effective date of this AD unless already accomplished. To prevent failure of the inboard pylon lower diagonal brace fittings accomplish the following:

A. Within 500 hours time-in-service after the effective date of this AD unless already accomplished, visually inspect the forward lower diagonal brace fittings for cracks in accordance with Boeing Service Bulletin 747-54-2062, or methods approved by the Chief, Engineering and Manufacturing Branch, FAA Northwest Region.

B. Replace or repair cracked fittings before further flight in accordance with Boeing Service Bulletin 747-54-2062, or in accordance with procedures approved by the Chief, Engineering and Manufacturing Branch, FAA, Northwest Region.

C. If no cracks are found, repeat the inspection in accordance with Paragraph A above at intervals not to exceed 1,000 landings until all affected fittings are replaced with steel fittings. If cracks are found and reworked, repeat the inspection at intervals not to exceed 250 landings, until the reworked fitting is replaced.

D. Upon request of the operator, an FAA Maintenance Inspector, subject to prior approval of the Chief, Engineering and Manufacturing Branch, FAA, Northwest Region, may adjust the compliance times if the request contains substantiating data to justify the increase for that operator.

E. Report results of the inspections of the fittings both positive and negative, to the Chief, Engineering and Manufacturing Branch, FAA, Northwest Region. (Reporting approved by the Bureau of Budget under BOB No. 04-R0174.]

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this directive who have not already received these documents from the manufacturer, may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may also be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108.

This amendment becomes effective September 4, 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).)

Note.—The FAA has determined that this document involves a regulation which is not considered to be significant under the provisions of Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Seattle, Wash., on August 13, 1979.

Note.—The incorporation by reference provisions in the document were approved by the Director of the Federal Register on June 19, 1967.

C. B. Walk, Jr.,

Director, Northwest Region.

[FR Doc. 79-26578 Filed 8-24-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 79-NW-24-AD Amdt. 39-3537]

Airworthiness Directives: Boeing Model 747 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Airworthiness Directive (AD) requires inspection and replacement, as necessary, of the lanyard cables on B. F. Goodrich escape slide/raft assemblies on certain Boeing 747 airplanes. During routine inspection, the slide/raft firing and packboard lanyards were found to be subject to corrosion which caused cable separation. Separation of the firing or packboard lanyard will prevent proper inflation of the slide/raft.

DATES: Effective date September 4, 1979.

ADDRESSES: The service bulletins specified in this directive may be obtained upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington, 98124. These documents may be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108.

FOR FURTHER INFORMATION CONTACT: Mr. Roger S. Young, Airframe Section, ANW-212, Engineering and Manufacturing Branch, FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108, telephone (206) 767-2516.

SUPPLEMENTARY INFORMATION: The firing lanyard connects the girt bar to the valve on the stored gas reservoir and activates the inflation of the slide/raft assembly during an emergency evacuation of the airplane. Separation of the firing lanyard will prevent inflation of the slide/raft both automatically and manually. Failure of the packboard lanyard will prevent the slide/raft from separating from the packboard and thus prevent proper inflation. In approximately forty percent of the twenty slide/raft assemblies checked, the firing lanyard showed evidence of corrosion. There were six instances of firing lanyards and two instances of packboard lanyards that had separated. Since this condition is likely to exist or develop on other slide/raft assemblies, this AD requires inspecting the lanyards and replacing as necessary. Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive:

Boeing: Applies to all Boeing Model 747 airplanes which are equipped with slide/raft assemblies. Compliance is required as indicated. Accomplish the following:

A. Within the next 90 days from the effective date of this AD, unless accomplished within the last 180 days, inspect the firing and packboard lanyards for corrosion in accordance with Boeing Alert Service Bulletin 747-25A2467 and B. F. Goodrich Alert Service Bulletin 25-051.

B. Lanyards showing signs of corrosion are to be replaced with new parts in accordance with B. F. Goodrich Alert Service Bulletin 25-051.

C. Repeat inspections, described in paragraph A, at intervals not to exceed one (1) year from the date of the last inspection.

D. Upon request of the operator, an FAA Maintenance Inspector, subject to prior approval of the Chief, Engineer and Manufacturing Branch, FAA Northwest Region may adjust the inspection interval if the request contains substantiating data to justify the increase for that operator.

The manufacturer's specifications and procedures identified and described in this directive are incorporated herein and made a part hereof pursuant to 5 U.S.C. 552(a)(1).

All persons affected by this directive who have not already received these documents from the manufacturer, may obtain copies upon request to Boeing Commercial Airplane Company, P.O. Box 3707, Seattle, Washington 98124. These documents may also be examined at FAA Northwest Region, 9010 East Marginal Way South, Seattle, Washington 98108.

This amendment becomes effective September 4, 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 11.85).)

Note.—The FAA has determined that this document involves a regulation which is not considered to be significant under the provisions of Executive Order 12044 and as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979.

Issued in Seattle, Wash., on August 15, 1979.

Note.—The incorporation by reference provisions in the document were approved by the Director of the Federal Register on June 19, 1967.

C. B. Walk, Jr.,
Director, Northwest Region.

[FR Doc. 79-26581 Filed 8-24-79; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 79-NW-18-AD—Amdt. No. 39-3538]

Airworthiness Directive; Hiller UH12D and UH12E (Including 4-Place) Helicopters Soloy Turbine Conversions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: On June 15, 1979, an airmail letter Airworthiness Directive (AD) was issued and made effective upon receipt to all known operators of Hiller UH12D and UH12E (including 4-place) helicopters that have been converted to turbine power by Soloy Conversions LTD., under Supplemental Type Certificates (STC'S SH177WE and SH178WE). The AD required a one time inspection, reporting of results, and possible repair or replacement of the outer gimbal forward attachment fitting on these aircraft. This action was prompted by four (4) confirmed incidents of cracked forward gimbal attachment fittings on Soloy Turbine converted helicopters, one of which completely failed one side of the dual load path fitting in less than 20 flight hours after turbine conversion. Compliance with the AD will result in detection of cracks in the fitting thereby preventing failure of the fitting and consequential loss of main rotor control. This condition still exists and the AD is hereby published in the Federal Register to make it effective as to all persons.

DATES: The effective date is September 4, 1979, except for recipients of the airmail letter of June 15, 1979, which contained this amendment. Initial compliance required before further flight.

FOR FURTHER INFORMATION CONTACT: Mr. James R. Haynes, Airframe Section, ANW-212, Engineering and Manufacturing Branch, Northwest Region, 9010 East Marginal Way South, Seattle, Washington, 98108. Telephone (206) 767-2516.

SUPPLEMENTARY INFORMATION: The cracks found were in the forward outer gimbal attachment fitting (Hiller Engine Mount Part No. 63181-5). The cracks appeared to originate from the weld beads and possibly progress into the gusset area of the fitting. The cracks occurred in both sides of the fitting simultaneously which negates the failsafe properties of the fitting. Complete failure of the forward fitting would result in an upward shift of the transmission causing binding of all main rotor controls and possible loss of the main rotor transmission assemblies. It was not determined if these cracks were caused by the higher flight loads induced by the turbine conversion, by damage induced at the time of conversion, or by incipient damage that already existed in these fittings when salvaged from previously damaged helicopters prior to turbine conversion. Consequently, the AD includes a reporting requirement to provide additional information.

Since this condition is likely to exist in other Hiller Helicopter Models UH12D and UH12E, converted to turbine power by Soloy Conversions, LTD. under applicable STC's, the AD was issued and is now published in the Federal Register requiring inspection and repair or replacement, as necessary, of the affected parts.

Since a situation existed that required immediate adoption of this regulation, it is found that notice and public procedure thereon were impracticable and good cause existed at the time of issuance, and still exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations, (14 CFR 39.13) is amended by adding the following new Airworthiness Directive:

Hiller Aviation: Applies to Hiller UH12D and UH12E (including 4-place) helicopters certificated in all categories which have been converted to turbine power under Soloy Conversions, LTD. Supplemental Type Certificates SH177WE and SH178WE.

A. Before further flight, unless already accomplished in the last 20-flight hours, remove the paint from the outer gimbal forward attach fitting of the Hiller engine mount Part No. 63181-5 and dye penetrant or magnetic particle inspect the gusset weld beads for cracks on both the front and back sides of the gusset.

B. If cracks are found, repair or replace the fitting on the engine mount Part No. 63181-5 before further flight in accordance with the following:

1. If cracks in the welds do not exceed 25 percent of the total weld length, repair by grinding out the defect and rewelding with Heliarc equipment and Oxweld #32 welding rod in accordance with the Hiller Structural Repair Manual.

2. If cracks in the fitting do not extend into the original welds, they may be repaired by welding with the equipment in (1) above in accordance with the Hiller Structural Repair Manual.

3. If cracks are found outside the limits of 1 or 2 above, replace the fitting in accordance with the engine mount strut repair procedures of the Hiller Structural Repair Manual by using appropriate fixture for maintaining mounting locations.

C. Equivalent repairs or replacements may be approved by the Chief, Engineering and Manufacturing Branch, FAA Northwest Region.

D. Report cracks found, total flight hours, and flight hours since last inspection, to Chief, Engineering and Manufacturing Branch, FAA Northwest Region, 9010 East Marginal Way South, Seattle, WA 98108. Reporting approved by the Bureau of the Budget under BOB No. 04-R0174.

E. Helicopters may be flown to a maintenance base for inspections or replacements in accordance with FAR 21.197.

"This Amendment is effective September 4, 1979, and was effective earlier for all recipients of the airmail letter dated June 15, 1979, which contained this Amendment."

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

Note.—The FAA has determined that this document involves a proposed regulation which is not considered to be significant under the provisions of Executive Order 12044 and as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Issued in Seattle, Wash., on August 15, 1979.

C. B. Walk, Jr.,
Director, Northwest Region.

[FR Doc. 79-26582 Filed 8-24-79; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 79-WE-3-AD; Amdt. 39-3540]

Airworthiness Directives; Hiller Helicopter Models UH-12D and UH-12E

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes the currently effective Airworthiness Directive (AD) which requires inspection and replacement, if necessary, of main rotor blade forks on Hiller UH-12D and UH-12E helicopters. This amendment revises the effectivity of the mandatory action and sub-divides the required action into two categories, dependent upon the main rotor blade fork serial number.

DATES: Effective August 30, 1979. Compliance schedule—As prescribed in the body of the AD.

FOR FURTHER INFORMATION CONTACT: Jerry Presba, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536-6351.

SUPPLEMENTARY INFORMATION: Amendment 39-3441, (44 FR 18645), AD 79-07-01 requires inspection and replacement, if necessary, of main rotor blade forks on UH-12D and UH-12E helicopters.

After issuing AD 79-07-01 the FAA has received a report of a crack in a main rotor blade fork which was in a serial number category exempt from the provisions of the AD. Therefore, the FAA is superseding AD 79-07-01 with a new AD requiring inspection of these additional serial numbered parts. Since this latter group of serial numbered parts is of an improved design, the inspection requirements for this serial numbered category of main rotor blade forks is less frequent than that specified for the original group of forks.

Additionally, the FAA has learned that certain serial numbered forks of the improved design were erroneously included in the inspection requirements of the superseded AD. Relief from undue burden is achieved by deleting these serial numbers from the more rigorous inspection requirements.

The FAA has also determined that the daily visual inspection requirements specified in the superseded AD are capable of accomplishment by the flight crew. The appropriate language has therefore been revised to "check," with an explanatory note.

This amendment relieves the restriction and imposes no additional burden to persons affected by the superseded AD. With respect to the additional requirements of the AD, it was found that immediate corrective action was required, hence notice and public procedure thereon was impracticable and contrary to the public interest and good cause existed for making this amendment effective in less than thirty (30) days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by adding the following new airworthiness directive:

Hiller Aviation: I. Applies to Models UH-12D and UH-12E helicopters certificated in all categories equipped with main rotor blade fork P/N 52110-3, S/N 4000P and lower Serial Numbered forks, except Serial Nos. 001P, 002P, 003P, 04P, 005P through 009P, 0010P, 0011P, 0012P, 013P through 016P, 0017P, 018P, 020P, 022P through 027P, 0027P, 028P through 040P, and 043P through 052P.

To detect cracks and prevent failures which have occurred in the main rotor blade fork P/N 52110-3 at the outboard tension-torsion bar retention bolt hole, the following inspections shall be conducted:

(a) Perform daily visual check of P/N 52110-3 forks for cracks in the area of the outboard tension-torsion bar retention bolt hole. Washers and nuts need not be removed for this inspection. This check may be performed by the pilot.

Note.—For the requirements regarding the listing of compliance and method of compliance with this AD in the aircraft's permanent maintenance record, see FAR 91.173.

(b) On forks having 240 or more hours' time in service, on the effective date of this AD, within the next 10 hours' time in service, unless already accomplished within the last 90 hours' time in service, and within each 100 hours' time in service thereafter from the last inspection, accomplish the inspection specified in I(d).

(c) On forks having less than 240 hours' time in service on the effective date of this AD, accomplish the inspection specified in I(d) prior to the accumulation of 250 hours' time in service and within each 100 hours' time in service thereafter from the last inspection.

(d) Perform a dye penetrant inspection, or FAA approved equivalent, of the bolt hole and adjacent milled surfaces. For this inspection remove the nut, washer and pin.

(e) Replace cracked rotor forks with like serviceable parts prior to further flight.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections required by this AD.

(g) Equivalent inspection procedures and repairs may be used when approved by the Chief, Aircraft Engineering Division, FAA Western Region.

II. Applies to Models UH-12D and UH-12E helicopters certificated in all categories equipped with main rotor blade fork P/N 52110-3, Serial Numbers 001P, 002P, 003P, 04P, 005P through 009P, 0010P, 0012P, 013P through 016P, 0017P, 018P, 020P, 022P through 027P, 028P through 040P, 043P through 052P and 4001P and higher Serial Numbers.

a. Coincident with replacement of the main rotor retention pin P/N 51452 perform a visual inspection of the P/N 52110-3 fork using a 10 power magnifying glass. The P/N 52110-3 fork is to be inspected for cracks in the area of the outboard tension-torsion bar retention bolt hole including both the forward and aft faces.

Note.—The replacement period of the retention pin P/N 51452 is 643 hours' time in service.

b. Replace cracked rotor forks with like serviceable parts prior to further flight.

c. Equivalent inspection procedures and repairs may be used when approved by the Chief, Aircraft Engineering Division, FAA Western Region.

This supersedes Amendment 39-3441 (44 FR 18645), AD 79-07-01.

This amendment becomes effective August 30, 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 Los Angeles, Calif., on August 15, 1979.

William R. Krieger,

Acting Director, FAA Western Region.

[FR Doc. 79-26583 Filed 8-24-79; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 79-GL-26]

Alteration of Transition Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of this federal action is to designate additional controlled airspace near Ashland, Wisconsin, to accommodate revised Very High Frequency Omnidirectional Range (VOR) and Non-Directional Radio Beacon (NDB) instrument approach procedure into the John F. Kennedy Memorial Airport, Ashland, Wisconsin.

EFFECTIVE DATE: October 4, 1979.

FOR FURTHER INFORMATION CONTACT: Doyle W. Hegland, Airspace and Procedures Branch, Air Traffic Division, AGL-530, FAA, Great Lakes Region, 2300 East Devon Avenue, Des Plaines, Illinois 60018, Telephone (312) 694-4500, Extension 456.

SUPPLEMENTARY INFORMATION: The intended effect of this action is to insure segregation of the aircraft using this approach procedure in instrument weather conditions and other aircraft operating under visual weather conditions. The floor of the controlled airspace will be lowered from 1200 feet above the surface to 700 feet for a distance of approximately one mile beyond that now depicted. The development of these proposed procedures necessitates that the FAA alter the designated airspace to insure that the procedure will be contained within controlled airspace. The minimum descent altitudes for this procedure will be established below the floor of the 700 foot controlled airspace. In addition, aeronautical maps and charts will reflect the area of the instrument procedure which will enable

other aircraft to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Discussion of Comments

On page 31198 of the Federal Register dated May 31, 1979, the Federal Aviation Administration published a Notice of Proposed Rule Making which would amend § 71.181 of Part 71 of the Federal Aviation Regulations so as to designate additional controlled airspace near Ashland, Wisconsin. Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No objections were received as a result of the Notice of Proposed Rule Making.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective October 4, 1979, as follows:

In § 71.181 (44 FR 442), the following transition area is amended to read:

Ashland, Wis.

That airspace extending upward from 700 feet above the surface within an 8 mile radius of the John F. Kennedy Memorial Airport (Latitude 40°32'59" N.; Longitude 90°56'06" W.) and within 4.5 miles west and 10.5 miles east of the Ashland, Wisconsin VOR 205° radial, extending from the 8 mile radius area to 18.5 miles southwest of the Ashland, Wisconsin VOR.

(Sec. 307(a), Federal Aviation Act of 1958 (47 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); sec. 11.61, of the Federal Aviation Regulations (14 CFR 11.61)).

Note.— The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this document is contained in the docket. A copy of it may be obtained by writing to the Federal Aviation Administration, Attention: Rules Docket Clerk (AGL-7), Docket No. 79-GL-26, 2300 East Devon Avenue, Des Plaines, Illinois.

Issued in Des Plaines, Ill., on August 14, 1979.

Wayne J. Barlow,

Director, Great Lakes Region.

[FR Doc. 79-25571 Filed 8-24-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 79-ANW-09]

Redesignation of Control Zone, Pendleton, Oreg.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises the effective time for the Pendleton, Oregon, control zone from continuous to part-time to establish effective times for this control zone which coincide with the availability of weather reporting service at this location. The National Weather Service has reduced their hours of operation at Pendleton, Oregon, making this amendment necessary.

EFFECTIVE DATE: August 28, 1979.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, Airspace Specialist (ANW-534), Operations, Procedures and Airspace Branch, Air Traffic Division, Federal Aviation Administration, Northwest Region, FAA Building, Boeing Field, Seattle, Washington, 98108; telephone: (206) 767-2610.

SUPPLEMENTARY INFORMATION:

History

The National Weather Service at Pendleton, Oregon, currently provides weather reporting service supporting the control zone at Pendleton, Oregon. Beginning May 5, 1979, operational hours for the National Weather Service at Pendleton, Oregon, were changed from full time to the period from 0600 to 2200 hours local time daily and weather reporting service is not available for an 8-hour period. Therefore, the present continuous effective period for the Pendleton, Oregon, control zone must be revised to establish effective times for this control zone coincidental with the availability of weather reporting service by the National Weather Service.

Furthermore, it is anticipated that the loss of weather reporting service at Pendleton, Oregon, will be temporary. Therefore, the revised Pendleton, Oregon, control zone designation provides for changes in the effective periods for this control zone by Notice to Airmen with continuous publication of these effective periods in the Airport/Facility Directory.

Since this amendment imposes no additional burden on any person and is relieving in nature, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than thirty (30) days.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (FARs) revises the control zone at Pendleton, Oregon.

The reduced hours of weather reporting service by the National Weather Service at Pendleton, Oregon, necessitates the changing of the effective hours of operation for the Pendleton, Oregon, control zone.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended effective August 28, 1979, as follows:

By amending Subpart § 71.171 by adding the following:

Pendleton, Oreg.

This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

(Sec. 107(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c))).

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.

Issued in Seattle, Wash., on August 15, 1979.

C. B. Walk, Jr.,

Director, Northwest Region.

[FR Doc. 79-25572 Filed 8-24-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 79-SO-53]

Alteration of Transition Area, Elkin, N.C.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule redesignates an extension and corrects the geographic location of the Zephyr RBN in the Elkin, North Carolina, Transition Area. This action provides controlled airspace required to protect instrument flight operations at the Elkin Municipal Airport.

EFFECTIVE DATE: September 20, 1979.

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

FOR FURTHER INFORMATION CONTACT: Harlen D. Phillips, Airspace and Procedures Branch, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: 404–763–7646.

SUPPLEMENTARY INFORMATION: In the Elkin, North Carolina, Transition Area described in § 71.181 (44 FR 442), an extension was designated on the 056° bearing from the Zephyr RBN to provide controlled airspace for aircraft executing the NDB RWY 25 standard instrument approach procedure at the Elkin Municipal Airport. The final approach course and geographic location of the Zephyr RBN have been changed. It is necessary to redesignate the extension and correct the RBN location in order to provide the required controlled airspace to protect aircraft executing the approach procedure.

Since this amendment is minor in nature and creates no burden on the public, notice and public procedures hereon are unnecessary.

Adoption of the Amendment

Acordingly, Subpart G, § 71.181 (44 FR 442) of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 G.m.t., September 20, 1979, as follows:

Elkin, N.C.

" * * * 056° bearing from Zephyr RBN (latitude 36°18'47" N., longitude 80°43'25" W.) * * * " is deleted and " * * * 057° bearing from Zephyr RBN (latitude 36°18'35" N., longitude 80°43'37" W.) * * * " is substituted therefor.

(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, Ga., on August 15, 1979.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 79-26579 Filed 8-24-79; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 79-SO-51]

Alteration of Transition Area, Southport, N.C.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This rule redesignates an extension in the Southport, North Carolina, Transition Area. This action provides controlled airspace required to protect instrument flight operations at the Brunswick County Airport.

EFFECTIVE DATE: September 20, 1979.

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

FOR FURTHER INFORMATION CONTACT: Harlen D. Phillips, Airspace and Procedures Branch, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: 404–763–7646.

SUPPLEMENTARY INFORMATION: In the Southport, North Carolina, transition area described in § 71.181 (44 FR 442), an extension was designated on the 315° bearing from the Yaupon RBN to provide controlled airspace for aircraft executing the NDB–A standard instrument approach procedure at the Brunswick County Airport. The final approach course in the procedure has been changed to the 291° bearing. It is necessary to redesignate the extension to provide the required controlled airspace to protect aircraft executing the procedure.

Since this amendment is minor in nature and creates no greater burden on the public, notice and public procedure hereon are unnecessary.

Adoption of the Amendment

Accordingly, Subpart G, § 71.181 (44 FR 442) of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, effective 0901 GMT, September 20, 1979, as follows:

Southport, N.C.

"* * * 315° * * *" is deleted and "* * * 291° * * *" is substituted therefor.

(Sec. 307(a), Federal Aviation Act of 1958, as amended (49 U.S.C. 1348(a)); sec. 6(c) 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, Ga., on August 15, 1979.

George R. LaCaille,

Acting Director, Southern Region.

[FR Doc. 79-26580 Filed 8-24-79; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Ch. I

Interpretative Statement Regarding the Use of Misleading Names by Persons Required To Be Registered With the Commission

AGENCY: Commodity Futures Trading Commission.

ACTION: Interpretative statement.

SUMMARY: The Commission is concerned about the use of names by individuals and firms required to be registered with the Commission which may mislead the public as to the affiliations or the true nature of the businesses of those persons. Of particular concern is the use of terms like "exchange" and "board of trade" in misleading contexts. The Commission is, therefore, announcing that it considers the use of a misleading name to constitute "other good cause" for the denial, suspension or revocation or registration.

FOR FURTHER INFORMATION CONTACT: Mark N. Rae, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C., 20581, 202–254–7265.

SUPPLEMENTARY INFORMATION: Under section 8a(2)(B) of the Commodity Exchange Act, 7 U.S.C. 12a(2)(B) (1976), the Commission may deny an application for registration if the Commission determines, after affording the applicant an opportunity for a hearing, that the applicant is unfit to engage in the activity for which registration is sought.[1] A finding of unfitness may be based on one or more of several enumerated factors or on

[1] Individuals and firms engaged in commodity activities are required to register with the Commission in various categories. See, *e.g.*, Sections 4d (futures commission merchants), 4e (floor brokers) and 4m (commodity trading advisors and commodity pool operators) of the Act, 7 U.S.C. 6d, 6e and 6m (1976), as amended, 92 Stat. 869, 870 (1978). Section 4k of the Act, 7 U.S.C. 6k (1976), as amended, 92 Stat. 869 (1978), generally requires the registration of any person associated with a futures commission merchant or with any agent thereof as a partner, officer or employee (or occupying a similar status or performing similar functions).

"other good cause shown." A finding of "other good cause shown" to deny registration is also sufficient to suspend or revoke the registration of any person. See Section 8a(3), 7 U.S.C. 12a(3) (1976).

In an interpretative statement published in the Federal Register on July 3, 1975, the Commission set forth a number of factors which, in the Commission's opinion, would constitute "other good cause" for denial of an application for registration. See 40 FR 28125 *et seq.* In that release, the Commission noted that the factors which it had listed as constituting "other good cause" were not exclusive and that other activity could also form the basis of a finding that a person is not suited to engage in the business for which registration is sought. *Id.* at 28126.

The Commission has determined at this time to advise prospective applicants, registrants and other interested persons that it considers the "other good cause" standard to preclude the use of names that suggest to the public that a firm is affiliated with another person when this is not the case or that a firm is engaged in a commodity-related business in which the firm is not engaged to a substantial extent.[2] The Commission is particularly concerned about the use of such terms as "board of trade" or "exchange" in misleading contexts. By way of illustration, the Commission believes that the use of a name such as "National Exchange, Incorporated" by an applicant for registration as a futures commission merchant or by its agents or correspondents named in the firm's application would be misleading. In contrast, the use of the name "Exchange Futures Merchants, Incorporated" by the same firm probably would not be inappropriate.

Similarly, in the case of an applicant for registration as a commodity trading advisor, the name "Futures Newsletter, Inc.," would probably be acceptable, but "Board of Trade Newletters, Inc.," would be misleading.

The Commission has directed its staff to advise an applicant of any problem that the staff perceives with the firm's name in order to afford the applicant an opportunity voluntarily to make whatever changes may be necessary to eliminate the misleading character of the name. In some cases, the only acceptable solution will be to delete certain terms from the name of a firm. In others, however, clarification may be sufficient to correct the problem.

Issued in Washington, D.C., on August 21, 1979, by the Commission.

Jane K. Stuckey,

Secretary, Commodity Futures Trading Commission.

[FR Doc. 79-26568 Filed 8-24-79; 8:45 am]

BILLING CODE 6351-01-M

[2] The use of a name by a person in these circumstances may be so misleading as to constitute fraud within the meaning of Sections 4b or 4o of the Act, 7 U.S.C. 6b and 6o (1976), as amended, 92 Stat. 870 (1978), or the Commission's antifraud regulations, 17 CFR 30.03, 31.03 and 32.9. See also Section 4h(2) of the Act, 7 U.S.C. 6h (1976), which, among other things, makes it unlawful for any person falsely to represent that he or she is a member of a contract market.

EXECUTIVE OFFICE OF THE PRESIDENT

Office of Administration

32 CFR Part 2500

Information Security Regulations

AGENCY: Office of Administration.

ACTION: Final rule.

SUMMARY: The Office of Administration is publishing this regulation as required by Executive Order 12065 and Information Security Oversight Office Directive No. 1, which provide for the classification, downgrading, declassification and safeguarding of national security information. This regulation establishes the policies and procedures by which the Office of Administration will safeguard the information under its control. The policies and procedures are intended to apply only to the Office of Administration and its employees.

EFFECTIVE DATE: August 27, 1979.

FOR FURTHER INFORMATION CONTACT: Donald Street, Assistant Security Officer, Telephone: 202-456-2832.

SUPPLEMENTARY INFORMATION: This regulation is issued pursuant to the provisions of Executive Order 12065 and Information Security Oversight Office Directive No. 1. Users of this regulation should concurrently refer to the Executive Order and the Directive.

In consideration of the foregoing, Part 2500 of Chapter XXV, Title 32, Code of Federal Regulations is promulgated as a final regulation as set forth below, effective August 27, 1979.

William R. Pollak,

General Counsel.

Title 32 of the Code of Federal Regulations is amended by establishing Chapter XXV—Executive Office of the President, Office of Administration, and adding a new Part 2500 as follows:

PART 2500—INFORMATION SECURITY REGULATION

Sec.

2500.1 Introduction.
2500.3 Original classification.
2500.5 Derivative classification.
2500.7 Declassification and downgrading.
2500.9 Safeguarding.
2500.11 Implementation and review.

Authority: Sec. 5-404 of Executive Order 12065

§ 2500.1 Introduction.

(a) *References.* (1) Executive Order 12065, "National Security Information", dated June 28, 1978.

(2) Information Security Oversight Office Directive No. 1, "National Security Information", dated October 2, 1978.

(b) *Purpose.* The purpose of this regulation is to ensure, consistent with the authorities listed in Section (a), that national security information held by the Office of Administration is protected to the extent necessary to safeguard the national security.

(c) *Applicability.* This regulation governs the Office of Administration. Together with the authorities listed in Section (a), it establishes the policies and procedures for safeguarding of information that is under the control of the Office of Administration.

§ 2500.3 Original classification.

No one in the Office of Administration has been granted authority for original classification of information.

§ 2500.5 Derivative classification.

The Office of Administration serves only as the temporary physical custodian of classified information which originated in other agencies of the Executive Office of the President. Therefore, no one in the Office of Administration incorporates, restates, paraphrases or generates in a new form information which is already classified.

§ 2500.7 Declassification and downgrading.

(a) *Declassification authority.* No one in the Office of Administration has the authority to declassify or downgrade classified information.

(b) *Mandatory review for declassification.* Requests for mandatory review for declassification of classified information contained in the records of any Executive Office of the President agency for which the Office of Administration provides services should be addressed directly to the agency which is the owner of the record, in accordance with that agency's published Information Security Regulation.

§ 2500.9 Safeguarding.

The Office of Administration shall protect information in its custody against unauthorized disclosure

commensurate with its level of classification.

§ 2500.11 Implementation and review.

The Information Security Oversight Committee of the Office of Administration shall be chaired by the agency's General Counsel. The Committee shall be responsible for acting on all suggestions and complaints concerning the administration of the information security program. The chairperson shall also be responsible for conducting an active oversight program to ensure effective implementation of Executive Order 12065.

[FR Doc. 79-26616 Filed 8-24-79; 8:45 am]
BILLING CODE 3115-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD 77-210]

Anchorage Grounds, Disestablishment of Anchorage B, Buffalo Harbor, N.Y.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule disestablishes the Explosives and Inflammables Anchorage B, Buffalo Harbor, New York. A reduction in the number of explosives transfers within the harbor has eliminated the need for this anchorage.

EFFECTIVE DATE: This amendment is effective on August 27, 1979.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander H. E. Snow, Office of Marine Environment and Systems (G-WLE/73), Room 7315, Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590 (202) 426-1934.

SUPPLEMENTARY INFORMATION: On April 26, 1979, the Coast Guard published a proposed rule (44 FR 24586) concerning this amendment. Interested persons were given until May 29, 1979 to submit comments. No comments were received.

DRAFTING INFORMATION: The principal persons involved in drafting this rule are Lieutenant Commander H. E. Snow, Project Manager, Office of Marine Environment and Systems, and Lieutenant J. W. Salter, Project Attorney, Office of the Chief Counsel.

In consideration of the foregoing Part 110 of Title 33, Code of Federal Regulations is amended as follows:

§ 110.208 [Amended]

By deleting from § 110.208 paragraphs (a)(2), (b)(1), and (b)(2).

(Sec. 7, 38 Stat. 1053, as amended, (33 U.S.C. 471); sec. 6(g)(1)(A), 80 Stat. 940, (49 U.S.C. 1655(g)(1)(A)); 49 CFR 1.46(c)(1).)

Dated: August 21, 1979.

R. H. Scarborough,
Vice Admiral, U.S. Coast Guard, Acting Commandant.

[FR Doc. 79-26604 Filed 8-24-79; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 110

[CGD 77-067]

Anchorage Grounds, Vieques Passage and Vieques Sound, Near Vieques Island, P.R.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule changes the size and location of Vieques Passage explosives anchorage and ammunition handling berth (Area 1). A portion of this anchorage area extends into a buoyed channel. This rule will eliminate a potentially unsafe situation by relocating the anchorage away from the channel.

EFFECTIVE DATE: This amendment is effective on August 27, 1979.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander H. E. Snow, Office of Marine Environment and Systems, (G-WLE/73), Room 7315, Department of Transportation, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590, (202) 426-1934.

SUPPLEMENTARY INFORMATION: On March 29, 1979, the Coast Guard published a proposed rule (44 FR 18703) concerning this amendment. Interested persons were given until May 10, 1979 to submit comments. No comments were received.

DRAFTING INFORMATION: The principal persons involved in drafting this rule are Lieutenant Commander H. E. Snow, Project Manager, Office of Marine Environment and Systems, and Lieutenant J. W. Salter, Project Attorney, Office of the Chief Counsel.

In consideration of the foregoing Part 110 of Title 33 of the Code of Federal Regulations is amended by revising § 110.245(a)(1) to read as follows:

§ 110.245 Vieques Passage and Vieques Sound, near Vieques Island, P.R.

(a) *The anchorage grounds*—(1) *Vieques Passage explosives anchorage and ammunition handling berth (Area 1).* A circular area having a radius of 1,700 yards with its center at latitude 18°09'00"N., longitude 65°32'40"W.

* * * * *

(Sec. 7, 38 Stat. 1053, as amended, (33 U.S.C. 471); sec. 6(g)(1)(A), 80 Stat. 937, (49 U.S.C. 1655(g)(1)(A)); 49 CFR 1.46 (c)(1).)

Dated: August 21, 1979.

R. H. Scarborough,
Vice Admiral, U.S. Coast Guard, Acting Commandant.

[FR Doc. 79-26603 Filed 8-24-79; 8:45 am]
BILLING CODE 4910-14-M

33 CFR Part 110

[CGD 79-018]

Special Anchorage Area, Lower Harbor, Marquette, Mich.

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This rule establishes a special anchorage in the lower harbor, Marquette, Michigan. The high density of boats in this area warrants establishment of a defined anchorage area. This rule will provide a safe anchorage area within the harbor for small craft.

EFFECTIVE DATE: This amendment is effective on August 27, 1979.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander H. E. Snow, Office of Marine Environment and Systems (G-WLE/73), Room 7315, Department of Transportation, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 426-1934.

SUPPLEMENTARY INFORMATION: On May 3, 1979, the Coast Guard published a proposed rule (44 FR 25883) concerning this amendment. Interested persons were given until June 19, 1979 to submit comments. One letter supporting the proposal was received.

DRAFTING INFORMATION: The principal persons involved in drafting this rule are Lieutenant Commander H. E. Snow, Project Manager, Office of Marine Environment and Systems, and Lieutenant J. W. Salter, Project Attorney, Office of the Chief Counsel.

In consideration of the foregoing Part 110 of Title 33, Code of Federal Regulations is amended by adding § 110.80b to read as follows:

§ 110.80b Marquette Harbor, Marquette, Mich.

The area within Marquette Harbor beginning at latitude 46°32'38"N., longitude 87°22'46"W.; thence to latitude 46°32'37"N., longitude 87°22'54"W.; thence to latitude 46°32'33"N., longitude 87°22'54"W.; thence to latitude 46°32'33"N., longitude 87°22'46"W., thence to point of origin.

Note.—An ordinance of the City of Marquette authorizes the Harbormaster to

direct the location and length of time any watercraft may anchor in this area.

(Rule 9, 28 Stat. 647, as amended, [33 U.S.C. 258]; sec. 6[g][1]C] 80 Stat. 937, [49 U.S.C. 1655[g][1][C]; 49 CFR 1.46[c][3])

Dated: August 21, 1979.

R. H. Scarborough,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

[FR Doc. 79-26602 Filed 8-24-79; 8:45 am]

BILLING CODE 4910-14-M

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Part 304

Cost of Living Adjustment for Compulsory Royalty Rates Paid by Non-Commercial Broadcasting; Correction

AGENCY: Copyright Royalty Tribunal.

ACTION: Final rules; correction.

SUMMARY: In FR Doc. 79-23727 at pages 45130 to 45131 in the issue of Wednesday, August 1, the Copyright Royalty Tribunal inadvertently excluded a cost of living adjustment under § 304.6(5)(b) for SESAC, Inc. Therefore, the following should be added under § 304.6(5)(b), after "For all such compositions in the repertory of BMI, annually, $500":

For all such compositions in the repertory of SESAC, Inc., annually, $111.

FOR FURTHER INFORMATION CONTACT: Douglas Coulter, Chairman, Copyright Royalty Tribunal, 202-653-5175.

Douglas Coulter,

Chairman.

[FR Doc. 79-26569 Filed 8-24-79; 8:45 am]

BILLING CODE 1410-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 265

[Docket No. 79-905]

Nondiscrimination in Federally Assisted Railroad Programs; Minority Business Enterprise

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of emergency rulemaking; extension of comment period.

SUMMARY: On June 21, 1979, the Federal Railroad Administration (FRA) published amendments to 49 CFR Part 265, modifying the definition of minority business enterprise (MBE) and providing guidance in establishing the eligibility of MBEs (44 FR 36338). Interested parties were given until August 20, 1979 to submit comments. A correction of the background statement to the amendments was published on July 23, 1979 (44 FR 42974).

The Chicago and Northwestern Transportation Company has filed a request that the comment period be extended to and including September 20, 1979. The request is granted.

DATE: Interested persons may submit comments through September 20, 1979.

ADDRESS: Written comments should identify the docket number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration (Trans Point Building), 2100 Second Street, SW., Washington, D.C. 20590. All comments received will be available for examination by interested persons in Room 4406 of the Trans Point Building.

FOR FURTHER INFORMATION CONTACT: Rufus S. Watson, Jr., (202) 472-5312.

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

John M. Sullivan,

Administrator.

[FR Doc. 79-26626 Filed 8-24-79; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 396

[BMCS Docket No. MC-48; Amendment No. 78-10]

Federal Motor Carrier Safety Regulations; Inspection, Repair, and Maintenance

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Effective date extended; additional comments requested.

SUMMARY: The final rule published in the Federal Register on July 2, 1979 (44 FR 38523), to become effective on August 31, 1979, is hereby amended to become effective on December 31, 1979. This extension is in response to various petitions requesting clarification of certain requirements, exemption from certain requirements, and additional time to use the current stock of vehicle condition reports. This document also requests comments on the exemptions requested by certain motor carriers and rebuttal comments on submissions from various entities.

DATES: The rule is effective on December 31, 1979. Comments must be received on or before December 31, 1979.

ADDRESS: Comments should be sent, preferably in triplicate, to BMCS Docket No. MC-48, Amendment No. 78-10, Room 3402, Bureau of Motor Carrier Safety, 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald J. Davis, Chief, Regulations Development Branch, Bureau of Motor Carrier Safety (202-426-9767); Mrs. Kathleen S. Markman, Office of the Chief Counsel, (202-426-0824), Federal Highway Administration, Department of Transportation, Washington, D.C. 20590. Office hours are 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: Thus far FHWA has received 17 comments on the revision of 49 CFR 396 published at 44 FR 38523 on July 2, 1979. That revision would provide more adequate inspection and maintenance procedures and thus mitigate vehicle defects and defect-related accidents. Comments were received from fourteen motor carriers, two carrier organizations and one labor organization. Twelve entities requested an extension of the effective date. Three entities requested exemptions from certain requirements of 49 CFR Part 396. These petitions will be described in more detail below. Three entities requested revision of 49 CFR 396.11, in particular the requirement that a copy of the vehicle inspection report be carried on the power unit. Seven entities requested a revision of the 396.13(3) requirement that the driver certify before driving the vehicle that repairs of defects indicated on the prior driver vehicle inspection report have been made.

The majority of comments received indicated that a four month extension of the effective date of the revision of 49 CFR 396 is needed in order to permit depletion of current stocks of vehicle condition report forms. However, one carrier requested an extension until October 1, 1980, while another carrier requested an extension until August 31, 1980. The Private Truck Council of America, Inc., requested a four month extension to provide additional time for clarification of certain requirements contained in the above mentioned revision. In contrast, the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers (IBT) has filed an objection to any postponement or delay in the effective date of the rule. The IBT said that any argument for delay or postponement is without merit and should be denied. The American Trucking Associations, Inc. (ATA), requested an extension to June 30, 1980, to permit carriers to use up their present stock of forms and also requested a

revision of § 396.13(3), regarding driver certification. The ATA contends that certification of repairs is not a responsibility of drivers in the regulated trucking industry.

Hudson Transit Lines, Inc., of Mahwah, New Jersey, has requested an indefinite postponement of § 396.13(3), and a revision of § 396.13(1) to read "Satisfy himself that the motor vehicle is in safe operating condition *and sign a report to that effect.*" (*Underlining* indicates addition). In addition, Hudson requested a four month postponement of the effective date of the new rules.

As indicated above, three motor carriers petitioned for exemptions from certain requirements of the new rule. The United Parcel Service (UPS) and Car Carriers, Inc., requested exemptions from certain provisions of 49 CFR 396.11 and 396.13 when the same person drives the same vehicle regularly, and the vehicle is returned to its origin point each day. The UPS suggested that a master work sheet be retained at the home base, where the driver can sign the vehicle in at the end of the workday and sign it out again at the beginning of the next day's run. In addition, each vehicle covered by the exemption would have an exemption card indicating the vehicle's home base, the place where the vehicle condition records could be inspected. The UPS requests that § 396.11(c)(3) be amended to provide for an exemption for all vehicles domiciled at the same location each day, or vehicles domiciled at one of two fixed locations on alternate days. Transport, Inc. of New Jersey, a motor carrier of passengers, requested for motor bus carriers and especially for motor bus commuter operators an exemption from the provisions of 49 CFR 396.11 and 396.13 requiring, in essence, that vehicle inspection reports be carried on the vehicle, that the last vehicle inspection report be reviewed for defects noted thereon and that the driver certify that necessary repairs have been made.

In consideration of the foregoing, it has been determined that a postponement of the effective date of the new rules to December 31, 1979, has merit for the purpose of obtaining additional views or comments with respect to the petitions referred to herein. Interested parties are invited to submit their views with respect to the above-mentioned petitions and comments on or before December 31, 1979.

Note.—The FHWA 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. However, this document does relate to a significant regulation. An evaluation of that regulation is contained in BMCS Docket No. MC–48 and can be reviewed in Room 3402, Bureau of Motor Carrier Safety, 400 Seventh Street SW., Washington, D.C. 20590 from 7:45 a.m. to 4:15 p.m. ET, Monday–Friday.

(49 U.S.C. 304, 49 U.S.C. 1655, 49 CFR 1.48(b) and 301.60)

Issued on: August 22, 1979.

Robert A. Kaye,

Director, Bureau of Motor Carrier Safety.

[FR Doc. 79–26513 Filed 8–24–79; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

Gulf of Alaska Groundfish; Final Regulations

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule.

SUMMARY: This document makes final an amendment (amendment number 4) to the fishery management plan (FMP) for the Gulf of Alaska groundfish fishery, submitted by the North Pacific Fishery Management Council. This amendment, consisting of 11 subparts, which was proposed on July 9, 1979 (44 FR 40099), corrects omissions in the original plan, eliminates superfluous management measures, and eases the burden of the measures on both domestic and foreign fishermen. The regulations are revised to implement this amendment.

EFFECTIVE DATE: August 22, 1979.

FOR FURTHER INFORMATION CONTACT: Denton R. Moore, Acting Chief, Permits and Regulations Division, National Marine Fisheries Service, Washington, D.C. 20235. Telephone: 202–634–7432.

SUPPLEMENTARY INFORMATION: On April 21, 1978, an FMP for the Gulf of Alaska groundfish, prepared by the North Pacific Fishery Management Council (Council) was published (43 FR 17242). This approved FMP was amended three times to: (1) Extend the fishing year to October 31, 1979; (2) allow a directed Pacific cod fishery to concentrate in one portion of a fishing area; and (3) raise reserves to allow for possible joint ventures. Final regulations implementing the FMP and the amendments were published (in two parts) on November 14, 1978 (43 FR 52709) and December 1, 1978 (43 FR 56238).

On April 4, 1979, amendment number 4 was submitted by the Council. The amendment was approved preliminarily by the Assistant Administrator for Fisheries, and was published on July 9, 1979, under section 305(a) of the Fishery Conservation and Management Act, as amended (the Act).

The approved management measures and these regulations are the result of experience gained by the Council in the fishery. This amendment will relieve restrictions on both foreign and domestic fishermen. The components of the amendment, and the basis for the changes are as follows:

1. Reduce the number of fishing areas in the Gulf of Alaska from 5 to 3 in order to relieve burdens on foreign and domestic fishermen while retaining sufficient delineation among stocks to prevent localized overfishing.

2. Allow foreign fishing within the 3–12 mile zone between 169° and 170° W. longitude to correct an omission in the original FMP.

3. Remove the restriction which allowed only 25% of the total allowable level of foreign fishing (TALFF) to be taken from December 1 to May 31. This provision, after experience, was considered unnecessary, since the requirement that foreign vessels use pelagic trawls in the winter adequately protects halibut stocks.

4. Allow foreign longlining for sablefish seaward of 400 meters (instead of 500 meters) from May 1 to September 30 in the area between 140° and 170° W. longitude. Because incidental halibut catch by longliners is low during the summer, this change increases areas for foreign nations to catch sablefish while retaining adequate protection for halibut stocks.

5. Permit a directed longline fishery for Pacific cod between 140° and 157° W. longitude (in addition to the authorized fishery between 157° and 170° W. longitude) seaward of 12 miles, except during the U.S. halibut season. By encouraging foreign longliners, rather than foreign trawlers, to take the Pacific cod TALFF, the incidental mortality of halibut will be reduced.

6. Exempt foreign longline vessels from the provisions of the foreign regulations which required that fishing by all vessels of a nation in a fishing area cease when the allocation for any species has been taken. The exemption does not apply if the allocation reached is for a target species of the longliners. This change prevents the foreign trawl fishery from inadvertently closing the foreign longline fishery (which tends to have low incidental catch mortality) before the longline fishermen achieve their allocation of target species.

7. Increase the squid optimum yield (OY) to 5,000 metric tons from 2,000 mt.

This adjustment of OY allows foreign nations a sufficent incidental catch of squid while maintaining harvest of squid at levels below the estimated maximum sustainable yield.

8. Increase the Atka mackerel OY by 2,000 metric tons to 26,800 mt. The increase conforms the OY to new information indicating higher historical catches of Atka mackerel by foreign nations.

9. Remove the domestic one-hour tow restriction. After experience, the Council judged this an unnecessary management measure given the separate incidental catch quota on halibut for domestic fishermen.

10. Remove the domestic requirement for the use of off-bottom trawls from December 1 to May 1. As in number 9, above, this measure was considered redundant for the protection of halibut.

11. Require domestic permits to be renewed annually and domestic reporting (i.e., fish tickets) to be submitted within 7 days instead of 72 hours to eliminate an unnecessary inconsistency between Federal and State regulations.

On July 9, 1979 (44 FR 40099) this amendment to the FMP for the Gulf of Alaska groundfish (see 43 FR 17242) was published in the Federal Register along with proposed implementing regulations. Comments on the proposed regulations were invited until August 16, 1979. No comments were received.

The Assistant Administrator for Fisheries, under a delegation of authority from the Secretary, has determined that this amendment to the FMP (1) is necessary and appropriate to the conservation and management of Gulf of Alaska groundfish resources; (2) is consistent with the National Standards and other provisions of the Act; (3) does not constitute a major Federal action requiring the preparation of an environmental impact statement (an appropriate statement of no significant environmental impact has been filed with the Environmental Protection Agency); and (4) does not constitute a significant action requiring the preparation of a regulatory analysis under Executive Order 12044.

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

(16 U.S.C. 1801 *et seq.*)

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

PART 611—FOREIGN FISHING

A. Amend 50 CFR Part 611 as follows:

§ 611.20 [Amended]

1. In § 611.20, Table I, under Gulf of Alaska Groundfish, change TALFF for Mackerel, Atka, to "25,640" and TALFF for Squid to "4,465".

§ 611.92 [Amended]

2. In § 611.92(b), change "fishing area" to "regulatory area" where it appears as follows:

§ 611.92(b)(1)—one place.
§ 611.92(b)(1)(i)—two places.
§ 611.92(b)(2)(i)(A)—four places.
§ 611.92(b)(2)(i)(B)—one place.
§ 611.92(b)(2)(ii)(A)—five places.
§ 611.92(b)(2)(ii)(B)—four places.
§ 611.92(b)(2)(iii)—one place.

3. In § 611.92(b)(1), remove Table I and replace it with the following Table I.

Table I.—*Gulf of Alaska Groundfish Fishery TALFF and Reserve [1] by Species and Regulatory Area for 1978–79: Regulatory Areas [2]*

[In metric tons]

Species		Western	Central	Eastern	Total
Pollack	TALFF	52,150	70,200	14,200	136,550
	Reserve	50	17,000	1,000	18,050
Pacific cod	TALFF	3,956	9,626	3,050	16,612
	Reserve	1,364	1,174	150	2,688
Flounders	TALFF	8,150	11,400	6,500	26,050
	Reserve	50	100	100	250
Pacific ocean perch (POP)	TALFF	2,150	6,350	13,075	21,575
	Reserve	450	1,250	625	2,325
Other rockfishes [3]	TALFF	175	500	4,600	5,275
	Reserve	25	150	200	325
Sablefish	TALFF	1,815	2,735	2,450	7,100
	reserve	185	965	810	1,960
Atka mackeral	TALFF	4,350	18,700	2,590	25,640
	Reserve	50	700	410	1,160
Squid	TALFF	835	1,780	1,790	4,465
	Reserve	105	220	210	535
Other species [4]	TALFF	4,200	8,100	3,070	15,370
	Reserve	100	200	30	330

[1] The TALFF's specified in this table may be modified during the year if reserves are apportioned in TALFF.
[2] See Figure 1 of this § 611.92(b) for description of regulatory areas.
[3] The category "other rockfishes" includes all rockfishes other than Pacific ocean perch.
[4] The category "other species" includes all species of fish except (A) The other fish listed in the table and (B) shrimp, scallops, salmon, steelhead trout, Pacific halibut, herring, fishes of the genus *Corphaenoides* and Continental Shelf fishery resources.

4. In § 611.92(b)(1), insert the new Figure 1.—Regulatory Areas of the Gulf of Alaska:

Areas of the Gulf of Alaska:

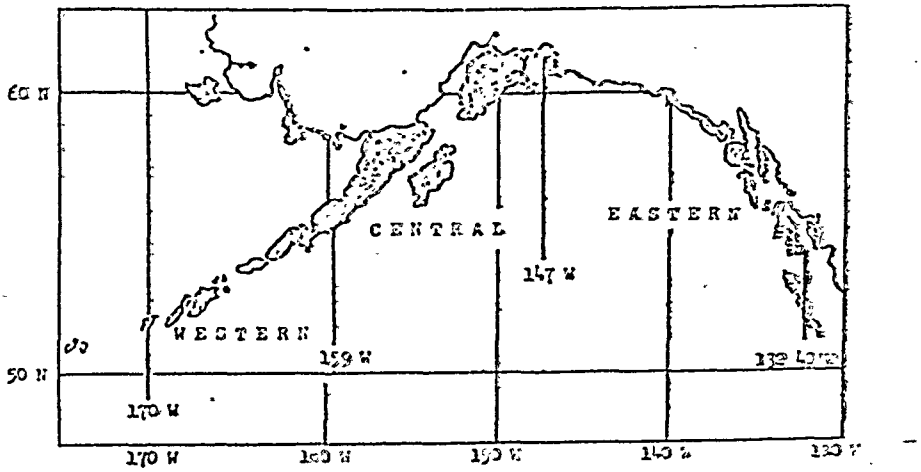

Figure 1. Regulatory Areas of the Gulf of Alaska

5. In § 611.92 is amended by revising (b)(1(ii)(A); adding (b)(2)(i)(D); revising (b)(2)(ii) and (C); deleting (b)(2)(ii) (D) and (E); revising paragraph (c); and amending paragraph (d)(3), as set forth below.

§ 611.92 Gulf of Alaska groundfish fishery.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) *Apportionment of reserve amounts.* As soon as practicable after each of the following dates, the Regional Director shall apportion to the TALFF's twenty-five (25) percent of the initial annual reserve amount for each species in each regulatory area: January 2; March 2, May 2, and July 2.

* * * * *

(2) * * *

(i) * * *

(D) The provisions of paragraph (b)(2)(i)(A) of this section do not apply to foreign vessels using longline gear unless the allocation reached is for Pacific cod or sablefish. However, when the area allocation of any groundfish species, or species group other than Pacific cod or sablefish is reached, any subsequent catch of that species in that area by vessels using longline gear shall be considered catch of a "prohibited species" and treated in accordance with the provisions of § 611.13.

(ii) The Regional Director shall issue a notice of closure, pursuant to the procedures of § 611.15(c), prohibiting fishing for the applicable species of groundfish, in the applicable regulatory area during the applicable periods using the applicable gear, as listed in paragraphs (A) through (C) below, when it is determined that one or more of the following catch limitations will be reached:

* * * * *

(C) The allocation of a nation for any groundfish species, or species group, in a regulatory area: the Regional Director shall issue a notice prohibiting all fishing for groundfish by vessels of that nation using trawl gear, and prohibiting retention of that species or species group by vessels of that nation using longline gear, in that regulatory area until November 1, *except* that if a national allocation for sablefish or Pacific cod in a regulatory area will be reached, the Regional Director shall prohibit fishing for groundfish in that regulatory area by all vessels of that nation until November 1.

(D) [Reserved]

(E) [Reserved]

(c) *Open areas.* Except as prohibited in paragraph (d) of this section, foreign fishing for groundfish is permitted in the Gulf of Alaska beyond twelve nautical miles from the base line used to measure the U.S. territorial sea, and between three and twelve nautical miles from the base line used to measure the U.S. territorial sea between 169° and 170° W. longitude.

(d) * * *

(3) *Fishing with longline gear.* * * *

(i) *General.* Longline fishing for groundfish by vessels subject to this section is prohibited east of 140° W. longitude at all times. For the purpose of this § 611.92, longline means a stationary, buoyed and anchored line with hooks or pots attached, or the taking of fish by means of such a device.

(ii) *Longline fishing for sablefish.* Longline fishing for sablefish by vessels subject to this section between 140° and 169° W. longitude is prohibited: (A) Landward of the 400 meter depth contour, from May 1 to September 30; and (B) landward of the 500 meter depth contour, between October 1 and April 30.

(iii) *Longline fishing for Pacific cod.* Longline fishing for Pacific cod by vessels subject to this section between 140° to 169° W. longitude is prohibited landward of the 400 meter depth contour during the halibut fishing seasons as established by regulations of the International Pacific Halibut Commission. The Regional Director shall give notification of the opening and closing dates of the U.S. halibut fishing seasons to the designated representative of each foreign nation, at least 48 hours before the opening and closing dates of the U.S. halibut fishing seasons.

PART 672—GROUNDFISH OF THE GULF OF ALASKA

B. Amend CFR Part 672 as follows: 1. In § 672.2 delete the paragraph commencing "Fishing area * * *", delete the paragraph commencing "Off-bottom trawl * * *", and add the following new definition:

§ 672.2 Definitions.

* * * * *

Regulatory area means any of three areas of the FCZ of the Gulf of Alaska seaward of the State of Alaska. The three regulatory areas are described as follows;

Area and Location
Eastern, between 132° 40′ and 147° W. longitude.
Central, between 147° and 159° W. longitude.
Western, between 159° and 170° W. longitude.

* * * * *

2. Section 672.4(e) is amended to read as follows:

§ 672.4 Permits.

* * * * *

(e) *Duration.* A permit shall continue in full force and effect for one year, or until it is revoked, suspended, or modified pursuant to 50 CFR Part 621 (Civil procedures).

* * * * *

§ 672.5 [Amended]

3. Section 672.5, change "72 hours" to "seven days": where it appears as follows:

§ 672.5(b)—two places.

§ 672.5(d)—one place.

4. In § 672.20(a), Table I, (c)(1), and (e)(1) are amended to read as follows:

§ 672.20 General limitations.

(a) *Optimum yield.* The optimum yield (OY) and reserves for species regulated under this Part in the three regulatory areas are set forth in Table I. These specifications of OY and reserves are effective for a fishing year beginning on December 1, 1978, and ending on October 31, 1979. The OY of each species in Table I is the maximum amount of that species which may by caught or harvested during the fishing year by vessels of the United States and foreign nations in each regulatory area.

Table I.—*Optimum Yield and Reserves; Regulatory Areas*

[In metric tons]

Species		Western	Central	Eastern	Total
Pollock	OY	57,000	95,000	16,000	169,000
	Reserve	50	17,000	1,000	18,050
Pacific cod	OY	9,600	13,400	5,900	34,900
	Reserve	1,364	1,174	150	2,688
Flounder	OY	10,400	14,700	8,400	33,500
	Reserve	50	100	100	250
Pacific ocean perch (POP)	OY	2,700	7,900	14,400	25,000
	Reserve	450	1,250	625	2,325
Other rockfish	OY	300	800	6,500	7,600
	Reserve	25	100	200	325
Sablefish	OY	2,100	3,800	7,100	13,000
	Reserve	185	965	810	1,960
Atka mackerel	OY	4,400	19,400	3,000	26,800
	Reserve	50	700	410	1,160
Squid	OY	1,000	2,000	2,000	5,000
	Reserve	105	220	210	535
Other species*	OY	4,400	8,600	3,000	16,000
	Reserve	100	200	30	330

*Includes all stocks of finfish except: (1) those listed above; and (2) salmon, steelhead trout, Pacific halibut, and fishes of the genus *Coryphaenoides*.

* * * * *

(c) * * *

(1) *Apportionment of reserve amounts.* As soon as practicable after each of the following dates, the Regional Director shall apportion to Total Allowable Level of Foreign Fishing (TALFF) twenty-five (25) percent of the initial annual reserve amount for each species in each regulatory area: January 2, March 2, May 2, and July 2.

* * * * *

(e) * * *

(1) If, during the period between December 1 and May 31, the Regional Director determines that the estimated total catch of halibut in any regulatory area by vessels regulated by this Part will reach the amount listed below, he shall issue a field order pursuant to § 672.22(a) prohibiting, until June 1, groundfish fishing with trawl gear in that regulatory area by vessels regulated by this part.

Regulatory Area and Catch Amount

Western—29 metric tons (m.t.).
Central—52 m.t.
Eastern—31 m.t.

* * * * *

§ 672.20 and § 672.22 [Amended]

5. Sections 672.20 and 672.22, change "fishing area" to "regulatory area" where it appears as follows:

§ 672.20(b)(1)—three places.
§ 672.20(b)(2)—two places.
§ 672.20(b)(5)—two places.
§ 672.20(e)(2)—one place.
§ 672.20(b)(3)(i)—one place.

6. Sections 672.24 and 672.25 are amended to read as follows:

§ 672.24 Gear limitations. [Reserved]
§ 672.25 Effort limitations. [Reserved]

[FR Doc. 79-26547 Filed 8-24-79; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 44, No. 167
Monday, August 27, 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.

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 121]

Small Business Size Standards; Procurement Purposes; Proposed Change

AGENCY: Small Business Administration.

ACTION: Proposed Rule.

SUMMARY: This proposal would amend the wording of 13 CFR Part 121.3–8(c)(2)(i) to carry out the intent of Pub. L. 95–507 subsection 15(j). This change will allow small offerers, including nonmanufacturers, to furnish any domestically manufactured product on Federal procurements valued at less than $10,000.

DATE: Written comments must be submitted by September 11, 1979.

ADDRESS: Address all comments to: Kaleel C. Skeirik, Chief, Size Standards Division, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: John D. Whitmore (202) 653–6373.

SUPPLEMENTARY INFORMATION: Pub. L. 95–507, enacted October 24, 1978, among other things, added a provision, Subsection 15(j) to the Small Business Act requiring that:

> Each contract for the procurement of goods or services which has an anticipated value of less than $10,000 and which is subject to small purchase procedures shall be "reserved" exclusively for small concerns * * *.

At present, SBA Rules and Regulations, Part 121, § 121.3–8(c)(2)(i), provide that small business nonmanufacturers must " * * * furnish the products of a small business manufacturer or producer * * * " in the case of Government procurements " * * * reserved for or involving the preferential treatment of small business * * *." That language, considered in conjunction with the statutory requirement of (new) Subsection 15(j) of the Small Business Act, would necessitate application of formal set-aside procedures and criteria in the processing of virtually every Government small purchase action irrespective of dollar value. For example, the $10, $50, $500, etc., solicitation and award actions would, for small business program purposes, require review and evaluation efforts comparable to those currently established by Federal agency procurement regulations for formal procurements exceeding $10,000. To impose this requirement upon Federal procurement offices for small purchase procedures under $10,000 would be burdensome and administratively unfeasible. Therefore, we propose to amend that part of the first sentence of 13 CFR 121.3–8(c)(2)(i) that appears before the proviso to read as follows:

§ 121.3–8 Definition of small business for Government procurements.

* * * * *

(c) Nonmanufacturing. * * *

(1) * * *

(2)(i) In the case of government procurement reserved for small businesses, such nonmanufacturer furnishes in the performance of the contract the products of a small business manufacturer or producer, which products are manufactured or produced in the United States: *Provided, however,* If the procurement has an anticipated value of less than $10,000 and is subject to, and is actually processed under "small purchase procedures" as defined in the Federal Acquisition Regulation or, pending issuance thereof by the Office of Federal Procurement Policy, in the Defense Acquisition Regulation (DAR), Federal Procurement Regulation (FPR), and the National Aeronautics and Space Administration Procurement Regulation (NASAPR), as applicable, such nonmanufacturer may furnish any domestically produced or manufactured product. For purposes of this exception such nonmanufacturer must qualify as an independently owned wholesaler, distributor or dealer selling in substantial quantities to local commercial customers and be located within the local trading area of the Federal purchasing office awarding the contract or in the location of where the supplies or services are to be delivered; * * *

* * * * *

Dated: August 20, 1979.

A. Vernon Weaver,
Administrator.

[FR Doc. 79-26548 Filed 8-24-79; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

[Airspace Docket No. 79-SO-47]

Proposed Designation of Control Zone; Smyrna, Tenn.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This proposed rule will designate the Smyrna, Tennessee, control zone and lower the base of controlled airspace in the vicinity of the Smyrna Airport from 700 feet AGL to the surface.

DATES: Comments must be received on or before: October 3, 1979.

ADDRESS: Send comments on the proposal to: Federal Aviation Administration, Chief, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

FOR FURTHER INFORMATION CONTACT: Harlan D. Phillips, Airspace and Procedures Branch, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: 404–763–7646.

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, Southern Region, Federal Aviation Administration, Attention: Chief, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. All communications received on or before October 3, 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. A report

summarizing each public contact with FAA personnel concerned with this rulemaking will be filed in the public, regulatory docket.

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 notice 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 Subpart F of Part 71 of the Federal Aviation Regulations (14. CFR Part 71) to designate the Smyrna, Tennessee, control zone. A nonfederal airport traffic control tower has been established on the Smyrna Airport. The control tower meets the requirements for establishment of a part-time control zone with irregular hours of operation.

In order to provide the maximum level of safety, designation of the control zone, controlled airspace to the surface, is required to contain flight operations near the airport.

The Proposed Amendment

Accordingly, the Federal Aviation Administration proposes to amend Subpart F, § 71.171 (44 FR 353), of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by adding the following:

Smyrna, Tenn.

Within a five-mile radius of Smyrna Airport (latitude 36°00'32" N., longitude 86°31'12" W.); excluding the portion within the Nashville, Tennessee, Control Zone. This control zone is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereunder be continuously published in the Airport Facility Directory.

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

Note.—The Federal Aviation Administration 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 evaluaton.

Issued in East Point, Ga., on August 17, 1979.

Lonnie D. Parrish,

Acting Director, Southern Region.

[FR Doc. 79-26573 Filed 8-24-79; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[File No. 9075]

Irving E. Miller; Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, accepted subject to final Commission approval, among other things, would require an individual party to a complaint issued against Bankers Life and Casualty Company and others, to cease, in connection with the advertising, promotion and sale of land, misrepresenting that land purchase is a safe investment; involves little financial risk; and is a means of achieving financial security. The order would require that all advertising, promotional materials and sales contracts include specified disclosures regarding risks involved in undeveloped land investment; the advisability of consulting with a real estate specialist prior to contracting; the availability and cost of water, sewage disposal and utilities; and the identity of lots in flood plain areas. Mr. Miller would be required to provide customers with cooling-off periods and information regarding rights to cancellation and refund; and prohibited from using certain contractual provisions including one by which defaulting purchasers forfeit all payments made. Additionally, the order would require Mr. Miller to release in favor of consumers who have paid for their lots in full any security interest he has or obtains in subdivisions.

DATE: Comments must be received on or before: October 22, 1979.

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

FOR FURTHER INFORMATION CONTACT: Paul C. Daw, Director, 6R, Denver Regional Office, Federal Trade Commission, Suite 2900, 1405, Curtis St., Denver, Colo. 80202. (303) 837-2271.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's rules of practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 5.9(b)(14) of the Commission's rules of practice (16 CFR 4.9(b)(14)).

[Docket No. 9075]

Irving E. Miller

AGREEMENT Containing Consent Order To Cease and Desist

The agreement herein, by and between Irving E. Miller, an individual, and his attorney and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's rules governing consent order procedure:

1. Respondent Irving E. Miller is an individual whose business address is 2601 Biscayne Boulevard, Miami, Florida.

2. Respondent has been served with a copy of the complaint issued by the Commission.

3. Respondent admits all the jurisdictional facts set forth in the complaint.

4. Respondent waives:

(a) Any further procedural steps;

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

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

5. This Agreement shall not become a part of the official record of this proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission, it will be placed on the public record pursuant to the Commission Rules for a period of sixty (60) days and information in respect thereto publicly released; and such acceptance may be withdrawn by the Commission if thereafter it deems the Agreement inappropriate.

6. This Agreement is for settlement purposes only and does not constitute

an admission by respondent that the law has been violated as alleged in the complaint.

7. This Agreement contemplates that, if accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 3.25 of the Commission Rules, the Commission may, without further notice to respondent:

(a) Issue its decision containing the following Order to cease and desist in disposition of this proceeding; and

(b) Make information public with respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation or interpretation not contained in the Order or this Agreement may be used to vary or contradict the terms of the Order.

8. Respondent understands that once the Order has been issued, he will be required to file one or more compliance reports pursuant to the Commission Rules showing that he has fully complied with the Order, and that he may be liable for a civil penalty in the amount provided by law for each violation of the Order after it becomes final.

9. It is agreed that the relief set forth in the Order contained herein fully satisfies any claim for consumer redress which the Commission has under Sections 5 and 19 of the Federal Trade Commission Act, as amended, arising out of the acts and practices alleged in the complaint which occurred prior to the effective date of the Order relating to the following developments: Hartsel Ranch, Estates of the World, Rio Grande Ranches, Larwill Costilla Ranches; Top of the World and San Luis Valley Ranches. By its final acceptance of this Agreement, with such modifications, if any, which the parties may make prior to said final acceptance, the Commission waives its right to commence a civil action under Section 19 of the Federal Trade Commission Act, as amended, with respect to the acts and practices alleged in the Commission's complaint which occurred prior to the effective date of the Order relating to said developments.

Order

For purposes of this Order, unless otherwise provided, the following definitions shall be applicable:

"Purchaser" shall mean a person to whom one or more lots in a subdivision have been sold or offered for sale: *Provided, however,* That a "purchaser" shall not include a person who purchases land in a single transaction for a sum in excess of $25,000.

"Land" or "subdivision" shall mean any real property which is divided or proposed to be divided into 50 or more units, whether contiguous or not, for the purpose of sale or lease to purchasers as part of a common promotional plan.

"Contract" shall mean a written agreement for the sale of land to purchasers.

"Business day" shall mean any calendar day except Saturday, Sunday, or the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans' Day, Thanksgiving Day and Christmas Day.

"Property Report" includes documents sometimes referred to as an Offering Statement or Prospectus.

"Company which sold the lot" shall mean the title owner or its sales agent."Inconsistent" shall mean mutually repugnant or contradictory one to the other.

For purposes of this Order, a requirement to cease and desist from representing or misrepresenting shall include representing or misrepresenting directly or indirectly. For purposes of this Order, all required disclosures shall be made in a clear and conspicuous manner.

Except as provided in Sections IV and IX of this Order, this Order shall not apply to a bulk transfer of land or subdivision. The term "bulk transfer" shall mean the transfer of all or a portion of land or subdivision conveyed in a single transaction for a sum in excess of $25,000.

I

It is ordered, That respondent Irving E. Miller and his agents, representatives and employees, directly or through any corporation, subsidiary, division, or other entity, in connection with the advertising, offering for sale or sale of land in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing: 1. That land or lots are a good or safe investment, or that the purchase of a lot is a good or safe investment.

2. That there is little or no financial risk involved in the purchase of lots.

3. That the resale of a purchased lot is not difficult.

4. That the value of, or demand for, any land, including lots being offered for sale or previously sold, has increased, or will increase, or that purchasers have made, or will in the future make, a profit by reason of having purchased such land.

5. That the prices of lots periodically rise or that prices of said lots are increasing, have increased or will increase, without disclosing at the same time, and by the same medium by which the price increases are communicated, that the price increases of lots do not in any way relate to the value of said lots.

6. That the purchase of a lot is a way to achieve financial security or prosperity, to deal with inflation or to become wealthy.

7. That the land in any subdivision will soon be unavailable or that prospective purchasers must purchase a lot in a subdivision immediately to ensure that such lot will be available

8. That subdivision land and the area surrounding it are comparable, similar or analogous either to urban, metropolitan and industrial areas or to mountain resort areas or to recreation areas.

9. That the growth in land values or potential growth in land values at a subdivision corresponds to or will correspond to the growth in land values at any other locality. The word "locality" includes, but is not limited to, cities, towns, counties, townships, boroughs, States and regions.

Provided, however, It shall be a defense that at the time a representation was made, it was true and the maker of the representation possessed data substantiating the representation. Such substantiating data shall be maintained for at least three years from the making of the representation it substantiates and shall be made available to the Commission upon request.

B. Including in any contract for the sale of subdivision land, or in the documents shown or provided to purchasers or prospective purchasers of subdivision land:

1. Language to the effect that no express or implied representations have been made in connection with the sale or offering for sale of such land, other than those set forth in the contract.

2. Language to the effect that upon a failure of the purchaser to pay any installment due under the contract or otherwise to perform any obligation under the contract, the company which sold the lot shall be entitled to retain sums previously paid thereunder by the purchaser.

3. Any waiver, limitation or condition on the right of a purchaser to cancel a

transaction or receive a refund under any provisions of this Order, except as such waiver, limitation or condition is expressly allowed by this Order.

C. Misrepresenting the right of a purchaser under any provision of this Order or any applicable statute or regulation to cancel a transaction or receive a refund.

D. Making any representation concerning the rights or obligations of a company or purchaser which differs in any respect from the rights or obligations of the parties as stated in the contract or Property Report.

E. Making any statement or representation concerning the proximity to any subdivision of any existing or future city, place, facility, body of water or road without disclosing, in immediate conjunction therewith and with the same conspicuousness as such statement of representation, the approximate distance to the nearest two (2) miles in road miles from the center of the subdivision to the downtown or geographical center of the city, place or facility referred to, or in the case of a body of water or a road, to the nearest point at which such body of water or road is accessible to entry and use by purchasers.

F. Making any statement of representation concerning any credit, refund or other monetary benefit or remuneration to purchasers or prospective purchasers from the company which sold the lot unless such is a fact and unless any conditions or limitations attached to such credit, refund, benefit or remuneration are disclosed.

II

It is further ordered, That respondent Irving E. Miller, his agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other entity, in connection with the advertising, offering for sale or sale of land in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith:

A. Set forth in all sales and promotional material and advertising relating to the sale of land, except billboards, the following statement:

Risk Factor: Since land values are uncertain, you should consult a qualified professional before purchasing.

B. Set forth as the title on the first page of any contract for the sale of land in 12-point boldface type "Contract for the Purchase of Land."

C. Set forth on the first page of all contracts for the sale of land in 10-point boldface type the following statement:

This is a contract by which you agree to purchase land. The future value of this land, as well as all undeveloped real estate, is uncertain. You should not assume that the value of land will increase. Do not assume that you will be able to resell your land without significant community development and population growth.

D. Set forth on the first page of all contracts for the sale of lots such of the following statements as are applicable:

1. For contracts for the sale of lots where the company which sold the lot is not obligated to provide electricity, water, and sewage disposal by central systems, but where all such utilities are available by other means, the following statement:

This undeveloped land has been planned for use as a vacation homesite. Electricity, water, and sewage disposal are available at the purchaser's expense. Electricity is obtainable by generator, water by well, and sewage disposal by septic tank. Access will be by unpaved roads.

Provided, That, if a central system is provided instead of a generator or well or septic tank, then the above statement may be modified only to the extent necessary to so indicate. *Provided further,* That, if paved roads are provided, then the above statement may be modified only to the extent necessary to so indicate. *Provided further,* That, if roads are county accepted, then the above statement may be so modified only to the extent necessary to so indicate.

2. For contracts for the sale of lots where the company which sold the lot is not obligated to provide any utilities and where utilities are not known to be available, the following statement in lieu of the above statement:

This completely undeveloped land is being sold "as is." No improvements are planned for this subdivision other than county—approved and maintained roads. No representation is made as to the availablility of water or sewer.

Provided, That, if the roads are not county-approved and maintained, this statement shall be modified to disclose the status of the roads if any.

E. Set forth the following statement in any contract for land requiring a Property Report; immediately below the statement required by paragraph D. above.

Note to Buyer: See page [insert page number] of the Property Report for statements relating to the additional expense for improvements.

F. Set forth in any contract for the sale of land which does not require a Property Report, immediately below the statements required by paragraph D. above, a statement providing the cost of improvements.

G. Whenever prospective buyers are provided with a contract for the sale of land by any means other than by mailing said contract directly to such purchasers:

1. Furnish each purchaser, at the time the purchaser signs a contract for the sale of land, with two copies of a form, captioned in boldface type "Notice of Cancellation," which shall contain in boldface type the following information and statements:

Notice of Cancellation

Date of Transaction

Contract Number

You may cancel this transaction, without any penalty or obligation, at any time prior to midnight of the tenth business day after the date shown on the contract.

If you cancel, any payments made by you under the contract and any negotiable instrument issued by you will be returned within twenty business days following receipt by the seller of your cancellation notice.

To cancel this transaction, mail or deliver a signed copy of this cancellation notice or any other written notice, or send a telegram to [name of company which sold the lot], at [address of said company's place of business] not later than midnight of [date].

I (we) hereby cancel this transaction (each purchaser must sign this notice.)

Dated: ———————.

Signature of Purchaser

Dated: ———————.

Signature of Purchaser

2. Before furnishing copies of the above "Notice of Cancellation" to the purchaser, complete both of the copies by entering the name of the company which sold the lot, the address of said company's place of business, the date of the transaction, the contract number and the date by which the purchaser may give notice of cancellation, but in no event may such date be earlier than the tenth business day following the date of the transaction.

3. Where a timely notice of cancellation is received and said notice is not properly signed and the company which sold the lot does not intend to honor the notice, immediately notify the purchaser by certified mail, return receipt requested, enclosing the notice, informing the purchaser of his error and stating clearly and conspicuously that a notice signed by the purchaser must be mailed by midnight of the seventh business day following the purchaser's receipt of the mailing if the purchaser is to obtain a refund.

4. Where the signature of a prospective purchaser is solicited during

the course of a sales presentation, inform each person orally, at the time he signs the contract, of his right to cancel as stated in paragraph II.G.5. of this Order.

5. Include clearly and conspicuously in each contract for the sale of land the following statement in boldface type:

Purchaser has the right to cancel the contract, without any penalty or obligation, at any time prior to midnight of the tenth business day after the date of this contract. See the attached "notice of cancellation" for an explanation of this right.

6. Within twenty business days after the receipt of a timely notice of cancellation signed by a purchaser, refund all payments made under the contract, and cancel and return any monies paid by the purchaser in connection with the contract.

H. Furnish any report required to be furnished to a purchaser at or before the signing of a contract by Federal or State law or by this Order (i) with the first written materials furnished to a prospective purchaser in connection with the sale of a lot or (ii) during the first contact which the prospective purchaser has with any agent or employee of the company which is offering the lot for sale, in connection with the sale of a lot.

I. Inform all prospective purchasers that a bank or other lender located near the subdivision should be consulted prior to the purchase of land if the purchaser intends to finance the building of a house on that land.

J. If a refund is offered contingent upon the purchaser taking a company-guided inspection tour or making a registered inspection of the propoerty in which the purchaser's lot is located:

1. Provide the purchaser three business days after taking said tour or making said inspection within which to request a refund.

2. Include in any contract with the original purchaser, in immediate proximity to the provision setting forth the availability of a refund upon the completion of a company-guided tour or registered inspection of the property, the following statements:

If you take a company-guided tour of the property within [designate time period] months of your purchase and you have not been declared in default, you will have three days after the tour to cancel your purchase and get your money back.

You, the purchaser, pay your own expenses for travel to the property in order to take the tour.

3. Furnish each purchaser at the completion of the tour or inspection a completed form in duplicate, captioned "Notice of Cancellation," which shall contain in boldface type the following statements:

Notice of Cancellation

Date of Company-Guided Inspection Tour or Registered Inspection of Property

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Contract Number

You may cancel your contract, without any penalty or obligation, at any time prior to midnight of the third business day after the above date.

If you cancel, any payments made by you under the contract and any negotiable instrument executed by you will be returned within twenty business days following receipt by the seller of your cancellation notice. To cancel your contract, mail or deliver a signed copy of this cancellation notice or any other written notice, or send a telegram to [name of company which sold the lot], at [address of said company's place of business] not later than midnight of [date]. I (we) hereby cancel the contract. (Each purchaser must sign this notice.)

Dated: ———

Signature of Purchaser

Dated: ———

Signature of Purchaser

4. Before furnishing copies of the above "Notice of Cancellation" to purchaser, complete both copies by entering the name of the company which sold the lot and the address of said company's place of business, the date of the company-guided inspection tour or the registered inspection of the property, the contract number and the date by which the purchaser may give notice of cancellation, but in no event may such date be earlier than the third business day following the date of said tour or inspection.

5. Where a timely notice of cancellation is received but said notice is not properly signed and the company which sold the lot does not intend to honor the notice, immediately notify the purchaser by certified mail, return receipt requested, enclosing the notice, informing the purchaser of his error and stating clearly and conspicuously that a notice signed by the purchaser must be mailed by midnight of the seventh day following the purchaser's receipt of the mailing if the purchaser is to obtain a refund.

K. Disclose in each instance where all or part of any printed article, publication, endorsement or testimonial is used, published or referred to, the date when such article, publication, endorsement or testimonial was originally published or made and the source of such article, publication, endorsement or testimonial.

L. Notify prospective purchasers of any lot offered for sale in a flood plain area that said lot is in a flood plain area.

III.

It is further ordered, That respondent Irving E. Miller and his agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other entity, in connection with the advertising, offering for sale or sale of land in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing that any land may be used now or in the future:

A. As a homesite, unless the contracts or Property Reports accurately set forth:

1. That water is available to the purchaser by drilling a well or by central water system.

2. That sewage disposal is available to purchasers by installation of a septic tank or by hook-up to a central sewage system.

3. That electricity will be available to the purchaser from a utility company.

B. As a vacation homesite, unless the contracts or Property Reports set forth:

1. That water is available to the purchaser by drilling a well.

2. That percolation on the property purchased is sufficient to support a septic tank.

3. That electricity is available to the purchaser by installing a generator.

IV

It is further ordered, That respondent Irving E. Miller, including his agents, representatives and employees, directly or through any corporation, subsidiary, division or other entity.

A. Regarding each subdivision in which respondent has or obtains a security interest, shall execute and record a covenant providing that, if a purchaser pays the total purchase price pursuant to the terms of a contract for the purchase of land, respondent shall grant to such purchaser a release of said security interest.

1. For each subdivision in which respondent has a security interest as of the effective date of this Order, respondent shall execute and record such covenant within 90 days of the effective date of this Order.

2. For each subdivision in which respondent obtains a security interest after the effective date of this Order, respondent shall execute and record such covenant at the same time said security interest is recorded.

B. Regarding each subdivision in which respondent has or obtains title, for as long as respondent retains title, shall obtain for each purchaser who

pays the total purchase price pursuant to the terms of a contract for the purchase of land, a release as to that purchaser of any security interest on such subdivision granted subsequent to the effective date of this Order.

V

It is further ordered, That if the Interstate Land Sales Full Disclosure Act, presently codified at 15 U.S.C. §§ 1701–20 (1970), or any regulation that has been or may be promulgated pursuant thereto requires an act or practice that is prohibited by any provision of this Order, or prohibits an act or practice that is required by any such provision, or is otherwise inconsistent with any such provision of this Order, any such provision of this Order shall be without legal force or effect.

VI

It is further ordered, That in the event the Federal Trade Commission promulgates a valid Trade Regulation Rule applicable to respondents' sale of land, then to the extent there are any inconsistencies between this Order and such Rule, the Trade Regulation Rule will govern.

VII

It is further ordered, That respondent Irving E. Miller:

1. Deliver, by hand or by certified mail, a copy of Sections I, II, and III of this Order to each of his present or future employees and salesmen, and independent brokers, who sell or promote the sale of land to purchasers.

2. Provide each person so described in Paragraph 1 above with a form, returnable to said respondent, clearly stating such person's intention to be bound by and to conform his sales practices to the requirements of this Order.

3. Inform each person described in Paragraph 1 above that said respondent shall not use any such person, or the services of any such person, unless such person agrees to and does file notice with said respondent that such person will be bound by the provisions contained in this Order.

4. That in the event such person will not agree to so file notice with said respondent and to be bound by the provisions of this Order, said respondent shall not use such person, or the services of such person.

5. Inform the persons described in Paragraph 1 above that said respondent is obligated by this Order to discontinue dealing with those persons who engage on their own in the acts and practices prohibited by this Order.

6. Institute a program of continuing surveillance adequate to reveal whether the sales practices of each of said persons described in Paragraph 1 above conform to the requirements of Sections I, II, and III of this Order.

7. Discontinue dealing with any person described in Paragraph 1 above, revealed by the aforesaid program of surveillance, who repeatedly engages on his own in the acts or practices prohibited by Sections I, II, and III of this Order: *Provided, however,* That, in the event remedial action is taken, evidence of such dismissal or termination shall not be admissible against said respondent in any proceeding brought to recover penalties for alleged violation of any other paragraph of this Order.

VIII

It is further ordered, That respondent Irving E. Miller shall forthwith distribute a copy of this Order to each entity which he owns or controls and which is engaged in the sale of land.

IX

It is further ordered, That in the event that respondent Irving E. Miller transfers to any other person or entity all or a substantial part of any subdivision owned by him or by an entity within his control, respondent shall notify the Commission in writing within sixty days of such transfer of the fact of the transfer, identifying the property transferred, the name and address of the transferee, and the date of the transfer.

X

It is further ordered, That respondent Irving E. Miller, for a period of 10 years from the date of service of this order, shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the advertising, offering for sale or sale of subdivision land to the consuming public. Such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

XI

It is further ordered, That respondent Irving E. Miller shall, within sixty (60) days after service upon him of this Order, file with the Commission a report in writing setting forth in detail the manner and form in which said respondent has complied with this Order.

Analysis of Proposed Consent

Order To Aid Public Comment

The Federal Trade Commission has accepted an Agreement to a proposed consent Order in Docket No. 9075 from:

Irving E. Miller

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

On February 26, 1976, the Federal Trade Commission issued a Complaint against Irving E. Miller and 15 other respondents, including Bankers Life and Casualty Company, alleging unfair and deceptive acts and practices in the sale of subdivided lots of undeveloped land in six subdivisions in Colorado. Four of these subdivisions are located in the San Luis Valley, a region in southern Colorado, and are known as: San Luis Valley Ranches, Rio Grande Ranches, Top of the World, and Larwill Costilla Ranches.

The other two subdivisions are located in Park County in central Colorado, and are known as: Hartsel Ranch, and Estates of the World or Estates of Colorado.

Previously, on May 16, 1979, the Commission published for comment a consent agreement which it had accepted from all respondents except Mr. Miller.

Complaint Allegations

The Complaint alleged that the respondents cooperated and acted together in using certain unfair and/or deceptive acts and practices in the sale of subdivision lots, including:

(1) Representing falsely that the purchase of a lot was a good investment;

(2) Failing to say that the purchase was a risky one due in part to the difficulty a consumer would have in attempting to resell;

(3) Misrepresenting the useability of respondents' lots as homesites;

(4) Failing to make disclosures about the high cost of utilities, the poor quality and remote location of the land, and the lack of home construction financing;

(5) Using unfair contract provisions; and

(6) Selling lots by the use of contracts-for-deeds while at the same time

entering into mortgage agreements which could cut off the purchaser's right to receive a warranty deed upon payment in full for the land.

Additionally, the notice of contemplated relief which accompanied the Complaint apprised respondents that the Commission might seek consumer redress at the conclusion of the adjudicative proceedings.

The Agreement

The Agreement basically requires the respondent to (1) cease and desist from making certain representations, and (2) make certain disclosures in the sale of subdivision lots. This Agreement with Mr. Miller does not provide for consumer redress, since the agreement with the other respondents provides that its redress terms fully satisfy the Commission's consumer redress claims regarding the subdivisions involved here.

(A) *Cease and Desist Provisions*

The Order prohibits the respondent from representing in the future that the purchase of a lot is a good investment, involves little or no financial risk, or is a way to achive financial security or prosperity, to deal with inflation or to become wealthy. The Order also requires the respondent to stop representing that lots may soon be unavailable, and that the subdivision land is comparable to industrial areas, urban areas or mountain resort areas. The Order has a proviso which allows the respondent to make these representations if he can prove that at the time they are made, the representations are true and the respondent has data which substantiates them.

In addition, the respondent is prohibited from representing that the lots are useable as homesites or vacation homesites, unless water, sewage disposal and electricity are available and the source of such utilities is accurately disclosed.

Further, the respondent is prohibited from using certain contractual provisions, including the one by which defaulting purchasers forfeit all payments made.

(B) *Disclosures*

The respondent is required by the Order to make certain disclosures in the advertising, promotional materials and contracts used in future lot sales. The Order often sets out the exact form in which these disclosures are to be made. Disclosures are to be made concerning:

(1) The risky nature of a land investment and possible difficulties in reselling the land;

(2) The availability of utilities and roads;

(3) The cost to the purchaser of utilities and the necessary improvements;

(4) The fact that a bank or other lender near the subdivision should be consulted prior to purchase if the purchaser needs home construction financing;

(5) The approximate distance from the purchaser's land to any city, facility, body of water, or road represented to be in the proximity of the land; and

(6) The identity of lots in flood plain areas.

The Order also requires the respondent to notify purchasers of two "cooling-off" periods. First, anyone who contracts other than through the mails must receive notice of the right to cancel the contract at any time within 10 days of signing the contract. Second, if the respondent offers a refund contingent upon the purchaser taking a company-guided inspection tour, then the purchaser must be given three days after taking the tour to cancel the contract and receive the refund.

(C) *Release of Security Interests*

The Order also is designed to insure that purchasers who fulfill their contracts receive a deed and that their rights are not cut off by a holder of a mortgage on the land. If the respondent owns or obtains a security interest, such as a mortgage, in subdivision land, he must publicly record a promise to release that security interest in favor of any consumer who pays for his lot in full. If the respondent holds the title to subdivision land, he must obtain for any lot purchaser who pays in full a release of any security interest granted in the future on the land.

(D) *Reporting and Compliance*

The Order also addresses the respondent's sale of all or a substantial part of a subdivision. In the event that the respondent makes such a sale, he must submit a report to the Commission identifying the property sold and the party who acquired it.

In addition to the above, the respondent must notify the Commission each time he becomes involved with a company in the subdivided land sales business within the next ten years. Finally, the respondent must file a report with the Commission, within sixty days of the effective date of the Order, indicating how he is complying with the terms of the Order.

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

James A. Tobin,

Acting Secretary.

[FR Doc. 79-26565 Filed 8-24-79; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[18 CFR Parts 2 and 3d]

[Docket No. RM79-69]

Regulations Implementing the National Environmental Policy Act of 1969

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission is proposing a new Part 3d of its regulations to replace §§ 2.80 through 2.82 as the basic procedural framework for collecting, evaluating, and disseminating environmental information about Commission actions or the proposed actions of applicants and jurisdictional entities. The regulations are drafted to reflect the policies and procedures of the NEPA regulations issued by the Council on Environmental Quality (40 CFR Parts 1500–1508), consistent with the Commission's independent regulatory responsibilities. The proposed rule lists those actions requiring an Environmental Assessment to determine if there is a major Federal action significantly affecting the quality of the human environment, thereby necessitating an Environmental Impact Statement (EIS). There are certain actions which automatically require an EIS and certain actions which are excluded from environmental reviews altogether, except in unusual circumstances.

Although many of the CEQ regulations are adopted by reference, the proposed rules provides applicants seeking Commission action or approval with a self-contained manual for compliance with NEPA.

DATE: Written comments by September 17, 1979.

ADDRESS: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, Reference Docket No. RM79-69

FOR FURTHER INFORMATION CONTACT:

James Hoecker, Office of the General Counsel, Federal Energy Regulatory Commission, Room 8106, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 275-0422, or

Dr. Jack Heinemann, Advisor on Environmental Quality, Office of Regulatory Analysis, Federal Energy Regulatory Commission, Room 3347, 825 North Capitol Street, N.E., Washington, D.C. 20426, (202) 275-6569.

Regulations Implementing the National Environmental Policy Act of 1969

Issued: August 20, 1979.

Notice is given that the Federal Energy Regulatory Commission (Commission) proposes to amend its regulations which govern the collection, evaluation, and dissemination of environmental information concern Commission actions, including actions on non-Federal projects within the Commission's jurisdiction, pursuant to the Department of Energy Organization Act, Natural Gas Act, Federal Power Act, the Public Utility Regulatory Policies Act, the Natural Gas Policy Act and the Interstate Commerce Act. The proposed regulations would replace and elaborate on existing Commission regulations under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321-4347. The proposed regulations reflect the policies and essential procedures of the NEPA regulations promulgated by the Council on Environmental Quality, 40 CFR Parts 1500-1508.

Background

Section 102(2)(C) of NEPA provides in part that all Federal agencies shall

> Include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on:
>
> (i) The environmental impact of the proposed action;
>
> (ii) Any adverse environmental effects which cannot be avoided should the proposal be implemented;
>
> (iii) Alternatives to the proposed action;
>
> (iv) The relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and
>
> (v) Any irreversible and irretrievable commitment of resources which would be involved in the proposed action should it be implemented.

On December 18, 1972, the Federal Power Commission, predecessor to the Federal Energy Regulatory Commission, issued Order No. 415-C to comply with the NEPA mandate that Federal agencies preserve the natural, cultural, historic, aesthetic, and biologic environments by requiring calculation and reporting of the probable environmental impact of Federal actions and programs and by prescribing means for preventing or mitigating environmental damage. Since the issuance of Order No. 415-C, §§ 2.80 through 2.82, and appendices that describe what applicants should include in an Environmental Report, have guided Commission review of environmentally related actions undertaken by permittees, licensees, and applicants within Commission jurisdiction.

On November 29, 1978, the Council on Environmental Quality (CEQ) published in the Federal Register its regulations implementing NEPA. The CEQ regulations establish processes which enable Federal executive agencies to work together in researching and solving environmental problems and provide for uniform methods of writing environmental impact statements and assessments, receiving comments, developing records of decision, and handling information. (40 CFR Parts 1500-1508) Executive agencies are bound by the CEQ regulations, and have supplemented them with interpretive guidelines, (See *e.g.*, proposed Department of Energy guidelines, 44 FR 42136, July 18, 1979). The Commission has determined not to adopt the CEQ regulations in their entirety. Rather, the Commission proposes to adopt much of the CEQ regulations with accompanying elaborative provisions which are specifically tailored to the Commission's particular procedures, functions, and responsibilities as an independent collegial body that regulates the activities of non-Federal entities.

Although the Commission, as an independent regulatory agency, is not bound by the CEQ regulations, it concurs in the policies reflected in the CEQ regulations. In the interests of uniformity, the Commission has determined to structure its own regulations as closely as practicable to the essential procedures reflected in the CEQ regulations, while ensuring that its regulations are consistent with its independent regulatory duties and responsibilities.

The Commission is also proposing environmental regulations for the management of floodplains and the protection of wetlands which are directly related to the NEPA processes proposed here. See Docket No. RM79-70.

The regulations proposed in this docket were developed in consultation with CEQ.

The Proposed Regulation

The rulemaking revokes the existing NEPA regulations and retains Appendices A and B, which specify the components of an Environmental Report for certain projects under the Federal Power Act and Natural Gas Act, respectively. Those appendices are transferred to new Part 3d, the NEPA regulations. The appendices are amended to eliminate the "abbreviated application" whereby an applicant was allowed to show that a project has no significant environmental impact and thus avoid filing a report. Section 3d.12 would require Environmental Reports without exception for certain types of actions or projects.

Appendix A will serve an increasingly limited role as the Commission revises its water power project licensing procedures to vary the Environmental Report requirements according to the type of project application. Only applications for major unconstructed water power projects and certain interconnection and transmission facilities will utilize Appendix A after the proposal in Docket No. RM79-36 is issued as a final rule.[1] New Appendix C is a flow chart showing the conceptual framework of the NEPA process for evaluating environmental issues.

Subpart A of Part 3d expresses the Commission's general approach to implementing NEPA and its goals and adopts most of the CEQ regulations for early and efficient review of environmental issues, public notice and participation, scoping, and inter-agency cooperation. The Commission proposes to adopt by reference certain parts of the CEQ regulations and to adopt others with revisions to accommodate its particular procedures and functions. Those sections to be adopted by reference wholly or in part (40 CFR Parts 1501, 1502, 1503, 1505 and 1508) should be read in conjunction with the proposals in this docket. They contain the general concepts, processes, and definitions used in the evaluation of environmental information.

Certain portions of the CEQ regulations may be inconsistent with the Commission's primary jurisdictional statutes.[2] Part 1504 of the CEQ regulations establishes a procedure whereby an agency's environmental impact statements and judgments about the acceptability of an action's impact may become subject to CEQ review outside the particular agency's NEPA processes. For proceedings under the Commission's primary jurisdictional statutes, however, any disputed issues must be decided by the Commission, on the full record before it, subject to

[1] In Docket No. RM78-9, 43 FR 40215 (September 11, 1978), the Commission established a separate Environmental Report for all minor water power projects (less than 2,000 horsepower of installed capactiy). Other rulemakings are establishing separate Environmental Report requirements for particular kinds of water power projects. Docket No. RM79-36 concerns major projects at existing dams.

[2] See 40 CFR 1500.3, 1507.3(b).

statutory judicial review. Resolution of disputed issues by CEQ in such proceedings would be inconsistent with the statutory regulatory schemes. The Commission will enter any CEQ opinion on an environmental issue in the record of the relevant proceedings, however. Such an opinion will be considered advisory unless CEQ is a party to the proceeding. Part 1504 is appropriate for use by the Commission in those instances where environmental disagreements arise in a context other than regulatory decisionmaking under the Commission's primary jurisdictional statutes. Section 3d.14(c) of the proposed regulations reflects the limitations on the Commission's participation in Part 1504 process.

The Commission adopts the procedures established by CEQ under 40 CFR 1501.5 for determining lead agency designations if agencies disagree. It does so in the interest of interagency cooperation and with the expectation that such procedures will not unnecessarily delay or infringe on the Commission's independent regulatory decisionmaking.

Other deviations from the CEQ regulations concern form more than substance. Section 3d.21 proposes a slightly different format for Environmental Impact Statements than that in the CEQ model, because the Commission has determined from prior experience that the § 3d.21 format provides a more useful analytical focus for proposed actions under the Commission's particular regulatory responsibilities.

Parts 1500 and 1507 of the CEQ regulations simply provide statements of CEQ's purposes, policies, and mandate in issuing its regulations and instructions to agencies on implementation of CEQ's regulations. These provisions are therefore not necessary for inclusion in the Commission's regulations.

Part 1506 has been largely revised as § 3d.13 of these proposed regulations, with modifications to those provisions of the CEQ regulations which might infringe upon the Commission's timely discharge of its regulatory functions. In addition, Part 1506 contains a number of provisions sufficiently important to applicants and other participants in the Commission's regulatory proceedings to warrant placing them in the Commission's regulations. The proposed regulations should provide a clear, concise, and self-contained manual on those matters for participants in the Commission's proceedings.

Subpart B of the proposed regulations contains the basic NEPA procedures and substantive requirements to be used by the Commission. Section 3d.10 sets forth the role that environmental documents will play in the Commission's decisions whether to approve or disapprove projects or programs, issue licenses or permits, or propose legislation. The Commission will routinely require that Environmental Assessments be prepared for certain proposals or applications to determine if the proposed action will be a major Federal action significantly affecting the quality of the human environment. Such an action would necessitate an Environmental Impact Statement for Commission and public consideration. (Section 3d.10(b)). Certain other proposed actions that almost always trigger the writing of an Environmental Impact Statement are set forth in § 3d.10(c). The procedures for intervenors to follow in Commission proceedings insofar as environmental concerns are at issue, is found in § 3d.10(e).

A variety of actions, some taken on proposals by applicants and others of an internal or administrative nature, are excluded as a class from the requirements of this part. The Commission believes that no genuine environmental interest is served by extensively reviewing certain types of actions or proposals for environmental impact. Almost by definition, the impact of most of the actions listed are extremely remote, incalculable, or non-existent. Many of the actions have impacts that are exclusively social and economic. The CEQ regulations do not contemplate environmental review of such actions. However, the Commission recognizes the possibility that unusual circumstances may create the need for examination of the environmental consequences of any of these excluded actions. It therefore proposes to evaluate the environmental impact of such normally excluded actions if the staff, an applicant, or an intervenor shows that circumstances warrant such evaluation. (§ 3d.11(b))

While the proposed rulemaking is intended to comprehend all Commission actions and applicant proposals within the three classes of actions in the NEPA process (*i.e.*, actions requiring an EA or an EIS, or actions usually excluded from environmental review), these classes may be subject to later expansion or reorganization. As the Commission is given new action by Congress, or recognizes that a particular responsibility requires or does not require environmental evaluation,[3] the regulation would be amended accordingly.

Section 3d.12 provides guidance to applicants about the NEPA process and indicates the general responsibilies of staff during the process. Paragraph (c) directs applicants to specific requirements for preparing Environmental Reports according to the type of proposed action.

Section 3d.13 parallels the CEQ regulations at 40 CFR Part 1506. This section explains limitations against prejudicial actions during the NEPA processes, cooperation with State and local agencies, the use of an EIS written by another Federal agency, public involvement in decisions affecting the environment, the NEPA process in relation to legislative proposals, cooperation with the Environmental Protection Agency, and the timing of Commission action in relation to public notice, the Adminstrative Procedure Act, and emergency circumnstances.

Section 3d.14 reflect the Commission's intention that all issues, including environmental issues, be resolved within Commission proceedings exclusively when a proposed action is within the Commission's independent regulatory responsibility, subject to court review as provided in its jurisdictional statutes. In those instances, any recommendation by CEQ on a referral to it under Part 1504 of the CEQ regulations would be entered in the record as advisory only, unless CEQ is a party to the proceeding. In other instances, such as when acting as a cooperating agency, the Commission proposes to allow or initiate referral of environmental disputes to CEQ for resolution. The environmental consequences of any action which is subject to proceedings under the Federal Power Act, Natural Gas Act, or other primary jurisdictional statutes may be debated by intervenors, public or private, as participants in Commission proceedings. Under proposed § 3d.15, coordination of the Commission's NEPA activities relating to NEPA and cooperation with CEQ and other agencies would be the responsibility of the Commission's Advisor on Environmental Quality.

Subpart C proposes specific requirements for the preparation and content of Environmental Assessments (§ 3d.20) and Environmental Impact Statements (§ 3d.21), the fundamental documents in the NEPA process.

[3] For example, in issuing a final rule establishing transportation certification for natural gas for displacement of fuel oil (Order No. 30, issued May 17, 1979, Docket No. RM79-34), the Commission assessed potential environmental impacts of this kind of action and found no significant impact. This finding is now reflected in proposed § 3d.11(a)(23).

Comment Procedure

Interested persons are invited to submit written views, comments, or suggestions in writing concerning all or part of the regulations proposed in this notice. An original and 14 copies of any comment should be filed with the Secretary of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. Comments must be received by September 17, 1979, and should reference Docket No. RM79-69. Written submissions will be available for public inspection at the Ofice of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426, during regular business hours. The Commission will consider all written submittals before acting on the proposed regulations.

(Department of Energy Organization Act, 42 U.S.C. 7101-7352; Executive Order No. 12009, 42 FR 46267; National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321-4347.)

In consideration of the foregoing, the Commission proposes to amend Part 2 and add Part 3d in Chapter I, Title 18, Code of Federal Regualtions as set forth below.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

PART 2—GENERAL POLICY AND INTERPRETATIONS

§ 2.80, 2.81, 2.82 [Revoked]

Appendices A and B [Amended]

1. Part 2, Subchapter A, Chapter 1 of Title 18, Code of Federal Regulations, is amended by revoking §§ 2.80, 2.81, and 2.82 and by transferring Appendices A and B to Part 3d. Appendices A and B are amended by deleting the first paragraph of numbered guideline (8), deleting from numbered guideline (2) the words "the Commission's Order No. 415C (issued December 18, 1972) amending §§ 2.80–2.82," and inserting in lieu thereof the words "Part 3d," and deleting from numbered guideline (3) in Appendix A the term "§ 2.81(a)" and from numbered guideline (3) in Appendix B the term "§ 2.82(a)", inserting in lieu thereof the term "§ 3d.12" in both places. The title of Appendix A is revised to read:

"Guidelines for the Preparation of Environmental Reports for Major Unconstructed Water Power Projects and Other Applications under Part I of the Federal Power Act, as specified in Section 3d.12."

2. Subchapter A, Chapter 1 of Title 18, Code of Federal Regulations, is amended by adding a new Part 3d and an Appendix C to read as follows:

PART 3D—REGULATIONS IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT

Subpart A—General

Sec.

3d.1 Purpose.
3d.2 Council on Environmental Quality NEPA regulations.
3d.3 Definitions.

Subpart B—Procedure

3d.10 Environmental documents and FERC decisionmaking.
3d.11 FERC categorical exclusions.
3d.12 Applicant and staff responsibilities and environmental reports.
3d.13 Other requirements of NEPA.
3d.14 Interagency resolution of disagreements on environmental matters.
3d.15 Coordination of NEPA activities.

Subpart C—Environmental Documents

3d.20 Environmental assessment.
3d.21 Environmental impact statement.
Appendix A—Guidelines for the Preparation of Environmental Reports for Major Unconstructed Water Power Projects and Other Applications Under Part I of the Federal Power Act as specified in Section 3d.12.
Appendix B—Guidelines for the Preparation of Applicants' Environmental Reports for Applications under Section 7(c) of the Natural Gas Act.
Appendix C—FERC Decisionmaking Process under NEPA.

Authority: National Environmental Policy Act of 1969, 42 U.S.C. §§ 4321–4347, and the Department of Energy Organization Act, 42 U.S.C. §§ 7101–7352.

Subpart A—General

§ 3d.1 Purpose and applicability.

(a) This part sets forth the procedures by which the Federal Energy Regulatory Commission (Commission) assesses the environmental consequences of any Commission action not categorically excluded from this part by § 3d.11, particularly the consequences of Commission authorization or licensing of projects for the production, transport, or sale of gas, oil, or electricity within the Commission's jurisdication. The regulations implement the National Environmental Policy Act of 1969 (NEPA) and adopt or reflect the policies set forth in the NEPA regulations of the Council on Environmental quality (CEQ), to the extent that those regulations are consistent with the Commission's reponsibilities and practices. The regulations apply to environmental documents and review processes initiated before the effective date only to the extent practicable.

(b) This part provides the means for early identification and assessment of environmental issues and problems, thereby assisting the Commission in protecting the human environment in the course of its decisionmaking. The Commission encourages public involvement in decisions affecting the environment and, to that end, requires the presentation of genuine environmental issues and alternatives and the formulation of clear and concise environmental documents.

§ 3d. 2 Council on Environmental Quality NEPA Regulations.

The Commission adopts the following parts of the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act issued by CEQ as part of Title 40 of the Code of Federal Regulations, except of modified by this part: Part 1501, Part 1502 (except §§ 1502.10–.18, which are replaced by § 3d.21(c) of this part), Part 1503, Part 1505, and Part 1508 (which is supplemented by the definitions in § 3d.3 of this part).

§ 3d. 3 Definitions.

The terms used in this part have the meanings set forth in 40 CFR Part 1508 and in this section. For the purposes of this part—

(1) "Commission" means the Federal Energy Regulatory Commission its staff, or organizational units.

(2) "Environmental Report" or "ER" means a document submitted to the Commission by an applicant as that part of an application for authorization of a proposed action identifying the environmental impact of the action and alternatives to the action.

(3) "Secretary" means the Secretary of the Commission.

Subpart B—Procedures

§ 3d.10 Environmental documents and FERC decisionmaking.

(a) *Environmental considerations and decisionmaking.* (1) It will be the policy of the Commission to adopt and adhere to the objectives and aims of NEPA in all Commission actions, including its actions under the Department of Energy Organization Act, the Federal Power Act, the Natural Gas Act, the Interstate Commerce Act, the Natural Gas Policy Act, the Power Plant and Industrial Fuel Use Act, the Alaska Natural Gas Transportation Act and the Public Utility Regulatory Policies Act. The Commission will include a detailed environmental Impact Statement in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.

(2) Major docketed electric, gas, and oil items, including actions that are new

or continuing on the effective date of this part, proposed actions or programs, or expansion or revisions of actions or programs requiring Commission authorization are reviewed in status reports updated periodically. If Commission actions or programs are likely to have a significant impact on the human environment, environmental considerations will be addressed at appropriate major decision points. The flow chart in Appendix C generally illustrates decision points for compliance with NEPA in Commission decisionmaking.

(3) Relevant environmental documents [40 CFR § 1508.10], comments, and responses will be part of the record of decision [40 CFR § 1505.2] in rulemaking and adjudicatory proceedings.

(4) The Environmental Report (ER), Environmental Assessment (EA), Environmental Impact Statement (EIS), comments, and responses [40 CFR Part 1503] will accompany the proposal through existing agency review processes so that all levels of the Commission may use them in making decisions.

(5) The alternatives the Commission considers with respect to major Federal actions significantly affecting the quality of the human environment will encompass the range of alternatives described in the relevant environmental documents. The Commission will consider the alternatives described in the EIS.

(b) *Actions that require an EA.* For proposals identified in this paragraph and not normally requiring an EIS under paragraph (c) of this section, the Commission will prepare an EA under § 3d.20 as part of the record of decision on the environmental effects of the proposed action. An EA will ascertain whether the proposed Action is a major Federal Action significantly affecting the quality of the human environment under section 102(2)(c) of NEPA. Proposals that will normally require an EA are:

(1) Construction or abandonment of compression, processing, interconnecting, pipeline, and metering facilities;

(2) Filing for a certification of sale, exchange, or transportation of gas;

(3) Natural gas abandonment or reduction of service;

(4) Conversion of existing depleted oil or gas fields to underground storage fields;

(5) Natural gas curtailment plans;

(6) Licensing of minor water power projects (not more than 2000 horsepower, or 1.5 MW, of installed capacity);

(7) Licensing of major water power projects (more than 2000 horsepower or 1.5 MW)—existing dams (see § 4.50);

(8) Surrender of water power project licenses and changes in licensed water power project facilities, operation, or boundaries;

(9) Exemptions for small conduit hydroelectric facilities;

(10) Licenses for transmission lines only;

(11) Electrical interconnections and wheeling under §§ 202(b), 210, 211, and 212 of the Federal Power Act, that would entail substantial new construction; and

(12) Regulations or proposals for legislation not excluded under § 3d.11 that may have significant environmental effects [40 CFR § 1508.8].

(c) *Actions that require an EIS.* The Commission will prepare an EIS pursuant to § 3d.21 of this part for the following types of proposals, unless the proposed action is not a major Federal action significantly affecting the quality of the human environment [40 CFR Part 1508]:

(1) Projects for liquefied natural gas import/export facilities;

(2) Major new onshore/offshore natural gas pipeline projects; and

(3) Construction of new major water power projects, that is, projects other than minor projects or major projects—existing dams.

(d) *Consultation with CEQ.* The Commission may consult with the CEQ under § 3d.14 in determining the need for an EIS.

(e) *Intervention and hearing.* (1) In addition to the opportunity to petition to intervene in response to a notice of an application, any person also may file a petition to intervene in Commission proceedings on the basis of a staff draft EIS within the time period for submitting comments prescribed in the notice of availability of the draft EIS. Any intervenor that takes a position on environmental matters must file timely comments with the Secretary containing an analysis of its environmental position and specifying any differences with the position of staff upon which the intervenor wishes to be heard. Nothing in this section precludes an intervenor from filing a separate ER.

(2) In the case of an EIS set for hearing, the applicant, the staff, and all intervenors that take a position on environmental matters must offer evidence for the record in support of their environmental positions. The applicant and all such intervenors must specify any differences with the position of the staff and other relevant factors.

(3) In the case of an EIS set for hearing, the initial and reply briefs filed by the applicant, the staff, and all intervenors taking a position on environmental matters must specifically analyze and evaluate the evidence in the light of the environmental criteria set forth in § 3d.21(b).

(4) The initial decision of the Presiding Administrative Law Judge in such cases, and the final order of the Commission dealing with the application on the merits in all cases, will include an evaluation of the environmental factors described in the EIS and the views and comments expressed in conjunction therewith by the applicant and those making formal comment pursuant to the provisions of this part.

§ 3d.11 Categorical exclusions.

(a) *General rule.* There are certain categories of actions that normally are not major Federal actions significantly affecting the quality of the human environment. Such actions are categorically excluded from the requirements of this part, except as provided in paragraph (b). Those programs, actions, and procedures which are categorically excluded from application of this part are:

(1) Procedural, ministerial, or internal administrative and management actions, programs, or decisions, including procurement, contracting, personnel actions, correction or clarification of filings or orders, and acceptance and rejection of filings;

(2) Reports or recommendations on legislation not initiated by the Commission;

(3) Compliance and review actions, including investigations (jurisdictional or otherwise), conferences, hearings, notices of probable violation, show cause orders, review of denials of adjustment requests, and of contested remedial orders;

(4) Proposals for legislative and promulgation of rules and regulations which are clarifying, corrective, or procedural, or which do not substantially change the effect of legislation or regulations being amended;

(5) Information gathering, analysis, and dissemination;

(6) Conceptual or feasibility studies;

(7) Actions concerning the reservation and classification of United States lands as water power sites and other actions under section 24 of the Federal Power Act;

(8) Transfers of water power project licenses;

(9) Withdrawals of applications for certificates or for water power project preliminary permits or licenses;

(10) Setting of annual charges or headwaters benefits charges for water power projects;

(11) Approval for water power projects of "as built" or revised drawings or exhibits that propose no changes of consequence to project works or operations or that reflect changes that have previously been approved or required by the Commission;

(12) Review or approval of study proposals required by a license or preliminary permit for a water power project;

(13) Review of filings made in compliance with the requirements of a preliminary permit or license order or article for a water power project;

(14) Issuance of preliminary permits for water power projects;

(15) Water resource appraisal studies;

(16) Review of electric rate filings submitted by public utilities and confirmation and approval of rate filings submitted by Federal power marketing agencies;

(17) Review and approval of actions under the Federal Power Act relating to issuance and purchase of securities, acquisition or disposition of property, merger, interlocking directorates, jurisdictional determinations, and accounting orders;

(18) Budget-type facilities applications filed under § 157.7(b), (c), (d) and (g) of this chapter, such as gas-purchase facilities or field gas compression facilities;

(19) Producers' applications for the sale of gas filed under §§ 157.23–.29 of this chapter;

(20) Approval of taps, meters, and regulating facilities located within an existing right-of-way where the land use of the vicinity has not changed since the original facilities were installed.

(21) Review of natural gas rate filings, except curtailment plans;

(22) Review of oil pipeline rate filings; and

(23) Plans for displacement of fuel oil by natural gas.

(b) *Unusual circumstances.* If there are unusual circumstances in which a categorically excluded action might be a major Federal action significantly affecting the quality of the human environment, the Commission staff will prepare an EA or EIS.

§ 3d.12 Applicant and staff responsibilities and environmental reports.

(a) *Applicant responsibilities.* (1) Any applicant seeking authorization from the Commission for any proposal identified in § 3d.10(b) and (c) must submit an ER with the proposal as prescribed in paragraph (c) of this section. In particular instances, the Commission may require applicants to submit environmental information required to comply with these regulations on proposals not identified as requiring an ER.

(2) An applicant seeking Commission authorization must also:

(i) Carry out a good-faith effort to provide all necessary or relevant information to the Commission;

(ii) Conduct any studies that the Commission staff considers necessary or relevant to determine the impact of the proposal on the human environment and natural resources;

(iii) Consult with appropriate Federal, regional, state, and local agencies throughout the planning stages of the proposed action, to assure that all potential environmental impacts are identified;

(iv) Submit applications for all Federal and state approvals as early as possible tin the planning process;

(v) Notify the Commission staff of all other Federal actions required for completion of the proposed action so that the staff may coordinate with other interested Federal agencies.

(vi) Before completion of the EA/EIS process and issuance of a Commission decision, the applicant may not take any steps toward completion of a propose action that may cause significant environmental impact, or that may foreclose alternatives available to the applicant or the Commission.

(b) *Staff responsibilities.* (1) The Commission staff will be available to provide informal guidance to any prospective applicant regarding the proper scope and depth of analysis in an ER. Such staff guidance will not bar any subsequent determination by the staff, an Administrative Law Judge, or the Commissioners that additional data or analysis must be submitted under this rule.

(2) The staff will review the methodologies employed by the applicant in its ER and independently evaluate the environmental impacts of the proposed action and all alternatives. Using the ER and other pertinent data and analyses, the staff will independently determine whether a proposed action requires EA or an EIS. Any information or analysis in the ER that is used by staff or relied on for preparation of an EA or EIS will be verified and independently evaluated.

(c) *Content of an ER for specific proposals.* (1) *Water power projects.* (i) Any application under Part I of the Federal Power Act for a license for a major water power project (more than 2,000 horsepower or 1.5 Mw of capacity) other than a major project—existing dam (see § 4.50 of this chapter) must include an ER which conforms to the requirements of Appendix A of this part and the requirements of § 4.41 [Exhibit W].

(ii) Any application under Part I of the Federal Power Act for a license for a major project—existing dam, as defined in § 4.50(b), must include an ER which conforms to the requirements of § 4.51(f) [Exhibit E].

(iii) Any application for the surrender or for the amendment of a license that proposes a change in the existing state of project works or project operation that would significantly increase the normal maximum surface area or normal maximum surface elevation of an existing impoundment, create a new impoundment, or significantly affect the quality of the human environment, must include an ER that conforms to the requirements of Appendix A of this part. Any application for surrender or amendment of a license that proposes a change in the existing state of project works or project operation that would not have any of the effects described in this clause must include an ER which conforms to the requirements of § 4.51(f) [Exhibit E]. A propsective applicant may seek advice from the Commission staff concerning whether any proposed change in the existing state of project works or project operation would result in a significant increase in the normal maximum surface area or normal maximum surface elevation of an existing impoundment, or could significantly affect the quality of the human environment, subject to § 3d.12(b)(1).

(iv) An application for a minor water power project (not more than 2,000 horsepower, or 1.5 MW, of installed capacity) must include an ER which conforms to the requirements of § 131.6 of this chapter.

(v) An application for exemption of a small conduit hydroelectric facility from all or part of Part I of the Federal Power Act must include the Environmental Report specified in § 4.66(b)(5) of this chapter.

(vi) An application either under § 4.70 of this chapter for a license for transmission line only or under §§ 202(b), 210, 211, or 212 of the Federal Power Act for electrical connections or wheeling which would entail substantial new construction must include an ER which conforms to the requirements of Appendix A of this part, to the extent that those requirements are applicable to the transmission lines or other electrical facilities proposed.

(2) *Gas projects.* Any application filed under the Natural Gas Act for a proposal identified in § 3d.10 (b) or (c) must include an ER that contains the environmental information and analysis specified in Appendix B of this part.

(3) *Format of an ER.* (i) Appendices A and B of this part are intended to provide specifications for the content of an ER and not to impose rigid requirements for format.

(ii) The level of detail in an ER must be commensurate with the complexity and expected significance of the environmental impacts of the proposed action. An ER must be a substantially self-supporting public document in which the data are accurate and complete. Data pertinent to the assessment of environmental impacts must be included in the text in a form that may be readily understood by the Commission staff and the public. For additional guidance in preparing an ER, see §§ 2.13, 2.14, 2.69, and 2.78 of this chapter.

§ 3d.13 Other requirements of NEPA.

(a) *Limitations on actions.* Except as provided in paragraph (b) of this section, the Commission will not undertake, or permit to be undertaken, any step toward completion of a proposed action which would have an adverse environmental impact or restrict the choice of reasonable alternatives until the appropriate EA/EIS process has been completed and a decision issued by the Commission. The Commission will take action to ensure that the objectives and procedures of NEPA are achieved when the Commission becomes aware that an applicant or jurisdictional entity may take or has taken such a step.

(b) While work on a required EIS for a program described in 40 CFR § 1508.18(b)(3) is not covered by an existing program EIS, the Commission will not undertake, or permit to be undertaken, any action that may significantly affect the quality of the human environment unless the action:

(1) Is justified independently of the program;

(2) Is itself accompanied by an adequate EIS; and

(3) Will not prejudice the ultimate action on the program.

(c) *Cooperation with state and local agencies.* (1) The Commission will cooperate with state and local agencies to the fullest extent possible, consistent with its primary jurisdictional statutes, to reduce duplication between NEPA and state or local requirements. Such cooperation may include joint planning, joint environmental research and study, and the conduct of joint hearings, subject to the requirements of Part 1 of this chapter.

(2) The Commission may share with state and local agencies its responsibility to formulate environmental documents.

(3) The Commission will reconcile NEPA with state law and local ordinances to the fullest extent possible, consistent with its primary jurisdictional statutes. An EIS will discuss any inconsistencies between a proposed action and any approved state or local plan or law and will discuss how the inconsistency would be resolved.

(d) *Adoption of the EIS of a Federal agency.* (1) The Commission may adopt a draft or final EIS prepared by another Federal agency or portion of either if the EIS, or adopted portion of it, meets the standards for an adequate EIS under this part.

(2) If the actions that are covered by the adopted EIS are substantially similar to the proposed action, the Commission, in adopting the EIS of another Federal agency, will not recirculate it except as a final EIS. Otherwise the Commission will treat the EIS as a draft and recirculate it (except as provided in subparagraph (4)).

(3) The Commission, as a cooperating agency [40 CFR 1501.6], may adopt without recirculation the EIS of a lead agency when, after an independent review of the EIS, the Commission concludes that its comments and suggestions have been satisfied.

(4) The Commission will specify if any of the following circumstances exist with respect to adopting all or part of an EIS of another Federal agency:

(i) The EIS is not final within the agency that prepared it;

(ii) The action that the EIS assesses is the subject of a referral under 40 CFR Part 1504; or

(iii) The adequacy of the EIS is the subject of a judicial action that is not final.

(e) *Combining documents.* Any environmental document that is prepared to comply with NEPA may be combined with any other Commission documents to reduce duplication and paperwork.

(f) *Public involvement.* (1) *Notice.* The Commission will provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents to inform those persons and agencies who may be interested or affected.

(i) In the case of an action with effects of national concern, notice will include publication in the Federal Register and notice by mail to national organizations reasonably expected to be interested in the matter.

(ii) In the case of an action with effects primarily of local concern, the notice may include:

(A) Notice to state and area-wide clearinghouses;

(B) Notice to Indian tribes when effects may occur on reservations;

(C) Use of the affected state's public notice procedures for comparable actions;

(D) Publication in local newspapers of general circulation; or

(E) Notice through other local media.

(2) *Hearings or meetings.* (i) The Commission will hold or sponsor hearings or public meetings if required by statute or if the Commission otherwise determines appropriate. Criteria that will be considered in determining whether to hold a hearing or public meeting include:

(A) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing or meeting;

(B) A request for a hearing or meeting by another agency with jurisdiction over the action, supported by reasons why a hearing or meeting will be helpful.

(ii) If a draft EIS is to be considered at a hearing or public meeting, the Commission will normally make the EIS available to the public at least 15 days in advance, unless the purpose of the hearing or meeting is to provide information for the draft EIS.

(3) *Information.* The Commission will make information or status reports on an EIS and other elements of the NEPA process available to interested persons through the Commission's Advisor on Environmental Quality, Office of Regulatory Analysis.

(4) *Documents.* The Commission will make the EIS, the comments received, and any underlying documents available to the public from the Commission's Office of Public Information. Materials made available will include interagency memoranda to the extent that those memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Materials will be provided to the public without charge to the extent practicable, or at a fee that is not more than the actual cost of reproducing copies. A copy of each EIS will be available for inspection at the Commission's regional office for the region in which the proposed action would occur.

(g) *Proposals for legislation.* (1) The NEPA process for proposals for legislation [40 CFR 1508.17] significantly affecting the quality of the human environment will be integrated with the legislative process of the Congress. An EIS will be part of the formal transmittal of a legislative proposal to Congress. It may be transmitted to Congress up to 30 days later in order to allow time for completion of an accurate EIS which can serve as the basis for public and Congressional debate. The EIS will be

available in time for Congressional hearings and deliberations.

(2) Preparation of an EIS for a legislative proposal will conform to the requirements of this part, except that:

(i) There need not be a scoping process [40 CFR § 1508.25];

(ii) When any of the following conditions exist, both the draft and final EIS on the legislative proposal will be prepared and circulated:

(A) A Congressional committee with jurisdiction over the proposal has a rule requiring both a draft and a final EIS;

(B) The proposal results from a study process required by statute; or

(C) Legislative approval is sought for Federal or Federally assisted construction or other projects that the Commission recommends be located at specific geographic locations.

(h) *Filing with the Environmental Protection Agency.* An EIS prepared by the Commission staff, with comments and responses, will be filed with the Environmental Protection Agency (EPA) at the time it is transmitted to commenting agencies and made available to the public.

(i) *Timing of Commission action.* (1) Under 40 CFR 1506.10, the EPA is required to publish a notice of availability and distribution of an EIS in the Federal Register. If the EPA fails to publish such notice within 15 days of the filing of the EIS under paragraph (h) of this section, the Commission will publish such notice. The minimum time periods set forth in this section will be calculated from the date of publication of this notice.

(2) No decision on the proposed action will be made by the Commission until the later of the following dates:

(i) Ninety (90) days after publication of the notice of a draft EIS under this paragraph; or

(ii) Thirty (30) days after publication of the notice of a final EIS under this paragraph.

(3) The Commission will allow no fewer than 45 days for comment on a draft EIS.

(4) The Commission may waive the time periods in paragraphs (i)(2) and (3) of this section when engaged in rulemaking under the Administrative Procedure Act or other statute for the purpose of protecting the public health or safety, or, in any proceeding, upon a finding of compelling reasons of national policy. To the extent practicable, the Commission will consult with the EPA regarding the waiver. A notice to waive time period will be published in the Federal Register. When time periods are waived under this subparagraph, the Commission may publish a decision on the final rule simultaneously with publication of the notice of the availability of the final EIS.

(5) If the notice of a final EIS is published within 90 days after a notice of a draft EIS is published in the Federal Register, the minimum 30-day period and the minimum 90-day period under paragraph (i)(2) of this section may run concurrently.

(6) The Commission may extend prescribed periods for good cause. Mere failure to file timely comments will not be a sufficient reason for granting an extension of a period.

(j) *Emergencies.* Where emergency circumstances make it necessary to take action with significant environmental impact without observing the provisions of these regulations, the Commission may consult with the CEQ and EPA about alternative arrangements. The Commission will limit those arrangements to actions necessary to control the immediate effects of the emergency. Other actions remain subject to NEPA review.

§ 3d.14 Interagency resolution of disagreements on environmental matters.

(a) This section provides procedures for resolution of disagreements between the Commission and another Federal agency about which agency will be the lead agency or about proposed major Federal actions that might cause significant adverse environmental effects.

(b) *Lead agency disputes.* If the Commission and another Federal agency that shares responsibility for a proposed Federal action are unable to agree on a lead agency designation, the Commission staff will refer or participate in referral of the matter to CEQ for determination under 40 CFR 1501.5.

(c) *Substantive environmental disputes.* (1) Any environmental issue or dispute concerning a proposed major Federal action significantly affecting the quality of the human environment related to a Commission action or proceeding pursuant to administration of the Commission's regulatory decisionmaking functions under the Natural Gas Act, the Federal Power Act, the Department of Energy Organization Act, the Interstate Commerce Act, the Natural Gas Policy Act, the Power Plant and Industrial Fuel Use Act, the Alaska Natural Gas Transportation Act, or the Public Utility Regulatory Policies Act must be resolved exclusively by Commission decision and any judical review of Commission decision provided by law. Any person wishing to participate in Commission decisionmaking processes in such a case may seek to intervene in the proceeding as an interested party, under §§ 1.8 or 3d.10(e)(1) of this chapter.

(2) If an environmental issue of dispute within the scope of paragraph (c)(1) of this section is referred to CEQ pursuant to 40 CFR Part 1504 for a recommendation to the Commission, any recommendation from CEQ will be entered in the record as advisory only, if CEQ is not a party to the Commission proceeding.

(d) *Referral of substantive issues.* If the Commission, acting in a matter other than one pursuant to administration of its regulatory decisionmaking functions under the Natural Gas Act, the Federal Power Act, the Department of Energy Organization Act, the Interstate Commerce Act, the Natural Gas Policy Act, the Power Plant and Industrial Fuel Use Act, the Alaska Natural Gas Transportation Act, or the Public Utility Regulatory Policies Act, such as a legislative proposal, and another agency sharing responsibility for a proposed major Federal action are unable to resolve any environmental disagreements, the Commission will refer the problem to the CEQ for resolution under 40 CFR Part 1504.

§ 3d.15 Coordination of NEPA activities.

The Commission's Advisor on Environmental Quality will be responsible for coordinating the Commission's NEPA activities and for coordinating the Commission's environmental policies with CEQ and the Department of Energy.

Subpart C—Environmental Documents

§ 3d.20 Environmental assessments.

(a) An EA is an environmental document, defined in 40 CFR 1508.9, prepared by the Commission staff to evaluate the environmental impact of proposed actions not categorically excluded from the NEPA process or normally requiring an EIS under § 3d.10(c). The Commission staff will determine the scope and content of each EA to ensure that sufficient information is available to determine whether the proposed action would be a major Federal action significantly affecting the quality of the human environment.

(b) The Commission staff will prepare an EIS for each proposed action determined under § 3d.10(c) or on the basis of the EA to be a major Federal action significantly affecting the quality of the human environment. In making that determination, the staff will consider at least:

(1) The magnitude of the proposed action, with respect to:

(i) The extent of Commission control or influence over the proposed action by virtue of its discretionary authority; and

(ii) The extent of the commitment of resources entailed.

(2) The significance of the environmental impacts of the proposed action, with respect to:

(i) The overall cumulative impact of relevant past, present, and reasonably foreseeable future actions by the Commission or other entities;

(ii) The potential for both short- and long-term degradation of the quality of the human environment, and the curtailment of the range of beneficial uses of the environment;

(iii) The effects on management, allocation, or consumption of important, scarce or nonrenewable resources;

(iv) The presence of responsible opposing views concerning the environmental impacts; and

(v) The unique characteristics of the environment to be affected.

(c) A separate EA need not be prepared for a proposed action for which the Commission or another Federal agency has already prepared an EA or EIS, if that document affords a currently valid evaluation of the environmental impact of the proposed action. In such a case, the Commission staff may adopt the EA or EIS of another Federal agency, in whole or in part, according to procedures in § 3d.13(d).

§ 3d.21 Environmental impact statement.

(a) Unless the Commission adopts all or part of an EIS prepared by another agency as described in § 3d.13(c), each EIS will be prepared directly by Commission staff or a contractor selected by the Commission, or where appropriate, by or in conjunction with a cooperating agency. Any contractor will be required to certify itself free of financial or other interest in the proposed action. Any EIS prepared under contract will be independently evaluated by the Commission staff before it is circulated.

(b) Data and analyses in an EIS will be commensurate with the importance of the impact of the proposed action, with less important material summarized, consolidated, or simply referenced. Useless bulk in an EIS will be avoided and the staff will concentrate effort and attention on important issues. Unpublished material, if necessary for a through understanding of the environmental impacts of a proposed action, may be included in an appendix.

(c) *Contents.* (1) *Format.* The Commission will normally use the following standard EIS format:

(i) Cover sheet.

(ii) Summary.

(iii) List of agencies, organizations, and persons to whom copies of the statement are sent.

(iv) Table of Contents.

(v) Description of proposed action and the need for it.

(vi) Affected environment.

(vii) Environmental impacts of the proposed action.

(viii) Analysis of alternatives.

(ix) Staff conclusions on significant environmental matters.

(x) References.

(xi) List of preparers.

(xii) Appendices (if any).

(2) *Cover sheet.* The cover sheet will include:

(i) A list of the responsible agencies, including the lead agency and any cooperating agencies;

(ii) The title of the proposed action that is the subject of the EIS (and, if appropriate, the titles of related cooperating agency actions), including reference to the states and counties (or other jurisdictions, if applicable) where the action would occur;

(iii) The name, address, and telephone number of the person at the Commission who can supply further information;

(iv) A designation of the EIS as a draft, final, or draft or final supplement;

(v) A one paragraph abstract of the EIS;

(vi) The date by which comments must be received; and

(vii) For a draft EIS only, a statement of the procedures for intervening in the Commission proceeding on the subject proposal.

(3) *Summary.* Each EIS will contain a summary of the EIS. The summary will stress the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). The summary normally will not exceed 10 pages.

(4) *Description of the proposed action and the need for it.* The proposed action and its objectives will be briefly described. Factors to be covered include the location and duration of the proposed action, historical information necessary to place it in proper perspective, its relationship to other current or future projects of programs of Federal, state, or local governments, private industry, or non-Federal applicants, its overall physical description, environmental and safety controls, and mitigative measures, including plans for site restoration.

(5) *Affected environment.* The EIS will succinctly describe the environment of the area to be affected by the proposed action. The description will be no longer than is necessary to understand the effects of the proposed action.

(6) *Environmental impacts of the proposed action.* (i) The EIS will identify and analyze the probable direct and indirect environmental effects [40 CFR 1508.8] of the proposed action, including the effects of proposed mitigative measures. The analysis will describe: the effects (beneficial and adverse) on the biological, physical, and socio-economic environment which could be caused by the proposed action, the magnitude and importance of each effect, and the time periods in which these effects are anticipated.

(ii) The analysis will discuss the extent to which the proposal will conform to, or conflict with, any Federal, state, or local statutes, regulations, standards, limitations, or policies respecting environmental quality, including air and water quality, wastes, pesticides, and land use. The analysis will assess, with respect to probability of occurrence and magnitude of consequences, the risks of environmental degradation and damage to the society from:

(A) Potential accidents or failures, whether attributable to natural or non-natural causes, associated with the proposed action;

(B) Normal operations associated with the proposed action; and

(C) To the extent practicable, termination and abandonment of facilities or services associated with the proposed action.

(iii) The EIS will address the issues in section 102(2)(C) of NEPA: adverse environmental effects that will be unavoidable if the proposal is implemented, the relationship between short-term uses of the human environment and the maintenance and enhancement of long-term productivity, any irreversible or irretrievable commitments of resources that would be involved in the proposal should it be implemented, possible conflicts between the proposed action and the objectives of Federal, regional, state, local and (in the case of an Indian reservation) tribal land use planes, policies, and controls for the area concerned, and the natural or depletable resource requirements and conservation potential.

(7) *Analysis of alternatives.* (i) *Factual evaluation.* The EIS will present factual evaluations of the environmental impacts of the full range of reasonable alternatives to the proposed action in a concise, but sufficiently informative, manner. In particular, the EIS will discuss reasonable alternatives to the proposed action that might be taken to avoid or mitigate adverse environmental impacts.

(ii) *Examples of alternatives.* The alternative of taking no action will always be evaluated. Examples of other potential alternatives include: postponing action, taking action of a significantly different nature that would provide similar benefits with different environmental impacts, and modification of the designs or details of the proposed action which would alter its environmental impact.

(iii) *Comparative evaluation.* The EIS will include a comparative evaluation of the environmental impacts of the proposed action and each reasonable alternative. If an existing EIS contains an analysis of an alternative to the proposed action, its treatment of that alternative may be summarized and incorporated by reference, if the earlier treatment is still current and relevant to the objective of the proposed action. The range of alternatives discussed in an EIS will not be limited to measures that the Commission has authority to implement.

(8) *Staff conclusions on significant environmental matters.* The EIS will contain the staff's conclusions, which may include, but need not be limited to, sumaries of: the significant environmental impacts of the proposed action, the staff's preferred alternatives, if any, and any alternative to these which would have less severe environmental impacts; any mitigative measures proposed by the applicant, as well as additional mitigation measures that might be more effective; any environmental impacts of the proposed action that cannot be mitigated; and reference to any pending, completed, or recommended studies that might provide base-line data or additional data on the proposed action.

(9) *References.* This EIS will contain a list of reports, literature, reference works and other source material cited or used in the text.

(10) *List of preparers.* The EIS will list the names, together with a brief summary of the qualifications (expertise, experience, professional disciplines) of the persons who were primarily responsible for preparing the EIS or significant background papers.

(11) *Appendix.* If the Commission staff prepares or adopts an appendix to an EIS, the appendix will:

(i) Consist of material prepared in connection with an EIS (as distinct from material incorporated by reference);

(ii) Consist of material that substantiates any analysis fundamental to the EIS.

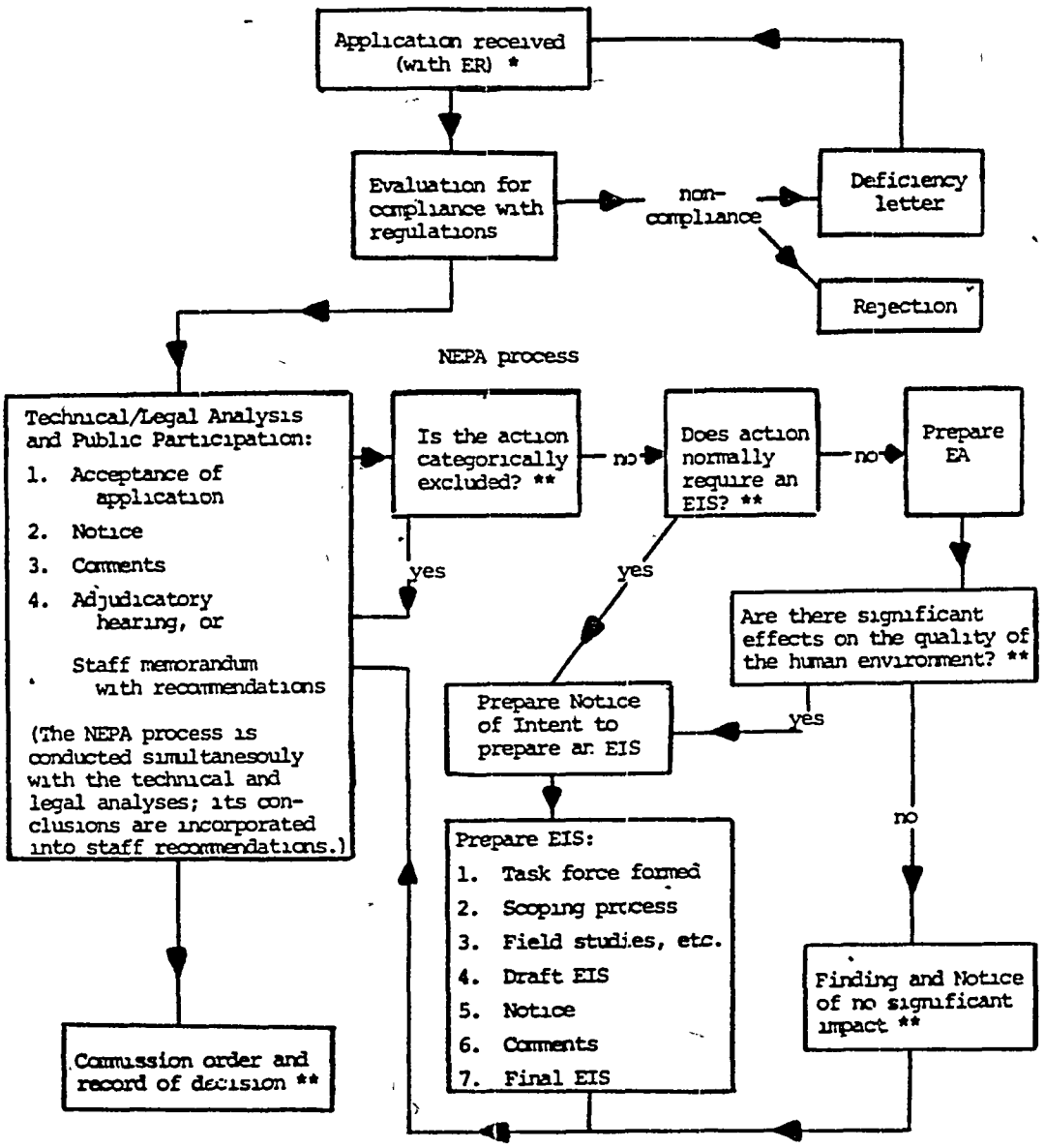
(iii) Be circulated with the EIS or be readily available on request.

* * * * *

BILLING CODE 6450-01-M

APPENDIX C

FERC DECISIONMAKING PROCESS
UNDER NEPA



* An ER is not required for categorically excluded actions.

** NEPA Decision Points.

[FR Doc. 79-26199 Filed 8-24-79; 8:45 am]
BILLING CODE 6450-01-C

[18 CFR Part 282]

[Docket No. RM79-47]

Statewide Exemptions From Incremental Pricing; Extension of Time To File Comments

August 22, 1979.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Extension of Time to File Comments.

SUMMARY: In the Notice of Proposed Rulemaking and Opportunity for Written and Oral Presentations of Data, Views and Arguments issued in Docket No. RM79-14 on June 5, 1979 (44 FR 33099, June 8, 1979), the Federal Energy Regulatory Commission (Commission) announced that it had opened a docket to receive comments on the question of whether a rulemaking proceeding should be established with respect to state-wide exemptions from incremental pricing. The opening of this docket was also announced in a Notice of Opportunity to Comment on Whether a Rulemaking Proceeding Should be Established, which was issued on July 3, 1979 (44 FR 40898, July 13, 1979). Both notices stated that comments in the docket would be due September 1, 1979. By this notice, we announce that the deadline for filing comments in Docket No. RM79-47 has been extended to September 17, 1979. This extension should provide commentators the opportunity to review the final rules in Docket Nos. RM79-14 and RM79-21, which should be issued in early September.

We take opportunity to note that the Commission desires that those who believe a rulemaking should be initiated indicate in as much detail as possible the sort of exemptions that should be allowed. The information on why such exemptions are required is also solicited.

DATES: Comments due September 17, 1979.

ADDRESS: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Barbara K. Christin, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 275-0426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-26566 Filed 8-24-79; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

[23 CFR Part 1252]

[NHTSA Docket 79-12; Notice]

State Matching of Planning and Administration Costs

AGENCIES: National Highway Traffic Safety Administration (NHTSA), Federal Highway Administration (FHWA).

ACTION: Amendment to notice of proposed rulemaking.

SUMMARY: This notice amends the outstanding notice of proposed rulemaking on State matching of planning and administration costs to make it clear that the States will not have to spend a fixed amount of their Federal Highway Administration funds on planning and administration costs.

DATES: Comments must be received on or before August 30, 1979.

ADDRESS: Submit written comments to NHTSA Docket No. 79-12, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street, S.W., Washington, D.C. 20590. Because this notice amends the first notice issued in Docket 79-12, it is expected that most comments on the two notices will be consolidated. All comments will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. EDT, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: NHTSA: George Reagle, Office of State Program Assistance, 202-426-0068, or John Womack, Office of the Chief Counsel, 202-426-1834. FHWA, James L. Rummel, Office of Highway Safety, 202-426-2131, or Thomas P. Holian, Office of the Chief Counsel, 202-426-0761. Office hours for both agencies are from 7:45 a.m. to 4:15 p.m. EDT Monday through Friday. All offices are located at 400 Seventh Street, S.W., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: The proposed rule on State matching of planning and administration costs in State highway safety programs contains procedures for the identification of these costs in the Highway Safety Plan submitted annually by each State. Among the procedures is a procedure for computing the portion of the Federal share that is to come from each of the two Federal agencies (subsection (b) of 23 CFR 1252.5). The intent behind the procedure was to *allow* the States to use FHWA funds for planning and administration costs in an amount proportional to the FHWA share of the total highway safety authorization under 23 U.S.C. 402, but the procedure was drafted in a manner that appears to *require* the States to use a fixed proportion of FHWA funds.

Although the procedure could be corrected in the final rule, many States will be preparing their fiscal year 1980 Highway Safety Plans on the basis of the procedures contained in the proposed rule. A number of States administer the highway-related portions of their highway safety programs through their State highway departments and do so without using FHWA funds to cover planning and administration costs. To allay the fears of officials in these States that they would have to divert a part of their FHWA funds to planning and administration purposes, NHTSA and FHWA find it advisable to issue an immediate amendment of the proposed rule.

As amended, the proposed rule allows the States to decide whether to use FHWA funds to pay planning and administration costs, but limits FHWA participation to amounts proportional to the FHWA share of the authorization under 23 U.S.C. 402.

In consideration of the foregoing, subsection (b) in proposed 23 CFR 1252.5 is amended as follows:

§ 1252.5 Procedures.

* * * * *

(b) FHWA funds may be used to pay for the federal share of P&A costs, in a proportion not to exceed the ratio of the FHWA authorization under 23 U.S.C. 402 to the total authorization. For example:

A State's P&A cost is $40,000. The State's share is 25 percent, or $10,000. To pay the remaining $30,000, the State may use FHWA funds up to the amount of 12.5 percent (the FHWA percentage of total 402 authorizations), or $3,750. The NHTSA share would therefore be 87.5 percent, or $26,250.

* * * * *

Note.—The National Highway Traffic Safety Administration and the Federal Highway Administration have determined that this document does not contain a significant proposal according to the criteria established by the Department of Transportation pursuant to E.O. 12044.

Issued on August 21, 1979.

Charles F. Livingston,

Acting Associate Administrator, Traffic Safety Programs, National Highway Traffic Safety Administration.

Robert A. Kaye,

Acting Associate Administrator for Safety, Federal Highway Administration.

[FR Doc. 79-26306 Filed 8-24-79; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

[LR-100-78]

Creditability of Foreign Taxes; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations setting forth the requirements for the creditability of foreign taxes against a person's U.S. income tax liability.

DATES: The public hearing will be held on October 11, 1979, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by September 30, 1979.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, D.C. The outlines should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-100-78), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: George Bradley or Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202-566-3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 901 and 903 of the Internal Revenue Code of 1954. The proposed regulations appeared in the Federal Register for Wednesday, June 20, 1979, at page 36071 (44 FR 36071).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and also desire to present oral comments at the hearing on the proposed regulations should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject by September 30, 1979. Each speaker will be limited to 10 minutes for an oral presentation exclusive of time consumed by questions from the panel for the Government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

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 Wednesday, November 8, 1978.

By direction of the Commissioner of Internal Revenue.

Robert A. Bley,

Director, Legislation and Regulations Division.

[FR Doc. 79-26489 Filed 8-24-79; 8:45 am]

BILLING CODE 4830-01-M

[26 CFR Part 1]

[LR-227-76]

Investment in U.S. Property by Controlled Foreign Corporations; Public Hearing on Proposed Regulations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the exceptions to the definitions of United States property under section 956(b)(2) of the Internal Revenue Code of 1954. The proposed regulations, which are the subject of this public hearing, also contain changes under section 956(c) of the Internal Revenue Code of 1954, which would affect the computation of the investment of earnings in United States property by controlled foreign corporations.

DATES: The public hearing will be held on October 30, 1979, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by October 16, 1979.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, D.C.

The outlines should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-227-76), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: George Bradley or Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202-566-3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 956 and 958 of the Internal Revenue Code of 1954. The proposed regulations appeared in the Federal Register for Monday, April 23, 1979, at page 23880 (44 FR 23880).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and also desire to present oral comments at the hearing on the proposed regulations should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject by October 16, 1979. Each speaker will be limited to 10 minutes for an oral presentation exclusive of time consumed by questions from the panel for the Government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

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 Wednesday, November 8, 1978.

By direction of the Commissioner of Internal Revenue.

Robert A. Bley,

Director, Legislation and Regulations Division.

[FR Doc. 79-26488 Filed 8-24-79; 8:45 am]

BILLING CODE 4830-01-M

[26 CFR Parts 48, 139]

[LR-61-78]

Excise Tax on Coal; Notice of Proposed Rulemaking

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the excise tax on coal. Changes to the applicable tax law were made by the Black Lung Benefits Revenue Act of 1977. The regulations would provide the public with the guidance needed to comply with the Act and affect all producers who mine coal in the United States.

DATES: Written comments and requests for a public hearing must be delivered or mailed by October 26, 1979. The amendments are proposed to be effective with respect to coal sold or used by the producer in other than a mining process after March 31, 1978.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T, LR-61-78, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Robert H. Waltuch of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3328, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the excise tax regulations (26 CFR Part 48) under section 4121 of the Internal Revenue Code of 1954 (Code), as added by section 2 of the Black Lung Benefits Revenue Act of 1977 (Pub. L. 95-227; 92 Stat. 11). These amendments are to be issued under the authority contained in section 7805 of the Code (68A Stat. 917; 26 U.S.C. 7805).

Section 4121 of the code imposes a manufacturers excise tax on the sale of coal by the producer. The tax is imposed at the rate of 50 cents per ton in the case of coal from underground mines in this country and 25 cents per ton in the case of coal from surface mines in this country. However, the amount of the tax per ton is limited to 2 percent of the sales price of the coal. Furthermore, this tax does not apply to lignite or imported coal. The proposed regulations are substantially similar to T.D. 7538, 43 FR 14305, which consists of temporary regulations under the Black Lung Benefits Revenue Act of 1977.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written coments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is Robert H. Waltuch of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

Proposed Amendments to the Regulations

Accordingly, 26 CFR Parts 48 and 139 are amended as follows:

Paragraph 1. § 48.4121-1 is added to read as set forth below.

§ 48.4121-1 Imposition and rate of tax on coal.

(a) *Imposition of tax.* Section 4121 (a) imposes a tax on coal mined at any time in this country if the coal is sold or used by the producer after March 31, 1978. For purposes of this section, the term "producer of the coal" is the person in whom is vested ownership of the coal immediately after the coal is extracted from the mine, without regard to the existence of any contractual arrangement for the sale or other disposition of the coal or the payment of any royalties between the producer and third parties. The term includes any person who reclaims coal from coal waste refuse piles.

(b) *Rate of tax.*—(1) *Underground mines; surface mines.* The rate of tax imposed on coal from underground mines located in the United States is the lower of 50 cents per ton (2,000 pounds), or 2 percent of the sale price. The rate of tax imposed on coal from surface mines located in the United States is the lower of 25 cents per ton (2,000 pounds) or 2 percent of the sale price. If a sale or use includes a portion of a ton, the tax is applied proportionately. Thus, if 1,200 pounds of coal from an underground mine are sold for $35.00, the tax is 30 cents.

(2) *Combination.* If a single mine yields coal from both surface and underground mining, the producer must determine the rate (50 cents or 25 cents per ton) for each ton of coal mined. It is presumed that coal is mined from underground mines (50 cents per ton) unless the producer keeps sufficient records to establish to the satisfaction of the Secretary that the coal was mined from a surface mine.

(c) *Exemptions.* The excise tax on coal does not apply to imported coal or lignite as defined in accordance with the standard specifications for the classification of coals by rank of the American Society for Testing and Materials. There are no exemptions for sales for further manufacture, for export, for use as supplies for vessels or aircraft, for the use of a state or local government, or for the use of a nonprofit educational organization. Furthermore, the Secretary does not have discretion to exempt sales of coal for use of the United States from the tax. There is also no exemption from the coal excise tax when the coal is used in further manufacture of another article that is subject to manufacturers excise tax. For example, if a producer of coal converts coal into gasoline which he then sells, the producer is liable for the coal excise tax when the coal is converted into gasoline and also liable for the manufacturers excise tax on gasoline when the gasoline is sold.

(d) *Definitions and special rules.*—(1) *Coal produced from surface mine.* Coal is treated as produced from a surface mine if all of the geological matter (e.g., trees, earth, rock) above the coal is removed before the coal is mined. In addition, both coal mined by auger and coal that is reclaimed from coal waste refuse piles are treated as produced from a surface mine.

(2) *Coal produced from underground mine.* Coal is treated as produced from an underground mine if it is not produced from a surface mine.

(3) *Coal used by the producer.* For purposes of this section, the term "coal used by the producer" means use by the producer in other than a mining process. A mining process is determined the same way it is determined for percentage depletion purposes. For example, a producer who mines coal does not "use" the coal and thereby becomes liable for the tax merely because, before selling the coal, the producer breaks it, cleans it, sizes it, or applies one of the other processes listed in section 613(c)(4)(A) of the Code. In such a case, the producer will be liable for the tax only when he sells the coal.

On the other hand, a producer who mines coal does become liable for the tax when he uses the coal as fuel, as an ingredient in making coke, or in another process not treated as "mining" under section 613(c).

(4) *Tonnage sold and sales price.* For purposes of determining both the amount of coal sold by a producer and the sales price of the coal, the point of sale is f.o.b. mine, or f.o.b. cleaning point if the producer cleans the coal before selling it. This is true even if the producer sells the coal on the basis of a delivered price. Accordingly, f.o.b. mine or cleaning point is the point at which the number of tons sold is to be determined for purposes of applying the applicable tonnage rate, and the point at which the sales price is to be determined for purposes of the tax under the 2 percent rate.

(5) *Constructive sale price.* If a producer uses coal mined by the producer in other than a mining process, a constructive sale price must be used in determining the tax under the 2 percent rate. This constructive price is determined under sections 613(c) and 4218(e) of the Code, and is based on sales of like kind and grade of coal by the producer or other producers made f.o.b. mine (if the coal is used without first being cleaned), or f.o.b. cleaning plant (if the coal is cleaned before it is used). Normally, this constructive price will be the same as the constructive price used in determining the producer's percentage depletion deduction.

(e) *Due date of tax returns; payment of tax, and tax deposits.* For information relating to the due date of tax returns and the time and place for the payment of the tax see § 48.6011(a)-1, § 48.6151-1 and § 48.6071(a)-1 of the Manufacturers and Retailers Excise Tax Regulations. The return form is Form 720, Quarterly Federal Excise Tax Return. For information relating to tax deposits, see § 48.6302(c)-1 of the Manufacturers and Retailers Excise Tax Regulations and Form 720 (Quarterly Federal Excise Tax Return) and the accompanying instructions.

§ 139.4121-1 [Revoked]

Par. 2. Section 139.4121-1 is revoked.

Jerome Kurtz,

Commissioner of Internal Revenue.

[FR Doc. 79-26493 Filed 8-24-79; 8:45 am]

BILLING CODE 4830-01-M

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 1305-6]

Proposed Revision of the Maryland State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The State of Maryland has submitted a proposed revision of the State Implementation Plan (SIP) consisting of a Consent Order for the Dickerson Generating Station of the Potomac Electric Power Company (PEPCO) at Dickerson, Maryland. The schedule in the Order requires PEPCO to achieve compliance with Maryland's particulate regulation by April 14, 1979, and specifies other milestones which the company must meet toward that end. This compliance date was not met on schedule, but good faith efforts are underway. For sulfur dioxide, a determination of compliance with national ambient air quality standards (NAAQS) around the plant to the year 1985 was made by PEPCO before July 1, 1979 as required by the Consent Order. Both Maryland and EPA concur that sulfur dioxide air quality standards are presently being met, and that air quality modeling shows no violations of either the NAAQS or the PSD increment. If at a later time violations are found or projected, the compliance schedule provides for an expeditious conversion to low-sulfur fuel. If no violations are measured or predicted, the plant may continue to burn higher-sulfur fuel (about 1.8%) with a re-evaluation every five years.

DATE: Comments must be submitted on or before September 26, 1979.

ADDRESSEES: Copies of the proposed SIP revision and the accompanying support documents are available for inspection during normal business hours at the following offices:

U.S. Environmental Protection Agency, Air Programs Branch, Curtis Building, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, Attn: William E. Belanger.

Bureau of Air Quality and Noise Control, State of Maryland, 201 West Preston Street, Baltimore, Maryland 21201, Attn: George Ferreri.

Public Information Reference Unit, Room 2922—EPA Library, U.S. Environmental Protection Agency, 401 M Street, S.W. (Waterside Mall), Washington, D.C. 20460.

All comments on the proposed revision submitted within 30 days of publication of this notice will be considered and should be directed to: Mr. Howard Heim, Chief, Air Programs Branch, Air & Hazardous Materials Division, U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, Attn: AH014MD.

FOR FURTHER INFOMATION CONTACT: William E. Belanger (3AH13), U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, telephone number 215-597-8188.

SUPPLEMENTARY INFORMATION: On August 8, 1978, the Acting Governor of Maryland, Blair Lee III, submitted to EPA, Region III a proposed revision of the Maryland State Implementation Plan consisting of a Consent Order for the Dickerson Generating Station of the Potomac Electric Power Company (PEPCO). In his letter, the Governor certified that the Order was adopted in accordance with the public hearing and notice requirements of 40 CFR, Part 51.4 and all relevant State procedural requirements, and asked that EPA consider the Consent Order as a revision of the State Implementation Plan. The Order states that PEPCO at Dickerson was not, as of the date of the Order, in compliance with the State's emission limitation for particulate matter as applicable to this facility, and establishes a schedule for improvement of control equipment to ensure compliance with that limitation. The final date for compliance with the applicable particulate regulations was April 14, 1979. While the company is behind schedule on the control of particulate matter at Dickerson the particulate control systems became operational for the Number 2 and the Number 3 scrubbers on June 22, 1979, and June 30, 1979 respectively.

The Order also establishes an interim increase in the allowable emission limit for sulfur dioxide (SO_2). This limit is 2.8 pounds per million BTU and is approximately equal to 1.8% sulfur-in-fuel. The existing limitation is approximately 1% sulfur.

The air quality impact of the proposed change was evaluated by a modeling study conducted by the H. E. Cramer Company, a consultant, under contract to PEPCO. The modeling was performed based on the stack height which was in existence at the time of the enactment of the Clean Air Act. In the case of Dickerson, the height is 122 meters. The facility is now served by a 213-meter stack. Under the maximum SO_2 emission of 2.8 pounds per million BTU, two exceedances of the 24-hour SO_2 standard were predicted under one of the five years of meteorology considered in the study. There were no predicted

violations of the three-hour or annual SO_2 standards.

The second highest predicted level of a pollutant based upon at least five years of meteorology has been utilized in the past by EPA as a criterion for acceptability when modeling single sources of air pollution. The modeling evaluation of this proposed revision utilizes a new method which accounts for the variability of the fuel as it is burned, and would accept, as meeting the standard, an expected number of exceedances as yet to be determined by EPA. For purposes of this rulemaking, all candidate criteria for approving the revision were examined and all were met. The concentrations predicted by the modeling study were based on a constant emission rate for the five years reviewed. Because the sulfur content of coal will vary considerably from day to day a further objective was to determine what effect this variation would have on 24-hour concentrations. Compliance with the 24-hour standard was therefore evaluated using a statistical analysis which accounts for the fact that the plant does not operate at the maximum allowable sulfur level all of the time.[1]

The result of this analysis is that there is not more than one expected exceedance in the worst year and less than three expected exceedances over the five-year period. According to any of the candidate criteria which may be used to define acceptability of the modeling demonstration EPA concludes that there is no expected violation of the ambient air quality standards. This new method would be used only for single sources of air pollution. Since this proposal is a SIP relaxation, an analysis of the impact on the PSD increment is required. EPA has determined that the air quality base line as measured in 1977 and the proposed emission limitation are equivalent, thus no consumption of the PSD increment from this revision will occur.

Under the Order, PEPCO is required to submit new projections of SO_2 and TSP air quality levels based on actual ambient air measurements and emissions, by July 1, 1979, and every five years thereafter. The Consent Order further states that if the study should find or project a violation, PEPCO will come into compliance expeditiously on a preset schedule. The analysis due July 1, 1979 was performed by PEPCO. Evaluations by both Maryland and EPA concur with the conclusion that there are no projected violations of the NAAQS or PSD increment under the present plant configuration using the stack height previously defined.

Therefore, it is the tentative decision of the Administrator to approve the proposed revision of the Maryland State Implementation Plan.

The public is invited to submit to the address stated above, comments on whether the Dickerson Consent Order should be approved as a revision of the Maryland State Implementation Plan.

The Administrator's decision to approve or disapprove the proposed revision will be based on the comments received and on a determination whether the amendments meet the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementatoin Plans.

Note.—Under Executive Order 12044 EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized." I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(42 U.S.C. 7401-7642)

Dated: July 30, 1979.

Stephen R. Wassersuy

Acting Regional Administrator.

[FR Doc. 79-26618 Filed 8-24-79; 8:45 am]

BILLING CODE 6560-01-M

[1] Because this approach depends on sophisticated air quality modeling it is not applicable to situations where such modeling cannot be used satisfactorily (e.g., to do complex terrain or an absence of meteological information).

4-A27082 0021(01)(24-AUG-79-12:28:37)

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[49 CFR Part 571]

Maximum Permissible Candlepower for Motorcycle Headlamps; Closure of Docket No. 76-5

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Closure of docket.

SUMMARY: This notice terminates Docket No. 76-5, which proposed that the maximum permissible candlepower for motorcycle headlamps be increased at two test points.

FOR FURTHER INFORMATION CONTACT: W. Marx Elliott, Office of Rulemaking, National Highway Traffic Safety Administration, Washington, D.C. 20590 (202-426-2720).

SUPPLEMENTARY INFORMATION: On July 22, 1976 the NHTSA published (41 FR 30128) a notice of proposed rulemaking (NPRM) granting the petition by L. A. MacEachern of Walnut Creek, California, to amend the motorcycle headlighting requirements of Federal Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*. The agency proposed an increase in the maximum permissible candlepower at two test points which, if adopted, would have allowed Mr. MacEachern to market a motorcycle headlamp system consisting of a single Type 2A headlamp (a rectangular headlamp 4 inches by 6½ inches, incorporating both an upper and a lower beam).

The NHTSA has decided to terminate this rulemaking action without adoption of the amendment proposed. The petitioner's system would illuminate the roadway by simultaneous activation of both the high and low beam filaments. This method of illumination, however, does not appear to meet the need for motor vehicle safety. The Type 2A lamp is designed for use with the Type 1A lamp and intended to provide only a small part of the total light available for the high beam pattern. The Type 1A lamp provides about 90 percent of the upper beam output. To adopt the proposal would result in a headlamp with an unsatisfactory upper beam.

Six comments were received on the proposal. Three, from members of the public, supported it. General Electric Corporation opposed it. General Motors and the California Highway Patrol supported it in part and opposed it in part.

The lawyer and program official principally responsible for this notice are Z. Taylor Vinson and W. Marx Elliott, respectively.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegation of authority at 49 CFR 501.8 and 1.50)

Issued on August 17, 1979.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 79-26508 Filed 8-24-79; 8:45 am]

BILLING CODE 4910-58-M

Urban Mass Transportation Administration

[49 CFR Part 635]

[Docket No. 79-D]

Maintenance of Effort Requirements

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Proposed rule.

SUMMARY: The Urban Mass Transportation Administration (UMTA) is proposing regulations to implement Section 5(f) of the Urban Mass Transportation Act of 1964, as amended by the Surface Transportation Assistance Act of 1978, which deals with maintenance of effort (MOE) by

designated recipients of Federal mass transportation funds. The maintenance of effort requirement is imposed to ensure that state and local support and mass transportation non-farebox revenues will be maintained for provision of mass transportation services. The changes made by the 1978 statute give recipients of funds greater flexibility in meeting their maintenance of effort requirements. The proposed regulations will implement these changed requirements.

DATES: Comments must be received on or before October 11, 1979.

ADDRESS: Comments must be submitted to UMTA Docket 79–D, Room 9320, 400–7th Street, S.W., Washington, D.C. 20590. All comments and suggestions received will be available for examination at the above address between 8:30 a.m. and 5:00 p.m., Monday through Friday. Receipt of comments will be acknowledged by UMTA if a self-addressed, stamped postcard is included with each comment.

FOR FURTHER INFORMATION CONTACT: Candace Noonan, Office of Program Analysis, (202) 472–6997.

SUPPLEMENTARY INFORMATION: All comments received before the expiration of the comment period will be considered before the final action is taken on this proposal.

The Administrator has determined that this regulation is not a significant regulation under the criteria in the DOT Order for Improving Government Regulations (44 FR 11042, February 26, 1979).

Under the DOT Order, a full evaluation is not warranted because the expected economic impact of the proposed regulations is minimal. The proposed regulations merely implement and interpret a statutory requirement and do not, in and of themselves, have any economic impact.

Discussion of Proposal and Background

The 1978 legislative changes to the MOE requirements cover the following four areas:

1. Reimbursement payments for transportation of school children.
2. Increases in operating revenue resulting from a change in the fare structure.
3. Eligible operating costs reduced while maintaining service levels.
4. Federal reductions in Section 5 operating assistance commensurate with a shortfall from the required maintenance of effort level as a result of reductions in local subsidies.

The proposed regulations implement these four areas of change. UMTA Circular 9050.1 sets out the basic application requirements in the MOE area.

Section 5 of the Urban Mass Transportation Act requires the grantee for Federal transit formula operating and capital grants to maintain state or local operating assistance contributions. The MOE requirement is one of five factors that govern the amount of Section 5 assistance that is available to a particular applicant.

The amount is also governed by the amount of money that is appropriated by the Congress, the manner in which that money is apportioned by the statutory formula, the net project cost for the particular project, and the availability of local share matching funds. Changes in any of these five factors will affect the amount of Federal assistance which is available to a particular applicant.

Under the original Section 5 maintenance of effort (MOE) requirement as it was implemented prior to the passage of the Surface Transportation Assistance Act of 1978, any locality which failed to meet its MOE requirement—regardless of the cause of the amount of shortfall— was denied all Section 5 assistance for the project year. Under the new maintenance of effort requirements as modified by the recent legislation, a grant recipient may reduce the overall level of effort below the average of the previous two local fiscal years without losing all Section 5 assistance. A reduction in the overall level of effort may, however, result in a commensurate reduction in the level of Federal assistance. MOE requirements apply to *all* subsidies for operating assistance provided by all non-Federal public agencies or state and local agencies and must be met for all Section 5 capital or operating grants. MOE requirements apply to certain non-farebox public mass transportation revenues used for the support of public mass transportation. MOE rquirements also apply to all state and local contributions during the local fiscal year to the operating expenses of transportation modes for which Section 5 operating assistance is sought except those contributions that are reimbursement payments for the transportation of school children. If an operator provides both bus and rapid rail transportation services, but requests Section 5 assistance for the bus operation only, then only that portion of the local subsidy which is applied to the eligible operating expenses of the bus operation is subject to MOE requirements. However, if the applicant applies for Section 5 assistance based on the eligible costs incurred for the operation of only a portion of the public transportation bus fleet eligible for assistance, the MOE requirement is applied to the total level of effort for the entire eligible bus operation. Contributions toward capital projects do not contribute toward MOE.

Prior to November 6, 1978, the effective date of the Surface Transportation Assistance Act of 1978, UMTA required that state and local governmental reimbursements for the transportation of schoolchildren in regular route service be counted as revenues of the mass transportation system and that these reimbursements be included in the calculations of the MOE.

The legislation now permits the inclusion of reimbursements for the transportation of schoolchildren in local share but requires that these reimbursements not be included in the calculation of the MOE.

UMTA is in the process of developing a comprehensive set of proposed regulations for Section 5 grants. In the interim, proposals such as this will be published to implement the 1978 legislative changes. This method necessitates the use of codified regulations in conjunction with the existing UMTA Circulars on Section 5.

If an applicant for a Section 5 grant does not comply with the application requirement then the grant will not be approved.

If a grantee fails to comply with its certifications in regards to MOE, it is liable to suspension or termination under the terms of its grant contract.

In consideration of the foregoing, it is proposed that Title 49 of the Code of Federal Regulations be amended by adding a new Subpart B to Part 635 to read as follows:

Subpart B—Maintenance of Effort Requirements Applicable to Section 5 Capital and Operating Assistance Grants

Sec.

635.21 Purpose.
635.23 Applicability.
635.25 Definitions.
635.27 Maintenance of effort requirement.
635.29 Transportation of schoolchildren.
635.31 Offsetting increase in fare structure.
635.33 Reduced operating costs.
635.35 Commensurate reductions.
Appendix—Sample Calculations.

Authority. 49 U.S.C. 1604 (d)(2) and (f); 49 CFR 1.51.

Subpart B—Maintenance of Effort Requirements Applicable to Section 5 Capital and Operating Assistance Grants

§ 635.21 Purpose.

(a) Section 5 of the Urban Mass Transportation Act requires designated recipients of Federal transit formula operating and capital grants to maintain state and local operating assistance contributions. The application instructions for public agencies who wish to apply for this formula assistance are contained in UMTA Circular 9050.1 which is available in UMTA by writing to the following: UMTA Office of Public Affairs, Room 9330, 400 7th Street, S.W., Washington, D.C. 20590.

(b) Exhibit B to UMTA Circular 9050.1 discusses application instructions relating to the maintenance of effort requirement. The purpose of this subpart is to implement changes to the maintenance of effort requirement necessitated by changes made to Section 5 by the Surface Transportation Assistance Act of 1978 (Pub. L. 95–599). The effect of these changes is to give recipients greater flexibility in meeting the maintenance of effort requirement.

§ 635.23 Applicability.

This subpart applies to all Section 5 projects, both operating and capital, approved by UMTA after November 6, 1978 regardless of the year in which the monies were apportioned.

§ 635.25 Definitions.

(a) "Act" means the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 et seq.).

(b) "Designated recipient" means the entity designated to receive funds by the procedures prescribed in Section 5(b) of the Act.

(c) "Grantee" is the local public body which undertakes legal responsibility for carrying out the Section 5 project directly, by lease, or otherwise. In most instances, the designated recipient and the grantee will be the same entity.

(d) "Level of Effort" (LOE) is the amount contributed from state and local government funds and other transit revenues described in Appendix B to Circular 9050.1 expended on the operation of mass transportation service in the area involved for a given local fiscal year. By statute, LOE includes advertising concessions and property leases and excludes reimbursement payments for the transportation of schoolchildren.

(e) "Maintenance of effort" (MOE) is the average of the LOE's for the two local fiscal years preceding the project year.

(f) "Mass transportation operator" is the entity (or entities) whose eligible transit operating expenses are included within a Section 5 operating assistance project.

(g) "Project year" is the fiscal year of the predominant mass transportation operator, unless the grantee is permitted by the Federal Government to use a different fiscal year.

§ 635.27 Maintenance of effort requirement.

Except as set forth in §§ 635.29, 635.31 and 635.33, each grantee must maintain a LOE in the project year which equals or exceeds the average level of effort for the two immediately preceeding local fiscal years. Failure to maintain this LOE will result in commensurate reductions in Federal assistance in accordance with § 635.35.

§ 635.29 Transportation of schoolchildren.

All Section 5 grants approved after November 6, 1978 must exclude reimbursements for the transportation of schoolchildren from the MOE and LOE calculations. The effect of this change for many grantees is to decrease the level of the MOE requirement while also reducing the LOE for the project year.

§ 635.31 Offsetting increase in fare structure.

(a) If the grantee's LOE for the project year is less than its MOE requirement, then the difference can be offset without a reduction in the amount of Federal assistance because of a failure to meet MOE if all of the requirements of paragraphs (b) through (f) are met. Changes in fare structure can also be used in combination with the other provisions of §§ 635.29, 635.33, and 635.35.

(b) The reduction in LOE may be offset dollar for dollar by an increase in operating revenues which results solely from a change or changes in the fare structure. Changes in the fare structure include, but are not limited to, fare increases or reductions, changes in the zone structure, institution of zone charges, or new peak hours.

(c) Increases in operating revenues which result from changes to service levels cannot be used to offset reductions in the required LOE. Measures of service levels include, but are not limited to, the total number of vehicle miles, the total number of route miles, frequency of service, and the characteristics of special services such as providing transportation for the elderly or handicapped or reverse commuter trips.

(d) An offsetting increase in operating revenues may be claimed only for one local fiscal year. In cases where the change in the fare structure is put into effect in the last three months of the local fiscal year, the grantee, at its option, may claim the offset amount for the following year. In all other cases, the offsetting increase may be claimed only for the local fiscal year in which it was put into effect. If the grantee met its LOE for the year in which the change in fare was claimed, the change must not be used to offset reductions in the level of effort in later years.

(e) The grantee has the burden of proof to establish that the amount of the offset claimed is due solely to increases in operating revenues resulting solely from changes in the fare structure ("offset amount"). The grantee must describe the fare structure change, compute the offset amount, and demonstrate the relationship between the increased revenues and changes in the fare structure. The accuracy of this document must be certifed by the authorized certifying officer. These documents should be included as an attachment to the regular grant application.

(f) Actual revenues and expenses must be reported for the year in which they were incurred or received.

(g) In the project application for the next fiscal year (project year #2), a grantee who has been permitted to offset reductions in LOE under the provisions of § 635.31(a) in the previous year (project year #1) may apply the same dollar amount of offset in the project application for project year #2 as was actually realized in project year #1. If the application for project year #1 was based on projections or estimated data, the amount actually realized in project year #1 must be calculated based on empirical data. To the extent that the difference between the MOE and LOE for project year #2 is offset by an increase in operating revenues in project year #1 which results solely from changes in the fare structure, there will not be a reduction in the amount of Federal assistance of a failure to meet the MOE requirement.

§ 635.33 Reduced operating costs.

(a) If a grantee is able to reduce eligible operating costs while maintaining the same transit service levels, UMTA permits the grantee to reduce its level of effort by an amount proportional to the reduction in operating costs without a loss of UMTA funds resulting from the decrease in the level of effort providing that the conditions specified in paragraphs (b) through (f) of this section have been met. However since the Federal operating assistance cannot exceed 50% of net

project cost, the UMTA assistance may decrease because the operating costs have decreased. This could happen, for instance, where a new provider of service under contract to the grantee provides the same service at a lower cost.

(b) Service levels must be maintained by the grantee. Any reductions of the total number of vehicle miles, total number of route miles, frequency of service, special services such as provisions for the elderly and handicapped or reverse commuter trips or other measures of service levels would make the grantee ineligible under this section.

(c) Grantees who seek to reduce their LOE under the provisions of this section have the burden of proof to establish that service levels have been maintained. Grantees must specify the dollar amount and percentage reduction in eligible operating costs for the project year compared to the eligible operating costs over the previous year and describe the actions taken to effect those reductions.

(d) Changes which result in reduced operating costs may be claimed only for one local fiscal year. In cases where the reduced operating costs result from changes that all went into effect in the last three months of the local fiscal year, the grantee, at its option, may claim the reduced operating costs for either the year in which the changes were instituted or it may claim the reduced operating costs for the following year. In all other cases, the reduced operating costs may be claimed only for the local fiscal year in which the changes were put into effect. If the grantee met its LOE for the year in which the reduced operating costs are claimed, the changes must not be used to offset reductions in the level of effort in later years.

(e) Actual revenues and expenses must be reported for the year in which they were incurred or received.

(f) The grantee must also certify the following:

Reductions in operating expenses that are being used to justify a reduction in the LOE have not been the result of any decreases in the level of service provided nor are these reductions in operating expenses expected to cause any decline in the level of service provided in the future.

This must be signed by the authorized certifying officer. The documents required under this section should be included as an attachment to the regular grant application.

(g) In the project application for the next fiscal year (project year #2), a grantee who has been permitted to reduce its LOE under the provisions of § 635.33(a) in the previous year (project year #1) should apply the same dollar amount of reduced operating costs for project year #2 as were actually realized in project year #1. If the application for project year #1 was based on projections or estimated data, the amount actually realized in project year #1 must be calculated based on empirical data. To the extent that the difference between the MOE and the LOE for project year #2 is met by reductions in operating expenses in project year #1 without reductions in service levels, the grantee may reduce its level of effort in project year #2 by an amount proportional to the reduction in operating costs in project year #1 without a loss of UMTA funds resulting from the decrease in the level of effort.

§ 635.35 Commensurate reductions.

(a) A grantee who has an LOE for the project year that is less than the MOE requirement of § 635.27 will receive a commensurate reduction in Section 5 operating assistance for any amounts of the reduced LOE which are not attributable to the specific provisions of §§ 635.29, 635.31, or 635.33.

(b) "Commensurate reduction" means that the amount of Section 5 operating assistance which the grantee would otherwise receive will be reduced either (1) by a dollar amount equal to the amount by which the grantee's LOE is less than the MOE requirement or, (2) by an amount proportional to the percentage shortfall from MOE. The method of calculating the Section 5 operating assistance reduction will be the method that is most advantageous to the grantee. The MOE and LOE calculations will include the adjustments made by this subpart.

(c) Reductions in LOE which lead to reductions in Section 5 operating assistance may lead to unfunded deficits unless the grantee has sufficient profits from the sale or operation of services which are not mass transportation and are therefore not included in the LOE and MOE calculations.

Appendix A—Sample Calculations

Sample calculations are provided below of the various situations that may arise based on the requirements of §§ 635.31 through 635.35.

The operator in each calculation has a required MOE level of $100 which is just equal to its local subsidy. MOE can, however, be lower than the current local subsidy if subsidies were lower in previous years.

The financial data for the sample operator for the year preceding the project period are as follows:

Eligible operating expenses	$200
Operating revenue	40
Local subsidy	100
MOE (Recomputed excluding reimbursement for the transportation of school children)	100
Section 5 assistance for project period and for preceding year	60

§ 6325.31

Case 1: For the project period, the operator increased all fares, which increased operating revenues by $3. During the same period, the local government reduced property taxes which resulted in a $3 decline in the local subsidy. Because the operator offset the $3 shortfall from the required MOE level with increased operating revenues, there will be no decrease in the amount of Section 5 assistance for which the operator is now eligible.

	Before	After
Eligible expenses	$200	$200
Revenues	40	43
LOE (Local subsidy)	100	97
Section 5 funds	60	60

Case 2: The operator instituted special higher charges for rush hour service and put additional vehicles into service during the time period. The increased frequency of service generated an additional $4 in revenues and the fare increase resulted in $2 of new revenues. Additionally, eligible operating expenses increased during this period by $4. Because only $2 of the total $6 in increased revenues are attributable to the change in the fare structure, the level of effort cannot be reduced more than $2 below the MOE level without risking a commensurate reduction in Section 5 assistance.

	Before	After
Eligible expenses	$200	$204
Revenues	40	46
LOE (Local subsidy)	100	98
Section 5 funds	60	60

§ 635.33

Case 3: The operator has consolidated all administrative functions in one building and realized a 10% ($20) reduction in eligible operating expenses. The level of effort is then reduced below the MOE level by the same percentage to $90 (10% of $100). Since the shortfall from the MOE level is the same percentage as the reduction in operating expenses, and service levels have been maintained, no reduction will be made in the amount of operating assistance for which the grantee is eligible based on the new data.

	Before	After
Eligible expenses	$200	$180
Revenues	40	40
LOE (Local subsidy)	100	90
Section 5 funds	60	50

In this example, the level of Section 5 assistance *did* decrease because the full amount of available assistance ($60) is no longer needed by the grantee to cover its deficit.

A reduction in level of effort under the requirements of § 635.33 will in most cases result in a decrease in the amount of Section 5 assistance that the operator required. There are, however, some exceptions, as shown in Cases 4 and 5 below. In Case 4 the operator

has an unfunded deficit which absorbs a portion of the change.

Case 4: Assume the operator in Case 3 had an MOE requirement of $80 rather than $100 but had achieved the same reduction in operating costs described in the previous example. In this case, the financial data would be as follows:

	Before	After
Eligible expenses	$200	$180
Revenues	40	40
LOE (Local subsidy)	80	72
Section 5 funds	60	60
Unfunded deficit	20	8

In this instance, the reduction in eligible operating expenses permitted the unfunded deficit to be reduced and the amount of Section 5 assistance to remain constant.

A change under § 635.33 in conjunction with other changes in the eligible expenses or in revenues could result in a constant level of Section 5 assistance, as in the following example:

Case 5: Assume the operator in Case 3 had also cut all fares in half in a move to increase ridership. The level of ridership increases by 50% so that there is only a 25% reduction in fare revenue from $40 to $30). The resulting financial data are:

	Before	After
Eligible expenses	$200	$180
Revenues	40	30
LOE (Local subsidy)	100	90
Section 5 funds	60	60

Despite the fact that there was a change in the fare structure in this example, there was no increase in operating revenues so that this additional action by the operator does not qualify for a reduction in LOE under § 635.31 but it does have the effect of retaining the amount of Section 5 assistance received (in Case 3, the federal assistance decreased by $10).

§ 635.35

Case 6: After the state rolled back property taxes, the operator received less income from that source, which resulted in a 10% ($10) shortfall from the required MOE level. Because the operator had no offsetting increase in operating revenues (§ 635.31) or proportional decrease in operating expenses (§ 636.33), the reduction in LOE must be compensated for by a commensurate reduction in Section 5 assistance. Were it not for the reduction in local subsidy, the operator would have been eligible to receive $60 in Section 5 assistance (the total amount apportioned). It is against this level of assistance that the § 635.35 commensurate reduction is taken. Since a 10% reduction in UMTA funds ($6) is less than the dollar reduction in LOE ($10), the operator is eligible to receive $54 in Section 5 funds.

	Before	After
Eligible expenses	$200	$200
Revenues	40	40
LOE (Local subsidy)	100	90
Section 5 funds	60	54
Unfunded deficit	0	16

Case 7: The operator in Case 6, despite the loss of $10 in state aid, had a 25% increase in ridership (no fare changes) which resulted in a $10 increase in revenues. The financial data in this case are:

	Before	After
Eligible expenses	$200	$200
Revenues	40	50
LOE	100	90
Section 5 funds	60	54
Unfunded deficit	0	6

With a § 635.35 MOE shortfall, the operator will *always* incur an unfunded deficit unless additional revenues are available from non-mass transportation sources. If a reduction below the MOE level falls under more than one requirement all changes in the LOE under § 635.31 and § 635.33 are computed first, in order to determine the amount of MOE shortfall attributable to more than one reduction in LOE. The remaining shortfall is used to calculate the amount of commensurate reduction under § 635.35. The amount or reduction is computed on the basis of the level of Section 5 assistance the applicant would receive based on Section 5 apportionment, the local share, and the project deficit. It is against this calculated level of assistance that commensurate reductions under § 635.35 are taken. In the above example, the project budget indicates that prior to the commensurate reduction under § 635.35, the operator would be eligible for $60 in UMTA funds. It is against this funding level ($60) that the 10% reduction is taken as a result of the § 635.35 $10 (10%) shortfall from the required MOE level.

§ 635.31 and § 635.35

Case 8: The state voted to reduce the amount of subsidy granted to local transit operators. As a result, the level of effort for the operator in this example is reduced by $20 (20% of the MOE level). During the project period, the operator instituted new zone charges which resulted in an additional $10 in revenues. In this instance, $10 of the MOE shortfall are offset by operating revenue increases under § 635.31. This calculation is therefore applied first. Since there is still a remaining $10 shortfall, § 635.35 is applied to calculate a commensurate reduction in Section 5 operating assistance. The steps in calculating the new level of Section 5 assistance for the operator in this case are as follows:

	Before	After
Eligible expenses	$200	$200
Revenues	40	50
LOE (Local subsidy)	100	80
Section 5 funds	60	54
Unfunded deficit	0	16

§ 635.33 and § 635.35

Case 9: An operator had total operating expenses of $220 but only $200 of this amount constituted eligible operating expenses since $20 in expenses were the result of a charter service operation. The operator took all buses out of charter service and transferred them to regular service thereby saving the $20 in expenses previously spent on charter operations. This savings in operating costs does not fall under § 635.33 since it does not reduce *eligible* operating expenses. Because the charter buses were the newest in the fleet, the operator finds that by putting them into regular service, costs for maintenance, vehicle repairs, fuel and oil fall enough to reduce operating costs by 5% or $10. However, when the City Council learned of the estimate that operating costs would be reduced by $10, the Council voted to divert $10 of the operator's subsidy to the school district, thereby reducing the level of effort from $100 to $90. Since the reduction in eligible operating expenses was effected with no reduction in service levels, the operator may reduce the level of effort proportionally (§ 635.33) by $5 (5% of $100) to $95. The remainig $5 shortfall from the MOE level will result in a commensurate reduction in Section 5 assistance of $3 (5% of $60) rather than a dollar for dollar reduction of $5.

	Before	After
Eligible expenses	$200	$190
Revenues	40	40
LOE (Local subsidy)	100	90
Section 5 funds	60	57
Unfunded deficit	0	3

§ 635.31, § 635.33, and § 635.35

Case 10: The state has voted to roll back property taxes, which results in a loss of $25 in local subsidies to the operator in this example. To offset the loss, the operator raised fares which results in $10 in new revenues. Under § 635.31, the level of effort may then be reduced on a dollar for dollar basis to $90 ($100–$10). During the project year, the operator upgraded the maintenance program which resulted in a $10 (5% of eligible expenses) savings in eligible operating costs. Because this reduction in costs falls under § 635.33, the operator may reduce his level of effort by an additional 5% of $100 or $5 to $85. However, as a result of the loss of state aid, the level of effort for the project year is only $75 thereby leaving $10 of the total $25 MOE shortfall which is not covered under § 635.31 or § 635.33. Due to the § 635.33 shortfall the operator will receive a commensurate reduction in Section 5 funds of $6 (10% of $60) thereby reducing UMTA funds to $54 and resulting in an $11 unfunded deficit. The operator's financial data are as follows:

	Before	After
Eligible expenses	$200	$190
Revenues	40	50
LOE (Local subsidy)	100	75
Section 5 funds	60	54
Unfunded deficit	0	11

(49 U.S.C. 1604 (d)(2) and (f); 49 CFR 1.51)

Dated: August 22, 1979.

Lillian C. Liburdi,

Acting Deputy Administrator.

[FR Doc. 79-26609 Filed 8-24-79; 8:45 am]

BILLING CODE 4910-57-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[10 CFR Part 212]

[Docket No. ERA-R-79-*3A*]

Mandatory Petroleum Price Regulations; Availability of Propane Deregulation Draft Regulatory Analysis

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Availability of Draft Regulatory Analysis.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives public notice and solicits comments on the Availability of a Draft Regulatory Analysis which examines the potential impacts of exempting propane from the Mandatory Petroleum Allocation and Pricing Regulations. Copies may be obtained from the Office of Public Information, ERA.

DATES: Written comments by December 1, 1979, 4:30 p.m.

ADDRESS: Comments to: Economic Regulatory Administration, Office of Public Hearing Management, Docket No. ERA-R-79-*3A*, Room 2313, 2000 M Street, NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Comment Procedures), Economic Regulatory Administration, Room 2222-A, 2000 M Street NW., Washington, D.C. 20461, (202) 254-5201.

William L. Webb (Office of Public Information), Economic Regulatory Administration, Room B-110, 2000 M Street NW., Washington, D.C. 20461, (202) 634-2170.

Robert Reinstein (Office of Regulations & Emergency Planning), Economic Regulatory Administration, Room 8202, 2000 M Street NW., Washington, D.C. 20461, (202) 632-5042.

Roger Miller (Office of Regulations & Emergency Planning), Economic Regulatory Administration, Room 8202, 2000 M Street NW., Washington, D.C. 20461, (202) 634-7351.

Jack Kendall (Office of General Counsel), Department of Energy, Room 6A-127, 1000 Independence Avenue SW., Washington, D.C. 20585, (202) 252-6739.

Issued in Washington, D.C., August 22, 1979.

F. Scott Bush,

Assistant Administrator, Regulations and Emergency Planning, Economic Regulatory Administration.

[FR Doc. 79-26909 Filed 8-24-79; 12:42 pm]

BILLING CODE 6450-01-M

Notices

Federal Register
Vol. 44, No. 167
Monday, August 27, 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.

DEPARTMENT OF AGRICULTURE

Forest Service

Nez Perce National Forest Grazing Advisory Board; Meeting

The Nezperce National Forest Grazing Advisory Board will meet at 9:00 a.m., September 19, 1979, at Moore's Cabin near White Bird, Idaho. The purpose of this meeting will be a two day field trip via horseback into the Dome Hill allotment area to gain first-hand knowledge of the allotment management plan.

Public participation is welcome, however, participants will be responsible for their own transportation, subsistence and lodging. Persons who wish to participate should notify James J. Harvey, 319 East Main, Grangeville, Idaho, telephone 208–983–1950.

Don Biddison,
Forest Supervisor.
August 17, 1979.
[FR Doc. 79-26549 Filed 8-24-79; 8:45 am]
BILLING CODE 3410-11-M

Office of Transportation

Rural Transportation Advisory Task Force Meeting

AGENCY: Office of Transportation, U.S. Department of Agriculture.

ACTION: Notice of Public Hearing of the Rural Transportation Advisory Task Force.

DATES: September 5, 1979—9:00 a.m., September 6, 1979—9:00 a.m.

ADDRESS: September 5 and 6, 1979, Ramada Inn, Rosslyn, Virginia.

SUMMARY: At the completion of its work on January 1, 1980, the Task Force will report on methods for enhancing the economical and efficient movement of agricultural commodities (including forest products) and agricultural inputs and recommend approaches for establishing a national agricultural transportation policy and for identifying impediments to a railroad transportation system adequate for the needs of agriculture. The Task Force formed three subcommittees on policy and essential transportation needs of agriculture; railroad problems of agriculture, and highway, waterway, and air transportation problems of agriculture. The Task Force published and distributed its interim report including the identification of critical agricultural transportation issues. The Task Force has held its 12 regional Public Hearings.

The purpose of this meeting is to prioritize and begin to formulate the process for the development of final recommendations. The meeting will be open to the public.

FOR FURTHER INFORMATION CONTACT: Dr. Robert J. Tosterud, Office of Transportation, U.S. Department of Agriculture, Washington, DC 20250. Phone: (202) 447–7690.

Dated: August 16, 1979.
Ron Schrader,
Director, Office of Transportation.
[FR Doc. 79-26605 Filed 8-24-79; 8:45 am]
BILLING CODE 3410-02-M

Soil Conservation Service

Five Creeks Watershed, Miss.; Intent Not To File an Environmental Impact Statement for Deauthorization of Federal Funding of the Five Creeks Watershed

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the deauthorization of Federal funding of the Five Creeks Watershed, Yazoo County, Mississippi.

The environmental assessment of this action indicates that deauthorization of Federal funding of the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Chester F. Bellard, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this action.

The project plan provided for accelerated technical assistance for application of land treatment measures, installation of seven floodwater retarding structures and 63.3 miles of channel improvement.

The notice of intent not to file an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Chester F. Bellard, State Conservationist, Soil Conservation Service, P.O. Box 610, Jackson, Mississippi 39205, telephone number 601–969–4335. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken on or before October 26, 1979.

Dated: August 20, 1979.
(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program—Pub. L. 83–566, 16 U.S.C. 1001–1008.)
Victor H. Barry, Jr.,
Deputy Administrator for Programs, SCS.
[FR Doc. 79-26551 Filed 8-24-79; 8:45 am]
BILLING CODE 3410-16-M

Pine Valley Watershed, Oreg.; Intent Not To File an Environmental Impact Statement for Deauthorization of Federal Funding of the Pine Valley Watershed

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the deauthorization of Federal funding of the Pine Valley Watershed, Baker County, Oregon.

The environmental assessment of this action indicates that deauthorization of Federal funding of the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. Guy W. Nutt, State Conservationist, has

determined that the preparation and review of an environmental impact statement are not needed for this action.

The project plan provided for accelerated technical assistance for application of land treatment measures, installation of a multiple purpose reservoir, and 4.45 miles of irrigation delivery system improvement.

The notice of intent not to file an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. Guy W. Nutt, State Conservationist, Soil Conservation Service, 1220 S.W. Third Avenue, Portland, Oregon 97204, telephone number 503–221–2751. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken on or before October 26, 1979.

Dated: August 20, 1979.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program—Pub. L. 83–566, 16 U.S.C. 1001–1008.)

Victor H. Barry, Jr.,

Deputy Administrator for Programs, SCS.

[FR Doc 79-26550 Filed 8-24-79; 8:45 am]

BILLING CODE 3410-16-M

Spring Brook Watershed, Wis.; Intent Not To File an Environmental Impact Statement for Deauthorization of Federal Funding of the Spring Brook Watershed

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the deauthorization of Federal funding of the Spring Brook Watershed, Langlade and Marathon Counties, Wisconsin.

The environmental assessment of this action indicates that deauthorization of Federal funding of the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Mr. J. C. Hytry, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this action.

The project being deauthorized concerns a plan for watershed protection, flood prevention, and enhancement of fish and wildlife resources. The planned works of improvement include one single-purpose floodwater retarding structure, 1,340 feet of dike, one lake outlet structure, and 10,430 feet of channel improvement.

The notice of intent not to file an environmental impact statement has been forwarded to the Environmental Protection Agency. The basic data developed during the environmental assessment are on file and may be reviewed by contacting Mr. J. C. Hytry, State Conservationist, Soil Conservation Service, 4601 Hammersley Road, Madison, Wisconsin 53711, telephone number 608–252–5351. An environmental impact appraisal has been prepared and sent to various Federal, State, and local agencies and interested parties. A limited number of copies of the environmental impact appraisal are available to fill single copy requests at the above address.

No administrative action on implementation of the proposal will be taken on or before October 26, 1979.

Dated: August 17, 1979.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program—Pub. L. 83–566, 16 U.S.C. 1001–1008.)

Victor H. Barry, Jr.,

Deputy Administrator for Programs, SCS.

[FR Doc. 79-26552 Filed 8-24-79; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

[Docket Nos. 36419, etc.; Order 79-8-103]

Alaska Airlines, Inc.; Order Instituting Investigation

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 20th day of August 1979.

Route D.1 of the Air Transport Services Agreement between the United States and Canada, May 8, 1974, provides for the designation of a U.S. airline or airlines to operate over the Houston/Dallas/Ft. Worth-Calgary/Edmonton-Anchorage/Fairbanks route.[1]

Existing service in the Texas-Alberta markets is provided through two interchange agreements, one between Braniff and Western, the other between Western and Continental.[2] Through these interchanges, the Dallas/Ft. Worth-Calgary and Houston-Calgary markets receive daily round-trip one-stop service; and Dallas/Ft. Worth-Edmonton receives daily round-trip two-stop service. Houston-Edmonton, however, currently receives no single-plane service.[3] Service between Texas and Alaska is also provided pursuant to interchange agreements.[4]

Alberta-Alaska service is extremely limited. No direct or connecting service exists between Anchorage or Fairbanks and Calgary. Edmonton-Fairbanks/Anchorage has connecting service, but only in one direction, and the first leg involves a four-stop flight from Edmonton to Whitehorse, Yukon Territories, on CP Air.

We have received applications from three carriers, Alaska Airlines (Docket 30705), Texas International Airlines (Docket 31178), and Braniff Airways (Docket 31599), to provide direct Texas-Alberta-Alaska service. All three carriers seek Houston and Dallas/Ft. Worth as coterminals and Calgary and Edmonton as intermediates. Braniff and TXI request Fairbanks and Anchorage as coterminals. Alaska Airlines seeks only Anchorage. No applicant has presented a service proposal.

No answers have been received to the applications.

On June 22, 1977, the Calgary Transportation Authority and the Edmonton Area Air Services Commission ("the Canadian parties") jointly petitioned for an investigation to determine whether the public convenience and necessity required the certification of a U.S.-flag carrier to serve the Texas-Alberta-Alaska route (Docket 31036). The petition was joined to a motion for hearing. On September 15, 1977, we denied the Canadian parties' motion and petition.[5] We felt that a hearing should not be held at that time considering the other more pressing matters pending at the Board.[6] We did not dismiss the carrier applications,

[1] Under the Agreement, only one U.S.-flag designation may be made for this route unless the Government of Canada gives prior approval for an additional designation. No Canadian-flag carrier may be designated.

[2] The Braniff/Western and Continental/Western interchanges authorize single-plane service (limited to one daily round-trip) between Calgary/Edmonton-Dallas/Ft. Worth and Calgary/Edmonton-Houston respectively, via Denver. Orders 78–3–75 and 78–4–162).

[3] OAG, North American Edition, August 1, 1979.

[4] An agreement Between Alaska Airlines and Braniff provides for daily Dallas/Ft. Worth/Houston-Fairbanks/Anchorage service via Seattle. An agreement between Continental and Western provides for daily Dallas/Ft. Worth/Houston-Anchorage service, also via Seattle. Both agreements were approved by the Board in Order 74–4–105, April 19, 1974.

[5] Order 77–9–49, September 15, 1977.

[6] This conclusion was reaffirmed on reconsideration, Order 77–11–107, November 22, 1977.

though, anticipating that a time would come when we could justifiably give them our attention. That time is now. We either have completed or are in the process of completing our work on nearly all the route opportunities opened up by the 1974 United States-Canada bilateral. The Texas-Alberta-Alaska route remains for our consideration.

Therefore, we have determined to institute a *Texas-Alberta-Alaska Case* to consider the need for certificated U.S.-flag service over the U.S.-Canada bilateral route D.1 described above, and which, if any, U.S. carrier or carriers should be selected to meet this need.

As is our usual policy in cases where carrier selection is at issue,[7] we will take into account the offer of or failure to offer lower prices in determining whether the public convenience and necessity require the award of certificate authority, and, if so, which carrier or carriers should be selected. We therefore expect this proceeding to include an examination of the need for and feasibility of various price/quality options in addition to traditional service benefits. We also want to register our continuing concern with competitive performance in international markets where there are limitations on our ability to designate new competitors. In limited designation situations, we wish to devise regulatory approaches to create competitive incentives resembling those that exist where our designation powers are not limited. We expect the parties and the judge to explore what those approaches may be. (Examples might include temporary certification, experimental certification, see section 401(d)(8) of the Act, as amended; price or service conditions; back-up awards and other possibilities.) We are especially anxious to come up with fair and effective ways to maximize the continuing incentives of the chosen carrier to perform efficiently and offer the optimal combination of price and service options to consumers. We also want to explore ways to replace a chosen carrier which does not perform in that manner. Those parties not familiar with the Board's practice should be aware that we desire to reduce the delay and costs of the evidentiary burden associated with traditional carrier selection cases. We invite parties to explore with the judge ways to reduce the quantity of required exhibit material, eliminate duplication and excessive detail, standardize methodology, and focus on significant facts and assumptions. Resolution of these matters will, of course, remain with the administrative law judge.

[7] Order 79-1-160, January 24, 1979.

Applications, motions to consolidate, and petition for reconsideration of this order shall be filed within 20 days of the date of service of this order, and responsive answers shall be filed within 10 days thereafter.

Accordingly, 1. We institute the *Texas-Alberta-Alaska Case*, Docket 36419, and set it for hearing before an administrative law judge of the Board at a time and place to be designated after any petitions for reconsideration have been acted upon by the Board;

2. This proceeding shall consider whether the public convenience and necessity require certification of a U.S. air carrier or carriers to engage in foreign air transportation of persons, property and mail, on a subsidy-ineligible basis, between the coterminal points Houston/Dallas/Ft. Worth, Texas, the intermediate points Calgary/Edmonton, Alberta, Canada, and the coterminal points Anchorage/Fairbanks, Alaska and, if so, which carrier or carriers should be authorized to provide the service; and what, if any, terms, conditions, or limitations should be placed on the operation of the carrier or carriers;

3. We consolidate the certificate applications of Alaska Airlines in Docket 30750, Texas International Airlines in Docket 31178 and Braniff Airways in Docket 31599 into this proceeding;

4. We make the following persons parties to this proceeding: Alaska Airlines, Texas International Airlines, Braniff Airways, Western Airlines, Continental Airlines, the Calgary Transportation Authority, and the Edmonton Area Services Commission;

5. Applications, motions to consolidate conforming to the scope of this proceeding and petitions for reconsideration of this order shall be filed no later than September 10, 1979, and answers shall be filed no later than September 20, 1979; and

6. All applicants that have not done so shall file environmental evaluations within 30 days of the date of service of this order.

This order shall be published in the Federal Register.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,[8]

Secretary.

[FR Doc. 79-26591 Filed 8-24-79; 8:45 am]

BILLING CODE 6320-01-M

[8] All members concurred.

Application for an All-Cargo Air Service Certificate

August 21, 1979.

In accordance with Part 291 (14 CFR Part 291) of the Board's Economic Regulations (effective November 8, 1978), notice is hereby given that the Civil Aeronautics Board has received an application, Docket 36254, from United Parcel Service Co., 51 Weaver Street, Greenwich Office Park #5, Greenwich, Connecticut 06830 for an all-cargo air service certificate to provide domestic cargo transportation.

Under the provisions of § 291.12(c) of Part 291, interested persons may file an answer in opposition to this application on or before September 17, 1979. An executed original and six copies of such answer shall be addressed to the Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. It shall set forth in detail the reasons for the position taken and must relate to the fitness, willingness, or ability of the applicant to provide all-cargo air service or to comply with the Act or the Board's orders and regulations. The answer shall be served upon the applicant and state the date of such service.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-26536 Filed 8-24-79; 8:45 am]

BILLING CODE 6320-01-M

[Docket No. 35834; Order 79-8-105]

Colibri Aviation Reg'd. Order To Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause: ORDER 79-8-105.

SUMMARY: The Board proposes to approve the following application:

Applicant: Colibri Aviation Reg'd.

Application Date: June 14, 1979 (Docket: 35834).

Authority Sought: Foreign air carrier permit authorizing small aircraft charters between points in Canada and points in the United States.

OBJECTIONS: All interested persons having objections to the Board's tentative findings and conclusions that this authority should be granted, as described in the order cited above, shall, no later than September 13, 1979, file a statement of such objections with the Civil Aeronautics Board (20 copies) and mail copies to the applicant, the Department of Transportation, the Department of State, and the Ambassador of Canada in Washington, D.C. A statement of objections must cite the docket number and must include a

summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Secretary of the Board will enter an order which will, subject to disapproval by the President, make final the Board's tentative findings and conclusions and issue the proposed permit or certificate.

ADDRESSES FOR OBJECTIONS:

Docket 35834, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

Mr. Jacques Corbeil, Owner, Colibri Aviation Reg'd, P.O. Box 215, Dorval Airport, Dorval, Quebec, Canada H4Y 1A5.

To get a copy of the complete order, request it from the C.A.B. Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT: Nancy L. Pitzer, Regulatory Affairs Division, Bureau of International Aviation, Civil Aeronautics Board—202–673–5104.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-26590 Filed 8-24-79; 8:45 am]

BILLING CODE 6320-01-M

[Order 79-8-106; Docket 34765]

Cougar Air, Inc.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause: ORDER 79–8–106.

SUMMARY: The Board proposes to approve the following application:

Applicant: Cougar Air Incorporated.

Application Date: February 15, 1979 (Docket 34765).

Authority Sought: Small aircraft charter permit to operate between the United States and Canada.

OBJECTIONS: All interested persons having objections to the Board's tentative findings and conclusions that this authority should be granted, as described in the order cited above, shall, no later than September 13, 1979, file a statement of such objections with the Civil Aeronautics Board (20 copies) and mail copies to the applicant, the Department of Transportation, the Department of State, and the Ambassador of Canada in Washington, D.C. A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Secretary of the Board will enter an order which will, subject to disapproval by the President, make final the Board's tentative findings and conclusions and issue the proposed permit or certificate.

ADDRESSES FOR OBJECTIONS:

Docket 34765, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

Cougar Air Incorporated, P.O. Box 2385, Sidney, British Columbia, Canada V8L 3Y3.

To get a copy of the complete order, request it from the C.A.B. Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT: C. Robert Mallalieu, Bureau of International Aviation, Civil Aeronautics Board; (202) 673–5407.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-26589 Filed 8-24-79; 8:45 am]

BILLING CODE 6320-01-M

[Order 79-8-104; Docket 35385]

Polskie Linie Lotnicze

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause: ORDER 79–8–104.

SUMMARY: The Board proposes to approve the following application:

Applicant: Polskie Linie Lotnicze (LOT).

Application Date: April 20, 1979 (Docket 35385).

Authority Sought: Amendment of Polskie Linie Lotnicze (LOT) foreign air carrier permit to lift frequency restrictions and to conform to U.S.-Poland Exchange of Notes, Jan. 31, 1979.

OBJECTIONS: All interested persons having objections to the Board's tentative findings and conclusions that this authority should be granted, as described in the order cited above, shall, no later than September 12, 1979, file a statement of such objections with the Civil Aeronautics Board (20 copies) and mail copies to the applicant, the Department of Transportation, the Department of State, and the Ambassador of Poland in Washington, D.C. A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Secretary of the Board will enter an order which will, subject to disapproval by the President, make final the Board's tentative findings and conclusions and issue the proposed permit or certificate.

ADDRESSES FOR OBJECTIONS:

Docket 35385, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

Applicant: Polskie Linie Lotnicze, c/o Robert R. Gray, Hale, Russell, Gray, Seaman & Birkett, 1025 Connecticut Avenue, N.W., Washington, D.C. 20036.

To get a copy of the complete order, request it from the C.A.B. Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT: Bureau of International Aviation, Civil Aeronautics Board; (202) 673–5880.

By the Civil Aeronautics Board: August 20, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-26587 Filed 8-24-79; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Industry and Trade Administration

Foreign Availability Subcommittees of the Computer Systems Technical Advisory Committee and Computer Peripherals, Component and Related Test Equipment Technical Advisory Committee; Partially Closed Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Foreign Availability Subcommittees of the Computer Systems Technical Advisory Committee and the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee will be held on Tuesday, September 11, 1979, at 9:00 a.m. in Room 3817, Main Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C.

The Computer Systems Technical Advisory Committee and the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee were 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 Committees, 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 Foreign Availability Subcommittee of the Computer Systems Technical Advisory Committee was established on July 8, 1975. On October 16, 1978, the

Assistant Secretary for Industry and Trade approved the continuation of the Subcommittee pursuant to the charter of the Committee. The Foreign Availability Subcommittee of the Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee was established on December 21, 1978, by the Assistant Secretary for Industry and Trade pursuant to the charter of the Committee.

The Committees, where they have expertise in such matters, advise the Office of Export Administration, Bureau of Trade Regulation, with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which may affect the level of export controls applicable to computer systems, peripherals, components and related test equipment, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls. The Foreign Availability Subcommittees were formed to ascertain if certain kinds of equipment are available in non-COCOM and Communist countries, and if such equipment is available, then to ascertain if it is technically the same or similar to that available elsewhere.

The joint Subcommittee meeting agenda has five parts:

General Session

1. Opening remarks by the Subcommittee Chairman.
2. Presentation of papers or comments by the public.
3. Continuation of review of recent material on COMECON computer technology.
4. New business.

Executive Session

5. 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 will be open to the public, at which a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Subcommittees. Written statements may be presented at any time before or after the meeting.

The Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, has formally determined, 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 by each of the aforementioned Subcommittees 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 interest of national defense of foreign policy. All materials to be reviewed and discussed by the Subcommittees during the Executive Session of the joint meeting have been properly classified under Exectuive Order 11652 or 12065. All Subcommittee members have appropriate security clearances.

Copies of the minutes of the General Session will be available 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.

Following are the dates of approval of the Notices of Determination to close portions of the series of meetings of the Technical Advisory Committees involved in this joint meeting, and of any subcommittees thereof, the dates the full texts of the Notices of Determination were published in the Federal Register and the Federal Register citiations

Date Approved and Date Published

Computer Systems Technical Advisory Committee, September 6, 1978, September 14, 1978 (43 FR 41073).

Computer Peripherals, Components and Related Test Equipment Technical Advisory Committee, September 6, 1978, September 14, 1978 (43 FR 41071)

Dated: August 22, 1979.

Kent N. Knowles,

Director, Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

[FR Doc. 79-26613 Filed 8-24-79; 8:45 am]

BILLING CODE 3510-25-M

Semiconductor Technical Advisory Committee; Partially Closed Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. 10(a)(2) (1976), notice is hereby given that a meeting of the Semiconductor Technical Advisory Committee will be held on Tuesday, September 18, 1979, at 9:30 a.m. in Room B841, Main Commerce Building, 14th Street and Constitution Avenue, N.W., Washington, D.C. The meeting will continue, to its conclusion, on September 19, in Room 6802, Main Commerce Building.

The Semiconductor 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 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 semiconductor products, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls.

The Committee meeting agenda had four parts:

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Committee program planning for 1979-80.

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, at which a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Committee. Written statements may be presented 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 the national defense or foreign policy. All materials to be reviewed and discussed by the Committee during the Executive Session of the meeting have been properly classified under Executive Order 11652 and 12065. All Committee members have appropriate security clearances.

The complete Notice of Determination to close meetings or portions thereof of the series of meetings of the Semiconductor Technical Advisory Committee and of any subcommittees thereof, was published in the Federal Register on December 21, 1978 (43 FR 59537).

Copies of the minutes of the open portion of the meeting can be obtained by calling Mrs. Margaret Cornejo, Policy Planning Division, Office of Export Administration, Industry and Trade Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone 202–377–2583.

For further information contact Mrs. Cornejo either in writing or by phone at the address or number shown above.

Dated: August 22, 1979.

Kent Knowles,

Director, Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

[FR Doc. 79-26614 Filed 8-24-79; 8:45 am]
BILLING CODE 3510-25-M

National Bureau of Standards

Operational Specifications for Rotating Mass Storage Subsystems; Issuance of Federal Information Processing Standard

On January 23, 1979, notice was given in the Federal Register (44 FR 4750–4751) that a standard for Operational Specifications for Rotating Mass Storage Subsystems was being proposed for Federal use. Interested parties were invited to submit written comments concerning this proposed standard to the National Bureau of Standards.

The written comments submitted by interested parties and other material available to the Department relevant to this standard have been reviewed. This examination, study, and review has resulted in a detailed analysis. On the basis of this analysis, together with the analyses completed as a part of the processing of three I/0 channel level interface standards, Federal Information Processing Standards Publication (FIPS PUB) 60, 61, and 62 announced as approved standards in the Federal Register on February 16, 1979 (44 FR 10098–10101), and pursuant to the authority vested in the Secretary of Commerce (Secretary) under Pub. L. 89–306 (79 Stat. 1127; 40 U.S.C. 759(f)) and Executive Order 11717 (38 FR 12315, dated May 11, 1973), the Secretary has approved this Federal Information Processing Standard and has approved the publication of this notice announcing her approval of the standard.

A copy of the evaluation documents on which the Secretary's approval of this standard was based, including copies of the written comments received and their analysis together with comments submitted and analyses completed as a part of the processing of FIPS PUB's 60, 61, and 62, are available for inspection and copying in the Central Reference and Records Inspection Facility, Room 5317, Department of Commerce Building, 14th Street between Consitution Avenue and E Street N.W., Washington, D.C. 20230. This facility is open to the public Monday through Friday between the hours of 9:00 a.m. and 4:30 p.m. See § 4.4(c) of Title 15 of the Code of Federal Regulations for more details regarding the operation of this facility.

This standard defines the peripheral device dependent interface specifications for use of rotating mass storage subsystems, including magnetic disk equipment, connected as a part of automatic data processing (ADP) systems through interfaces that are also in conformance with FIPS PUB 60, I/0 Channel Interface, and FIPS PUB 61, Channel Level Power Control Interface. These standards together will enable Federal agencies to procure rotating mass storage computer peripheral equipment competitively with regard to cost and performance and to be assured that the resulting interconnected equipment will perform correctly as a part of Federal ADP systems. Such competition will be made possible in the procurement of this computer peripheral equipment at the time of initial ADP system acquisition, when systems are being augmented, and when system components are being replaced.

This approved Federal Information Processing Standard contains two basic sections: (1) an announcement section which provides information concerning the applicability and implementation of the standard, and (2) a technical specifications section which defines the technical parameters of the standard. Only the announcement section of this standard is provided in this notice.

Interested parties may purchase either paper or microfiche copies of this standard, including the technical specifications section, from the National Technical Information Service (NTIS). Specific ordering information from NTIS for these standards is set out below in the *Where to Obtain Copies* portion of the announcment section of the standard.

Persons desiring any further information about this standard may contact Mr. Thomas N. Pyke, Jr. Director, Center for Computer Systems Engineering, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, (301) 921–3436.

Dated: August 22, 1979.

Ernest Ambler,

Director.

Federal Information Processing Standards Publication 63

Operational Specifications for Rotating Mass Storage Subsystems

Federal Information Processing Standards Publications are issued by the National Bureau of Standards pursuant to the Federal Property and Administrative Services Act of 1949, as amended, Pub. L. 89–306 (79 Stat. 1127), Executive Order 11717 (38 FR 12315, dated May 11, 1973) and Part 6 of Title 15 Code of Federal Regulations (CFR).

Name of Standard. Operational Specifications for Rotating Mass Storage Subsystems (FIPS PUB 63).

Category of Standard. Hardware Standard, Interface.

Explanation. This standard defines the peripheral device dependent operational interface specifications for connecting rotating mass storage equipment as a part of automatic data processing (ADP) systems. It is to be used together with FIPS PUB 60, I/O Channel Interface and FIPS PUB 61, Channel Lever Power Control Interface. This standard, together with these two referenced standards, provides for full plug-to-plug interchangeability of rotating mass storage equipment as a part of ADP systems.

The Government's intent in employing this standard for Operational Specifications for Rotating Mass Storage Subsystems is to reduce the cost of satisfying its data processing requirements through increasing its available alternative sources of supply for computer system components at the time of initial system acquisition, as well as in system replacement augmentation and in system component replacement. This standard is also expected to lead to improved reutilization of system components.

When acquiring ADP systems and system components, Federal agencies

shall cite this standard in specifying the interface for connecting rotating mass storage peripheral equipment as a part of ADP systems.

Approving Authority. Secretary of Commerce.

Maintenance Agency. Department of Commerce, National Bureau of Standards (Institute for Computer Sciences and Technology).

Cross Index. American National Standards Institute document X3T9/848, Rev. 2, Draft Proposed Operational Specifications for Rotating Mass Storage Subsystems. This operational specification is in turn supplemented by three draft proposed American National Standards, each of which provides supplemental track format definition and specifies the sense information format and content for a particular class of rotating mass storage devices: 1) American National Standards Institute document X3T9/904 Rev. 1, Draft Proposed American National Standard Class A Rotating Mass Storage Device Specification, 2) American National Standards Institute document X3T9/905 Rev. 1, Draft Proposed American National Standard Class B Rotating Mass Storage Device Specification, and 3) American National Standards Institute document X3T9/906 Rev. 1, Draft Proposed American National Standard Class C Rotating Mass Storage Specification.

Applicability. This standard is applicable to the acquisition of all rotating mass storage equipment whenever the use of Federal Information Processing Standard I/O Channel Interface (NBS–FIPS–PUB 60) is required.

Verification of the correct operation of all interfaces that are required to conform to this standard shall, through demonstration or other means acceptable to the Government, be provided prior to the acceptance of all applicable ADP equipment.

Specifications. This standard incorporates by reference the technical specifications of the following ANSI documents: X3T9/904 Rev. 1, X3T9/905 Rev. 1, and X3T9/906 Rev. 1, and X3T9/848 Rev. 2 except for:

1. Page 6. Change paragraph numbered 1.4.4 to 1.4.3.

2. Page 20, paragraph 2.1, last sentence. Add to the beginning of that sentence—"Attempts to execute . . .".

3. Page 21a, Table 3, Diagnostic Optional Extensions, column entitled "Multitrack off Binary." Enter the following four binary values:

0101 0011
0111 0011
0100 0100
1000 0010

Copies of the technical specifications section of the standard will be available from the National Technical Information Service as described in the *Where to Obtain Copies* section below.

Implementation. The provisions of this standard are effective June 23, 1979. All applicable equipment ordered on or after the effective date, or procurement actions for which solicitation documents have not been issued by that date, must conform to the provisions of this standard unless a waiver has been granted in accordance with the procedure described elsewhere in this publication.

Regulations concerning the specific use of this standard in Federal procurement will be issued by the General Services Administration to be a part of the Federal Property Management Regulations.

This standard shall be reviewed by NBS within three years after its effective date, taking into account technological trends and other factors, to determine whether the standard should be affirmed, revised, or withdrawn.

Waivers. Heads of agencies desiring a waiver from the requirements stated in this publication, so as to acquire ADP equipment that does not conform to this standard, shall submit a request for such a waiver to the Secretary of Commerce for review and approval. Approval will be granted if, in the judgment of the Secretary based on all available information, including that provided in the waiver request, a major adverse economic or operational impact would occur through conformance with this standard.

A request for waiver shall include: (1) a description of the existing or planned ADP system for which the waiver is being requested, (2) a description of the system configuration, identifying those items for which the waiver is being requested, and including a description of planned expansion of the system configuration at any time during its life cycle, and (3) a justification for the waiver, including a description and discussion of the major adverse economic or operational impact that would result through conformance to this standard as compared to the alternative for which the waiver is requested.

The request for waiver shall be submitted to the Secretary of Commerce, Washington, D.C. 20230, and labeled as a Request for Waiver to a Federal Information Processing Standard. Waiver requests will normally be processed within 45 days of reciept by the Secertary. No action shall be taken to issue solicitation documents or to order equipment for which this standard is applicable and which does not conform to this standard prior to receipt of a waiver approval response from the Secertary.

Where to Obtain Copies. Either paper or microfiche copies of this Federal Information Processing Standard, including the technical specifications, may be purchased from the National Technical Information Service (NTIS) by ordering Federal Information Processing Standards Publication 63 (NBS–FIPS–PUB–63), Operational Specifications for Rotating Mass Storage Subsystems. Ordering information, including prices and delivery alternatives, may be obtained by contacting the National Technical Information Service (NTIS), U.S. Department of Commerce, Springfield, Virginia 22161, Telephone: (703) 557–4630.

[FR Doc. 79-26517 Filed 8-23-79; 8:49 am]
BILLING CODE 3510-13-M

I/O Channel Level Interface Standard; Revision of Federal Information Processing Standard

On February 16, 1979, notice was given in the Federal Register (44 FR 10098–10101) that the Secretary of Commerce had approved three Federal Information Processing Standards: (1) I/O Channel Interface Standard, (2) Channel Level Power Control Interface, and (3) Operational Specifications for Magnetic Tape Subsystems, designated FIPS Publications (PUB) 60, FIPS PUB 61, and FIPS PUB 62, respectively.

Federal Information Processing Standards Publication 63 (FIPS PUB 63), Operational Specifications for Rotating Mass Storage Subsystems, has been approved by the Secretary with an effective date of June 23, 1979. That standard defines the peripheral device dependent interface specifications for use of rotating mass storage subsystems, including magnetic disk storage equipment, connected as a part of Federal ADP systems. That standard is to be used with FIPS PUB 60, and FIPS PUB 61 to provide for full plug-to-plug interchangeability of rotating mass storage subsystems. In order to assure the orderly and consistent conformance with these standards by Federal agencies and ADP equipment suppliers, FIPS PUB 60, I/O Channel Interface, should be revised so that its effective date for application to rotating mass storage subsystems is the same as the effective date of FIPS PUB 63. It should be noted that FIPS PUB 61 is applicable whenever use of FIPS PUB 60 is required.

Accordingly, and pursuant to the authority vested in the Secretary of

Commerce (Secretary) under Pub. L. 89-306 (79 Stat. 1127; 40 U.S.C. 759(f)) and Executive Order 11717 (38 FR 12315, dated May 11, 1973), the Secretary has approved a revision of FIPS PUB 60, I/O Channel Interface, that replaces the first sentence of the "Implementation" section of that standard which reads "The provisions of this standard are effective December 13, 1979," so that it now reads "The provisions of this standard are effective December 13, 1979, except for the provisions of the third paragraph of the section labeled "Applicability" as they apply to rotating mass storage subsystems, including magnetic disk storage equipment, such provisions being effective on June 23, 1979."

Persons desiring any further information about this revision may contact Mr. Thomas N. Pyke, Jr., Director, Center for Computer Systems Engineering, Institute for Computer Sciences and Technology, National Bureau of Standards, Washington, D.C. 20234, (301) 921-3436.

Dated: August 22, 1979.

Ernest Ambler,

Director.

[FR Doc. 79-26518 Filed 8-23-79; 8:49 am]

BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council and Scientific and Statistical Committee and Advisory Panel; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Caribbean Fishery Management Council was established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265) and the Council has established a Scientific and Statistical Committee (SSC) and an Advisory Panel (AP) which will meet concurrently and jointly.

DATES: The Council meeting will convene at 8:30 a.m. on Tuesday, September 18, 1979, and will adjourn at approximately 12 noon on Wednesday, September 19, 1979. The SSC meeting will convene at 8:30 a.m. on Monday, September 17, 1979, and will adjourn at approximately 5 p.m. on Tuesday, September 18, 1979. The AP meeting will convene at 1:30 p.m. on Monday, September 17, 1979, and will adjourn at approximately 5 p.m. on Tuesday, September 18, 1979. The Council, SSC, and AP will meet jointly on the afternoon of Tuesday, September 18, 1979. If deemed necessary by the participants, a joint SSC and AP meeting will be held in the morning session of their Tuesday, September 18, 1979, meeting. The meetings are open to the public. Meeting Agendas follow:

Advisory Panel

The AP will consider (1) the Second Working Draft Fishery Management Plan (FMP) for Shallow-Water Reef Fishes; and (2) the development of a new FMP for Deep-Water Reef Fishes.

Scientific and Statistical Committee

The SSC will consider (1) Biological and socioeconomic research needs in the Council's area of jurisdiction; and (2) National Marine Fisheries Service (NMFS) Proposed Guidelines for Optimum Yield (OY) Determination, in addition to the agenda items to be considered by the AP.

Council

The Council will consider (1) Status Reports on FMP Development and related issues; (2) Administrative matters, and (3) Other Council business, in addition to the agenda items listed under the SSC and AP meetings.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 00918. Telephone: (809) 753-4926.

Dated: August 22, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-26617 Filed 8-24-79; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council, and Scientific and Statistical Committee; Amended Meeting Notice

AGENCY: National Marine Fisheries Service, NOAA

SUMMARY: The Pacific Fishery Management Council was established by Section 302 of the Fishery Conservation and Management Act of 1976 (Public Law 94-265) and the Council has established a Scientific and Statistical Committee (SSC) to assist in carrying out its responsibilities. The Council has changed its meeting times and the SSC has cancelled its meeting (FR Vol. 44, No. 154, dated August 8, 1979).

DATES: The Council will now meet for closed session from 6 p.m. to 8 p.m. on Thursday, September 13, 1979, and reconvene in open session from 8 a.m. to 5 p.m. on Friday, September 14, 1979. A public comment period will be held at 1 p.m. on Friday, September 14, 1979.

ADDRESS: The meeting will take place at the Cosmopolitan Motor Hotel, 1030 N.E. Union, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Pacific Fishery Management Council 526 S. W. Mill Street, Second Floor, Portland, Oregon 97201. Telephone: (503) 221-6352.

Dated: August 22, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc 79-26548 Filed 8-24-79; 8:45]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1979; Proposed Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed addition to procurement list.

SUMMARY: The Committee has received a proposal to add to Procurement List 1979 commodities to be produced by workshops for the blind and other severely handicapped.

Comments must be received on or before September 26, 1979.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77.

If the Committee approves the proposed addition, all entities of the Federal Government will be required to procure the commodities listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities to Procurement List 1979, November 15, 1978 (43 FR 53151):

Class 7530

Pad, Writing, Paper

7530-00-286-6173 (GSA Regions 1, 4, 5, 7)
7530-00-285-3083 (GSA Regions 3, 4)
7530-00-239-8479 (GSA Regions 3, 9, 10)
7530-00-285-3088 (GSA Regions 9, 10)

C. W. Fletcher,

Executive Director.

[FR Doc. 79-26585 Filed 8-24-79; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; Notice of System of Records: Corrections

Corrections

In FR Doc. 79-20389, appearing at page 38967, in the issue for Tuesday, July 3, 1979, make the following corrections:

On pages 38970 and 38980, in the system identification, delete "DIO&R 01", and insert: "DWHS IO&R01".

H. E. Lofdahl,

Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

August 22, 1979.

[FR Doc 79-26595 Filed 8-24-79; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

Intent To Publish Names of Potential Sellers of Natural Gas for Fuel Oil Displacement

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of intent to publish names upon written request of potential sellers of available natural gas.

SUMMARY: The Economic Regulatory Administration (ERA) has determined that there is a short-term excess of deliverable natural gas and is attempting to locate those persons with excess supplies. ERA hereby gives notice of its intention to publish notices in the Federal Register upon written request of the names of persons that may have an excess of deliverable natural gas available for sale for fuel oil displacement purposes. This notice requests that those persons wishing to have their names published make such a request in writing to ERA.

FOR FURTHER INFORMATION CONTACT:

Finn K. Neilsen, Director, Import/Export Division, Office of Petroleum Operations, Department of Energy, 2000 M Street, NW., Room 4126, Washington, D.C. 20461, Telephone (202) 254-8202.

Michael T. Skinker, Office of General Counsel, Department of Energy, 12th and Pennsylvania Avenue, NW., Room 7148, Washington, D.C. 20461, Telephone (202) 633-8788.

SUPPLEMENTARY INFORMATION: The Economic Regulatory Administration of the Department of Energy (ERA) is responsible in part for carrying out the national energy policy to utilize the present short-term excess of deliverable natural gas to displace fuel oil in order to reduce the Nation's reliance on imported fuel oil. President Carter stated the basis for our oil displacement efforts in his national energy policy on April 5, 1979: "We are dangerously dependent on uncertain and expensive sources of foreign oil * * *. This growing dependence has left us dangerously exposed to sudden price rises and interruption in supply." The President re-emphasized it in his July 15, 1979, energy address to the Nation: "This intolerable dependence on foreign oil threatens our economic independence and the very security of our Nation." Although ERA continues to urge voluntary conservation measures by all energy consumers, the substitution in the near-term of natural gas to displace fuel oil has emerged as the single most effective and immediate means of reducing our reliance on imported oil.

ERA has recently taken a number of steps to encourage and to facilitate the use of natural gas in order to reduce our dependence on imported oil. On April 4, 1979, ERA issued a final rule (44 FR 21230, April 9, 1979) providing procedures for obtaining a temporary public interest exemption for the use of natural gas by existing powerplants under the Powerplant and Industrial Fuel Use Act of 1978 (Pub. L. 95-620, 92 Stat. 3289, 42 U.S.C. 3301 *et seq.)* That rule pointed out the current availability of significant natural gas volumes and the usefulness of the new gas transportation authority in the Natural Gas Policy Act of 1978 (Pub. L. 95-621, 92 Stat. 3351, 15 U.S.C. section 3301 *et seq.)* to move those volumes interstate.

On March 18, 1979, ERA issued a proposed rule for action by the Federal Energy Regulatory Commission (Commission) pursuant to section 403 of the Department of Energy Organization Act (Pub. L. 95-91, 91 Stat. 565, 42 U.S.C. 7101 *et seq.)* regarding "Transportation Certificates for Natural Gas" (44 FR 17644, March 22, 1979). That proposal was designed to encourage and facilitate the issuance by the Commission of certificates of public convenience and necessity under section 7(c) of the Natural Gas Act (Act of June 21, 1938, ch. 556, 528 Stat. 821, 15 U.S.C. 717) authorizing the transportation of gas purchased directly by end-users in order to displace fuel oil. On May 17, 1979, the Commission issued the final rule (FERC Order No. 30, 44 FR 30323, May 25, 1979) as a short-term measure to deal with "a serious and immediate fuel oil supply situation".

On April 2, 1979, ERA issued an "Interim-Final Rulemaking Regarding Procedures for Certification of the Use of Natural Gas for Fuel Oil Displacement" (ERA Docket No. ERA-R-79-16, 44 FR 20398, April 5, 1979). The rule establishes procedures to be followed by ERA for certification to the Commission of the use of natural gas to displace fuel oil. The ERA certification is a precondition to transportation of the oil displacement gas pursuant to FERC Order No. 30. The policy underlying the oil displacement program, then has been established and is the subject of agreement between DOE and the Commission.

ERA has received numerous inquiries from persons capable of switching from oil to natural gas for information regarding oil displacement programs. In particular, they have requested information as to where available supplies of natural gas might be located. In aid of these programs, ERA has attempted to locate excess supplies of natural gas.

ERA is publishing today's notice in order to assist those persons who have the capability of using natural gas to displace fuel oil but are unable to locate available supplies of natural gas. ERA hereby requests that any potential sellers who have excess supplies of deliverable natural gas available for sale and want to have their names published in the Federal Register make such a request, in writing, to ERA. ERA intends to publish those names on a periodic basis, beginning shortly, in furtherance of its policy to encourage and facilitate the use of natural gas to reduce our dependence on imported oil. The published list will include only the names of those persons who responded to this notice and stated they have an excess of deliverable natural gas available for sale. ERA makes no representations regarding the persons to be listed or the amount and availability of any surplus natural gas.

Requests by persons to have their names published should be made to Mr. Finn K. Neilsen at the address previously stated in this notice. The request should include the person's name, address, telephone number, and the name of a person to contact regarding the potential sale of the gas. The request should be labeled "Excess Natural Gas Availability".

Issued in Washington, D.C. August 20, 1979.

Doris J. Dewton,

Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.

[FR Doc. 79-26597 Filed 8-24-79; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 79-CERT-067]

National Standard Co.; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

Take notice that on August 6, 1979, National Standard Company (National), 601 N. 8th Street, Niles, Michigan, 49120, filed an application for certification of an eligible use of natural gas to displace fuel oil at its City Plant and Lake Street Plant facilities in Niles, Michigan, pursuant to 10 CFR Part 595 (44 FR 20398, April 15, 1979), all as more fully set forth in the application on file with the Economic Regulatory Administration (ERA) and open to public inspection at the ERA, Docket Room 4126–A, 2000 M Street, N.W., Washington, D.C., 20461, from 8:30 a.m.–4:30 p.m., Monday through Friday, except Federal holidays.

In its application, National states that the volume of natural gas for which it requests certification is approximately 18,250 Mcf per year for the City Plant and 18,250 Mcf per year for the Lake Street Plant and the eligible seller is Rowley and Brown Petroleum Corporation, 850 Leader Building, East 6th and Superior Avenues, Cleveland, Ohio, 44114.

This natural gas will displace the combined use of approximately 242,360 gallons of No. 6 fuel oil (2% sulfur) per year at National's City Plant and Lake Street Plant. The gas will be transported by Columbia Gas Transmission Corporation, Columbia Gulf Transmission Company, and Michigan-Wisconsin Pipeline Company.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Room 4126–A, 2000 M Street, N.W., Washington, D.C. 20461, Attention: Mr. Finn K. Neilsen, on or before September 6, 1979.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest, and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines an oral presentation is required, further notice will be given to National and any persons filing comments, and published in the Federal Register.

Issued in Washington, D.C., on August 20, 1979.

Doris J. Dewton,

Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.

[FR Doc. 79-26598 Filed 8-24-79; 8:45 am]

BILLING CODE 6450-01-M

[ERA Docket No. 79-CERT-80]

Orange & Rockland Utilities, Inc.; Application for Certification of the Use of Natural Gas To Displace Fuel Oil

Take notice that on August 9, 1979, Orange and Rockland Utilities, Inc. (Orange and Rockland), One Blue Hill Plaza, Pearl River, New York, 10965, filed an application for certification of an eligible use of natural gas to displace fuel oil at its Lovett Plant and/or Bowline Point generating station in Rockland County, New York, pursuant to 10 CFR Part 595 (44 FR 20398, April 15, 1979), all as more fully set forth in the application on file with the Economic Regulatory Administration (ERA) and open to public inspection at the ERA, Docket Room 4126–A, 2000 M Street, N.W., Washington, D.C., 20461, from 8:30 a.m.–4:30 p.m., Monday through Friday, except Federal holidays.

In its application, Orange and Rockland states that the volume of natural gas for which it requests certification is up to 40,000 Mcf per day and the eligible seller is National Fuel Gas Distribution Corporation, 10 Lafayette Square, Buffalo, New York, 14203.

This natural gas will displace the combined use of approximately 2,000,000 barrels of No. 6 fuel oil (.37% sulfur) for the period August 1, 1979, to June 1, 1980. The gas will be transported by Tennessee Gas Pipeline Company, P.O. Box 2511, Houston Texas, 77001, Texas Eastern and Algonquin Gas Transmission Corporation, 1284 Soldier Field Road, Boston, Massachusetts, 02135.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Room 4126–A, 2000 M Street, N.W., Washington, D.C. 20461, Attention: Mr. Finn K. Neilsen, on or before September 6, 1979.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing within the ten (10) day comment period. The request should state the person's interest, and, if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines an oral presentation is required, further notice will be given to Orange and Rockland and any persons filing comments, and published in the Federal Register.

Issued in Washington, D.C., on August 20, 1979.

Doris J. Dewton,

Assistant Administrator, Office of Petroleum Operations, Economic Regulatory Administration.

[FR Doc. 79-26599 Filed 8-24-79; 8:45 am]

BILLING CODE 6450-01-M

Sierra Petroleum Co., Inc.; Issuance of Proposed Remedial Order

Notice is hereby given that on August 3, 1979, the Proposed Remedial Order (PRO) summarized below was issued by the Central Engorcement District of the Economic Regulatory Administration (ERA) of the Department of Energy to Sierra Petroleum Company, Inc. (Sierra), 211 North Broadway, Wichita, Kansas 67202.

The PRO includes findings that Sierra, a crude oil producer, overcharged $167,475.05 in sales of crude oil during the period September 1973 through January 1976. The overcharges occurred with respect to ten crude oil properties located in Barker, Phillips, Rooks, Russel and Barton Counties in the State of Kansas. Specifically, the Office of Enforcement of the ERA has found that Sierra overcharged $2,343.25 in sales of crude oil produced from the Brook property; $158,502.65 in sales of crude oil produced from the Dayton property; $356.00 in sales of crude oil produced from the Howat (Baxa) property; $342.00 in sales of crude oil produced from the Hindman property; $2,988.40 in sales of crude oil produced from the Imm B (Alfred G.) property; $357.00 in sales of crude oil produced from the Morris property; $563.00 in sales of crude oil produced from the Sanko property; $410.00 in sales of crude oil produced

from the Wilborn LKC property; $1,491.75 in sales of crude produced from the Beckman B property; and $121.00 in sales of crude oil produced from the Riffe Unit.

The reasons for the overcharges were: (a) Sierra's erroneous characterization of the Brook, Dayton, Howat (Baxa), Hendman, Morris, and Sanko properties as stripper well base properties, as defined at 6 CFR 150.54(s) during the period November 16, 1973, through January 14, 1974; and at 10 CFR 210.32 during the period January 15, 1974 through January 31, 1976; (b) the sale of old crude oil as new or released crude all from the Brook, Dayton, Imm B (Alfred G.) Wilborn LKC, Beckman B and Riffe Unit properties at a price exceeding the ceiling price in violation of 6 CFR 150.354(c) and 10 CFR 212.73(a); (c) Sierra's erroneous computation of the ceiling price based on an incorrect May 15, 1973, posted price for the Beckman B, Brook, Dayton and Imm B (Alfred G.) properties. The specific periods during which the violations ocurred with respect to each property are set forth in the PRO.

The Office of Enforcement of the ERA has proposed in the PRO that Sierra be required to refund the full amount of overcharges (plus interest) found with respect to each property as the Department of Energy shall direct. Refunds shall be made over a period of time which is equal to the number of months during which overcharges have been found with respect to each property.

A copy of the PRO, with any confidential information deleted, may be obtained from the ERA at the following address: Chief Crude Products Management Branch, Central Enforcement District, Economic Regulatory Administration, Department of Energy, 324 East 11th Street, Kansas City, Missouri 64106.

Any aggrieved person may, on or before September 11, 1979, file a Notice of Objection with the Office of Hearings and Appeals in accordance with 10 CFR 205.193. Pursuant to 10 CFR 205.193, a Notice of Objection must be filed in duplicate, shall briefly describe how the person would be aggrieved by issuance of the PRO as a final Remedial Order, and shall state the person's intention to file a Statement of Objections pursuant to 10 CFR 205.196. No confidential information shall be included in a Notice of Objection. A Notice of Objection must be filed in the following address: Office of Hearings and Appeals, Department of Energy, 2000 M Street, N.W., Washington, D.C. 20461.

In addition, a copy of each filing must be submitted to the ERA Central Enforcement District office at the address set forth herein, and to: Assistant General Counsel for Administrative Litigation, Office of General Counsel, U.S. Department of Energy, Room 7149, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461.

Issued this 20th day of August 1979, in Washington, D.C.

Robert D. Gerring,

Director, Enforcement Program Operations Division, Economic Regulatory Administration.

[FR Doc. 79-26000 Filed 8-24-79; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. GP79-84]

Gilliland and Fix, Whyte-State #2 Well, JD79-12345, and Legg Resources, Ltd., Joyce-State #1 Well, JD79-12346; Preliminary Finding Regarding State of Utah Determinations

Issued August 14, 1979.

On July 12, 1979, the Commission received notice from the State of Utah Department of Natural Resources, Division of Oil, Gas and Mining, that the Whyte-State #2 Well and the Joyce-State #1 Well qualify as stripper wells under section 108 of the Natural Gas Policy Act of 1978 (NGPA). The Commission published notice of these determinations on July 22, 1979.

Section 108(b)(1)(A) of the NGPA provides that in order to qualify as a stripper well, a well must produce nonassociated natural gas at a rate which does not exceed an average of 60 Mcf "per production day" during the preceding 90-day production period. Section 108(b)(3) defines "production day" as (1) any day during which natural gas is produced; and (2) any day during which natural gas is not produced if production during such day is prohibited by a requirement of State law or a conservation practice recognized or approved by the State agency.

The data submitted with the determinations for the above-listed wells indicate that these wells produced no natural gas during the 90-day production periods upon which the applications were based. The data also indicated that the wells were shut in because they are incapable of producing into the nearby transmission line without compression.[1] Accordingly, the 90-day production periods upon which these applications were based contained no "production days" as defined in the statute. Since section 103(b) requires that a well produce at a rate not exceeding an average of 60 Mcf "per production day," a well's rate of production cannot be calculated where the 90-day production period contains no production days.

In addition, section 108(b)(1)(B) of the NGPA provides that in order to qualify as a stripper well, a well must produce at its maximum efficient rate of flow (MER) during the 90-day production period. Section 271.804(d) of the Commission's regulations establishes several procedures by which a jurisdictional agency may determine that a well produced at its MER. The data submitted with these determinations purport to establish MER on the basis of § 271.804(d)(2),[2] which provides that a well is presumed to have produced at its MER if during the 12 months ending concurrently with the 90-day production period it produced at an average rate of 60 Mcf or less per production day. In this case, however, the relevant data indicate that these wells produced no natural gas during the 12 months relied on to establish MER. Since § 271.804(d)(2) requires that a well produce natural gas at a rate not exceeding an average of 60 Mcf "per production day," a well's MER cannot be presumed when the 12 month period contains no "production days." Accordingly, there is not substantial evidence that the wells in question meet the MER requirement.

On the basis of the records submitted with these determinations, the Commission hereby makes a preliminary finding, pursuant to 18 CFR 275.202(a)(1)(i), that the determinations submitted by the State of Utah Department of Natural Resources that the above-listed wells qualify as section 108 stripper wells are not supported by substantial evidence.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-26007 Filed 8-24-79; 8:45 am]

BILLING CODE 6450-01-M

Miller Brothers, et al., Determinations by Jurisdictional Agencies Under the Natural Gas Policy Act of 1978

August 20, 1979.

The Federal Energy Regulatory Commission received notices from the

[1] The Commission intends to address the problems arising where wells are incapable of producing without compression in conjunction with the implementation of regulations under section 107 of the NGPA.

[2] The data for the Whyte State #2 Well also include the results of a flow test. Such test indicates a production rate of 160 Mcf per day.

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.

Michigan Department of Natural Resources

1. Control Number (FERC/State)
2. API Well Number
3. Section of NGPA
4. Operator
5. Well Name
6. Field or OCS Area Name
7. County, State or Block No.
8. Estimated Annual Volume
9. Date Recieved at FERC
10. Purchaser(s),

1. 79-15475
2. 21-101-00000-
3. 102
4. Miller Brothers
5. Miller Brothers Abshire 29
6. Cleon 29-24N-13W
7. Manistee MI
8. 146.0 million cubic feet
9. August 8, 1979
10. Consumers Power Company

Nebraska Oil and Gas Conservation Commission

1. Control Number (FERC/State)
2. API Well Number
3. Section of NGPA
4. Operator
5. Well Name
6. Field or OCS Area Name
7. County, State or Block No.
8. Estimated Annual Volume
9. Date Received at FERC
10. Purchaser(s)

1. 79-15477/NGPA-34
2. 26-033-05056-
3. 108
4. Marathon Oil Company
5. R. Hawkins #1
6. Rohlfing
7. Cheyenne NB
8. 13.0 million cubic feet
9. July 13, 1979
10. Kansas-Nebraska Natural Company

New Mexico Department of Energy and Minerals Oil Conservation Division

1. Control Number (FERC/State)
2. API Well Number
3. Section of NGPA
4. Operator
5. Well Name
6. Field or OCS Area Name
7. County, State or Block No.
8. Estimated annual volume
9. Date Received at Ferc
10. Purchaser(s)

1. 79-15550
2. 30-015-22463
3. 103
4. Arco Oil and Gas Company
5. Empire Abo Unit G-343
6. Empire-Abo Pool
7. Eddy County NM
8. 54.0 million cubic feet
9. August 8, 1979
10. Amoco Production Company Phillips Petroleum Co

1. 79-15551
2. 30-015-22592
3. 103
4. Arco Oil and Gas Company
5. Empire Abo Unit G-313
6. Empire-Abo Pool
7. Eddy County NM
8. 4.0 million cubic feet
9. August 8, 1979
10. Amoco Production Company Phillips Petroleum Co

1. 79-15552
2. 30-015-22525
3. 103
4. Arco Oil and Gas Company
5. Empire Abo Unit G-322
6. Empire-Abo Pool
7. Eddy County NM
8. 70.0 million cubic feet
9. August 8, 1979
10. Amoco Production Company Phillips Petroleum Co

1. 79-15553
2. 30-015-22415
3. 103
4. Arco Oil and Gas Company
5. Empire Abo Unit H-331
6. Empire-Abo Pool
7. Eddy County NM
8. 235.0 million cubic feet
9. August 8, 1979
10. Amoco Production Company Phillips Petroleum Co

1. 79-15554
2. 30-015-22527
3. 103
4. Arco Oil and Gas Company
5. Empire Abo Unit J-223
6. Empire-Abo Pool
7. Eddy County NM
8. 200.0 million cubic feet
9. August 8, 1979
10. Amoco Production Company Phillips Petroleum Co

1. 79-15555
2. 30-015-22608
3. 103
4. Arco Oil and Gas Company
5. Empire Abo Unit L-142
6. Empire-Abo Pool
7. Eddy County NM
8. 34.0 million cubic feet
9. August 8, 1979
10. Amoco Production Company Phillips Petroleum Co

1. 79-15556
2. 30-015-22597
3. 103
4. Arco Oil and Gas Company
5. Empire Abo Unit H-281
6. Empire-Abo Pool
7. Eddy County NM
8. 53.0 million cubic feet
9. August 8, 1979
10. Amoco Production Company Phillips Petroleum Co

1. 79-15557
2. 30-015-22465
3. 103
4. Arco Oil and Gas Company
5. Empire Abo Unit H-322
6. Empire-Abo Pool
7. Eddy County NM
8. 30.0 million cubic feet
9. August 8, 1979
10. Amoco Production Company Phillips Petroleum Co

1. 79-15558
2. 30-015-22804
3. 103
4. Arco Oil and Gas Company
5. Empire Abo Unit E-363
6. Empire Abo
7. Eddy NM
8. 71.0 million cubic feet
9. August 8, 1979
10. Amoco Production Company Phillips Petroleum Co

1. 79-15559
2. 30-015-22775
3. 103
4. Arco Oil and Gas Company
5. Empire ABO Unit E-374
6. Empire ABO
7. Eddy NM
8. 83.0 million cubic feet
9. August 8, 1979
10. Amoco Production Company, Phillips Petroleum Co

1. 79-15560
2. 30-015-22766
3. 103
4. Arco Oil and Gas Company
5. Empire ABO Unit E-384
6. Empire ABO
7. Eddy NM
8. 50.0 million cubic feet
9. August 8, 1979
10. Amoco Production Company, Phillips Petroleum Co

1. 79-15561
2. 30-015-22772
3. 103
4. Arco Oil and Gas Company
5. Empire ABO Unit F-375
6. Empire ABO
7. Eddy NM
8. 50.0 million cubic feet
9. August 8, 1979
10. Amoco Production Company, Phillips Petroleum Co

1. 79-15562
2. 30-015-22777
3. 103
4. Arco Oil and Gas Company
5. Empire ABO Unit L-134
6. Empire ABO
7. Eddy NM
8. 37.0 million cubic feet
9. August 8, 1979
10. Amoco Production Company, Phillips Petroleum Co

1. 79-15563
2. 30-015-22634
3. 103
4. Arco Oil and Gas Company
5. Empire ABO Unit H-303
6. Empire ABO
7. Eddy NM
8. 31.0 million cubic feet
9. August 8, 1979
10. Amoco Production Company, Phillips Petroleum Co

1. 79-15564
2. 30-015-22630
3. 103
4. Arco Oil and Gas Company
5. Empire ABO Unit F-362
6. Empire-ABO Pool
7. Eddy County NM
8. 64.0 million cubic feet
9. August 8, 1979

10. Amoco Production Company, Phillips Petroleum Co
1. 79-15565
2. 30-015-22637
3. 103
4. Arco Oil and Gas Company
5. Empire ABO Unit J-212
6. Empire ABO Pool
7. Eddy County NM
8. 37.0 million cubic feet
9. August 8, 1979
10. Amoco Production Company, Phillips Petroleum Co
1. 79-15566
2. 30-015-22844
3. 103
4. Arco Oil and Gas Company
5. Empire ABO Unit F-354
6. Empire ABO
7. Eddy NM
8. 65.0 million cubic feet
9. August 8, 1979
10. Amoco Production Company, Phillips Petroleum Co
1. 79-15567
2. 30-015-22803
3. 103
4. Arco Oil and Gas Company
5. Empire ABO Unit D-631
6. Empire ABO
7. Eddy NM
8. 65.0 million cubic feet
9. August 8, 1979
10. Amoco Production Company, Phillips Petroleum Co
1. 79-15568
2. 30-015-22806
3. 103
4. Arco Oil and Gas Company
5. Empire ABO Unit F-383
6. Empire ABO
7. Eddy NM
8. 27.0 million cubic feet
9. August 8, 1979
10. Amoco Production Company, Phillips Petroleum Co
1. 79-15569
2. 30-015-22807
3. 103
4. Arco Oil and Gas Company
5. Empire ABO Unit K-131
6. Empire ABO
7. Eddy NM
8. 84.0 million cubic feet
9. August 8, 1979
10. Amoco Production Company, Phillips Petroleum Co
1. 79-15570
2. 30-025-00000
3. 108
4. Dallas McCasland
5. Aztec State No 1
6. Jalmat Yates
7. Lea NM
8. 10.1 million cubic feet
9. August 8, 1979
10. Phillips Petroleum Co
1. 79-15571
2. 30-025-00000
3. 108
4. The Wiser Oil Company
5. McQuatters No 1
6. Eumont Queen
7. Lea NM
8. 14.7 million cubic feet
9. August 8, 1979
10. El Paso Natural Gas Company
1. 79-15572
2. 30-025-00000
3. 108
4. Gene Milford
5. Hondo State No 5
6. Chaveroo San Andres
7. Lea NM
8. 1.2 million cubic feet
9. August 8, 1979
10. Cities Service Company
1. 79-15573
2. 30-025-00000
3. 108
4. Gene Milford
5. Hondo State No 6
6. Chaveroo San Andres
7. Lea NM
8. 1.2 million cubic feet
9. August 8, 1979
10. Cities Service Company
1. 79-15574
2. 30-025-00000
3. 108
4. Don H Wilson
5. State BJ No 1
6. Vacuum San Andres
7. Lea NM
8. 8.2 million cubic feet
9. August 8, 1979
10. Phillips Petroleum Co
1. 79-15575
2. 30-015-00000
3. 108
4. Robinson Bros Drilling Co Inc
5. State A No 1
6. Winchester Wolfcamp
7. Eddy NM
8. 20.2 million cubic feet
9. August 8, 1979
10. Phillips Petroleum Co

Texas Railroad Commission Oil and Gas Division

1. Control Number (FERC/State)
2. API Well Number
3. Section of NGPA
4. Operator
5. Well Name
6. Field or OCS Area Name
7. County, State or Block No.
8. Estimated Annual Volume
9. Date Received at FERC
10. Purchaser(s)
1. 79-15409/03053
2. 42-495-00000
3. 108
4. Bass Enterprises Production Co
5. M J Bashara C 1-M
6. Keystone
7. Wilkler TX
8. 13.1 million cubic feet
9. August 7, 1979
10. Transwestern Pipeline Company; El Paso Natural Gas Co
1. 79-15410/03583
2. 42-211-30874
3. 103
4. General American Oil Company of Tex
5. Crow #2-137
6. S E Parsell (Douglas)
7. Hemphill TX
8. 16.0 million cubic feet
9. August 7, 1979
10. El Paso Natural Gas Company
1. 79-15411/02851
2. 42-039-30805
3. 103
4. Sun Oil Company (Delaware)
5. Wisch-Saint Unit No 5-L
6. Pledger (Carter 7940)
7. Brazoria TX
8. 59.0 million cubic feet
9. August 7, 1979
10. United Texas Transmission Company
1. 79-15412/02854
2. 42-039-30823
3. 103
4. Sun Oil Company (Delaware)
5. Wisch-Saint Unit No 6-U
6. Pledger (Braman 7800)
7. Brazoria TX
8. 170.0 million cubic feet
9. August 7, 1979
10. United Texas Transmission Company
1. 79-15413/02211
2. 42-371-00000
3. 108
4. Adobe Oil & Gas Corporation
5. Knight State No 1
6. Apco-Warner West (Wichita Albany)
7. Pecos TX
8. 9.0 million cubic feet
9. August 7, 1979
10. Transwesterm Pipeline Company
1. 79-15414/02222
2. 42-469-31166
3. 102
4. Petrotex Management Co
5. R S Williams 1-C (78951)
6. Williams (Frio 5400)
7. Victoria TX
8. 180.0 million cubic feet
9. August 7, 1979
10. Natural Gas Pipeline Co of America
1. 79-15415/02014
2. 42-233-30621
3. 103
4. J M Huber Corporation
5. Read No 12
6. Panhandle
7. Hutchinson TX
8. 36.0 million cubic feet
9. August 7, 1979
10. Colorado Interstate Gas Company
1. 79-15416/01929
2. 42-371-32437
3. 107
4. Ladd Petroleum Corporation
5. Gomez South Unit #1-A
6. Gomez
7. Pecos TX
8. 3,285.0 million cubic feet
9. August 7, 1979
10. Northern Natural Gas Company; Clajon Inc
1. 79-15417/01201
2. 42-079-30531
3. 103
4. The Ard Drilling Company Inc
5. D S Wright E No 7
6. Levelland (San Andres)
7. Cochran TX
8. 91.0 million cubic feet
9. August 7, 1979
10. El Paso Natural Gas Company
1. 79-15418/01202
2. 42-079-30534

3. 103
4. The Ard Drilling Company Inc
5. D S Wright E No 11
6. Levelland (San Andres)
7 Cochran TX
8. 133.0 million cubic feet
9. August 7, 1979
10. El Paso Natural Gas Company

1. 79-15419/01909
2. 42-165-31381
3. 103
4. Amerada Hess Corporation
5. Seminole San Andres Unit #3405
6. Seminole
7 Gaines TX
8. 161.0 million cubic feet
9. August 7, 1979
10. Phillips Petroleum Company

1. 79-15420/01910
2. 42-165-31386
3. 103
4. Amerada Hess Corporation
5. Seminole San Andres Unit #3117
6. Seminole
7 Gaines TX
8. 123.0 million cubic feet
9. August 7, 1979
10. Phillips Petroleum Company

1. 79-15421/01911
2. 42-165-31383
3. 103
4. Amerada Hess Corporation
5. Seminole San Andres Unit #3118
6. Seminole
7 Gaines TX
8. 533.0 million cubic feet
9. August 7, 1979
10. Phillips Petroleum Company

1. 79-15422/01199
2. 42-079-30934
3. 103
4. The Ard Drilling Company Inc
5. D S Wright D No 1
6. Levelland (San Andres)
7 Cochran TX
8. 100.0 million cubic feet
9. August 7, 1979
10. El Paso Natural Gas Company

1. 79-15423/01200
2. 42-079-30533
3. 103
4. The Ard Drilling Company Inc
5. D S Wright E No 5
6. Levelland (San Andres)
7 Cochran TX
8. 69.0 million cubic feet
9. August 7, 1979
10. El Paso Natural Gas Company

1. 79-15424/01196
2. 42-079-30541
3. 103
4. The Ard Drilling Company Inc
5. D S Wright B No 4
6. Levelland (San Andres)
7. Cochran TX
8. 33.0 million cubic feet
9. August 7, 1979
10. El Paso Natural Gas Company

1. 79-15425/01198
2. 42-079-30851
3. 103
4. The Ard Drilling Company Inc
5. D S Wright B No 6
7. Cochran TX
8. 106.0 million cubic feet
9. August 7, 1979
10. El Paso Natural Gas Company

1. 79-15426/01893
2. 42-165-30614
3. 103
4. Amerada Hess Corporation
5. Adair San Andres Unit #1405
6. Adair
7 Gaines TX
8. 4.0 million cubic feet
9. August 7, 1979
10. Pioneer Natural Gas Company

1. 79-15427/01890
2. 42-165-31176
3. 103
4. Amerada Hess Corporation
5. Seminole San Andres Unit #2709
6. Seminole
7 Gaines TX
8. 474.0 million cubic feet
9. August 7, 1979
10. Phillips Petroleum Company

1. 79-15428/01891
2. 42-445-30604
3. 103
4. Amerada Hess Corporation
5. Adair San Andres Unit #310
6. Adair
7 Gaines TX
8. 9.0 million cubic feet
9. August 7, 1979
10. Pioneer Natural Gas Company

1. 79-15429/01892
2. 42-445-30605
3. 103
4. Amerada Hess Corporation
5. Adair San Andres Unit #204
6. Adair
7. Gaines TX
8. 9.0 million cubic feet
9. August 7, 1979
10. Pioneer Natural Gas Company

1. 79-15430/01889
2. 42-165-31162
3. 103
4. Amerada Hess Corporation
5. Seminole San Andres Unit #2311
6. Seminole
7. Gaines TX
8. 57.0 million cubic feet
9. August 7, 1979
10. Phillips Petroleum Company

1. 79-15431/01888
2. 42-165-31161
3. 103
4. Amerada Hess Corporation
5. Seminole San Andres Unit #2312
6. Seminole
7 Gaines TX
8. 54.0 million cubic feet
9. August 7, 1979
10. Phillips Petroleum Company

1. 79-15432/07421
2. 42-295-00000
3. 108
4. H & L Operating Co
5. Hanshu #1 (56390)
6. Bradford (Cleveland)
7 Lipscomb TX
8. 19.0 million cubic feet
9. August 7, 1979
10. Northern Natural Gas Co

1. 79-15433/07340
2. 42-365-00000
3. 103
4. Getty Oil Co
5. Beason-Ross No 1 (05994)
6. Carthage (Travis Peak 6400 SW)
7 Panola TX
8. 245.0 million cubic feet
9. August 7, 1979
10. United Gas Pipeline Co

1. 79-15434/04852
2. 42-079-30878
3. 103
4. Amoco Production Company
5. Landreth Company B No 4
6. Buckshot (4950 Ft Sand)
7. Cochran TX
8. 28.1 million cubic feet
9. August 7, 1979
10. Cities Service Company

1. 79-15435/04870
2. 42-079-30879
3. 103
4. Amoco Production Company
5. Landreth Company B No 3
6. Buckshot (4950 Sand)
7. Cochran TX
8. 33.9 million cubic feet
9. August 7, 1979
10. Cities Service Company

1. 79-15436/06336
2. 42-391-31155
3. 103
4. North American Royalties Inc
5. W A Simmons #1 (74833)
6. Austwell (FRIO 9500)
7. Refugio TX
8. 730.0 million cubic feet
9. August 7, 1979
10. Energy Development Corporation

1. 79-15437/06340
2. 42-391-31208
3. 103
4. North American Royalties Inc
5. A E Reilly #2 (76776)
6. Austwell (FRIO 9500)
7. Refugio TX
8. 696.0 million cubic feet
9. August 7, 1979
10. Energy Development Corporation

1. 79-15438/06511
2. 42-135-33081
3. 103
4. John H Hendrix Corporation
5. Amoco-Johnson E #1
6. Johnson
7. Ector TX
8. 20.0 million cubic feet
9. August 7, 1979
10. Amoco Production Company Pioneer Natural Gas Co

1. 79-15439/07255
2. 42-317-31987
3. 103
4. MGF Oil Corporation
5. Lindsey Estate No 1
6. Spraberry (Trend area)
7. Martin TX
8. 36.5 million cubic feet
9. August 7, 1979
10. Northern Natural Gas Co

1. 79-15440/07256
2. 42-317-31974
3. 103
4. MGF Oil Corporation
5. Stimson No 2
6. Spraberry (Trend area)

7. Martin TX
8. 13.7 million cubic feet
9. August 7, 1979
10. Northern Natural Gas Co

1. 79-15441/07257
2. 42-317-31975
3. 103
4. MGF Oil Corporation
5. Stimson No 1
6. Spraberry (Trend area)
7. Martin TX
8. 18.3 million cubic feet
9. August 7, 1979
10. Northern Natural Gas Co

1. 79-15442/07258
2. 42-317-32047
3. 103
4. MGF Oil Corporation
5. Epley 31 No 1
6. Spraberry (Trend area)
7. Martin TX
8. 46.0 million cubic feet
9. August 7, 1979
10. Phillips Petroleum Co

1. 79-15443/07259
2. 42-115-31155
3. 103
4. MGF Oil Corporation
5. Webb Estate No 1
6. Ackerly (Dean Sand)
7. Dawson TX
8. 7.7 million cubic feet
9. August 7, 1979
10. Getty Oil Co

1. 79-15444/07315
2. 42-365-00000
3. 103
4. Getty Oil Co
5. Eddy A No 4 (05863)
6. Carthage (Travis Peak 6400 SW)
7. Panola TX
8. 35.0 million cubic feet
9. August 7, 1979
10. United Gas Pipeline Co

1. 79-15445/07330
2. 42-365-00000
3. 103
4. Getty Oil Company
5. C H Shivers No 1 (10065)
6. Carthage (Travis Peak 6400 SW)
7. Panola TX
8. 24.4 million cubic feet
9. August 7, 1979
10. United Gas Pipeline Company

1. 79-15446/07334
2. 42-365-00000
3. 103
4. Getty Oil Co
5. H G Shrivers No 1 (05988)
6. Carthage (Travis Peak 6400 SW)
7. Panola TX
8. 80.0 million cubic feet
9. August 7, 1979
10. United Gas Pipeline Co

1. 79-15447/07336
2. 42-365-00000
3. 103
4. Getty Oil Co
5. Shivers—Feemster No 1 (10097)
6. Carthage (Travis Peak 6400 SW)
7. Panola TX
8. 75.0 million cubic feet
9. August 7, 1979
10. United Gas Pipeline Co

1. 79-15448/03584
2. 42-329-30771
3. 103
4. General American Oil Company of Tex
5. Winkleman #2-7
6. Spraberry (Trend Area)
7. Midland TX
8. 32.0 Million Cubic Feet
9. August 7, 1979
10. Odessa Natural Corporation, Warren Petroleum Co.

1. 79-15449/04642
2. 42-357-30798
3. 103
4. S K Tuthill & B J Barbee
5. Mcafee #1
6. Dude Wilson Upper Morrow
7. Ochiltree TX
8. 120.0 Million Cubic Feet
9. August 7, 1979
10. Northern Natural Gas Co

1. 79-15450/04776
2. 42-435-31412
3. 103
4. Petroleum Corporation of Texas
5. Wess Hill #3 (75098)
6. Sawyer (Canyon)
7. Sutton TX
8. 58.0 Million Cubic Feet
9. August 7, 1979
10. Northern Natural Gas Company

1. 79-15451/04778
2. 42-435-31411
3. 103
4. Petroleum Corporation of Texas
5. Wess Hill #4 (75307)
6. Sawyer (Canyon)
7. Sutton TX
8. 24.0 Million Cubic Feet
9. August 7, 1979
10. Northern Natural Gas Co

1. 79-15452/06622
2. 42-505-30957
3. 103
4. Gulf Oil Corporation
5. Antonio Martinez et al A #1 (76206)
6. Laredo (Lobo)
7. Zapata TX
8. 220.0 Million Cubic Feet
9. August 7, 1979
10. Lovaca Gathering Company

1. 79-15453/06638
2. 42-479-32139
3. 103
4. Gulf Oil Corporation
5. Bruni Mineral Trust #5
6. Laredo (Lobo)
7. Webb TX
8. 15.0 Million Cubic Feet
9. August 7, 1979
10. Lovaca Gathering Co

1. 79-15454/06641
2. 42-505-30972
3. 103
4. Gulf Oil Corporation
5. Eudxio Martinez Unit 1 (76840)
6. Laredo (Lobo)
7. Zapata TX
8. 160.0 Million Cubic Feet
9. August 7, 1979
10. Lovaca Gathering Company

1. 79-15455/06643
2. 42-505-30990
3. 103
4. Gulf Oil Corporation
5. Jose Gonzales et al #1 (78127)
6. J C Martin (Lobo)
7. Zapata TX
8. 160.0 Million Cubic Feet
9. August 7, 1979
10. Lovaca Gathering Company

1. 79-15456/06644
2. 42-479-31935
3. 103
4. Gulf Oil Corporation
5. M J Raymond #1 (77962)
6. Laredo (Lobo)
7. Webb TX
8. 160.0 Million Cubic Feet
9. August 7, 1979
10. Lovaca Gathering Company

1. 79-15457/06647
2. 42-505-30921
3. 103
4. Gulf Oil Corporation
5. Gb Vergara et al #3 (75823)
6. J C Martin (Lobo)
7. Zapata TX
8. 660.0 Million Cubic Feet
9. August 7, 1979
10. Lovaca Gathering Company

1. 79-15458/07087
2. 42-135-00000
3. 103
4. Continental Oil Company
5. J L Johnson #20 (24714)
6. Cowden S/8790 Canyon
7. Ector TX
8. 3.6 Million Cubic Feet
9. August 7, 1979
10. Odessa Natural Gas Co

1. 79-15459/07639
2. 42-211-30900
3. 103
4. Sun Oil Company (Delaware)
5. Frank Shaller No 2-L
6. Canadian SE
7. Hemphill TX
8. 118.0 Million Cubic Feet
9. August 7, 1979
10. Pioneer Natural Gas Company

1. 79-15460/07640
2. 42-211-30900
3. 103
4. Sun Oil Company (Delware)
5. Frank Shaller No 2-U
6. Canadian SE
7. Hemphill TX
8. 118.0 Million Cubic Feet
9. August 7, 1979
10. Pioneer Natural Gas Company

1. 79-15461/01902
2. 42-165-31367
3. 103
4. Amerada Hess Corporation
5. Seminole San Andres Unit #3211
6. Seminole
7. Gaines TX
8. 392.0 Million Cubic Feet
9. August 7, 1979
10. Phillips Petroleum Company

1. 79-15462/01903
2. 42-165-31452
3. 103
4. Amerada Hess Corporation
5. Seminole San Andres Unit #3115
6. Seminole
7. Gaines TX
8. 26.0 Million Cubic Feet
9. August 7, 1979
10. Phillips Petroleum Company

1. 79-15463/01904
2. 42-165-31372
3. 103
4. Amerada Hess Corporation
5. Seminole San Andres Unit #3213
6. Seminole
7 Gaines TX
8. 179.0 Million Cubic Feet
9. August 7, 1979
10. Phillips Petroleum Company

1. 79-15464/01905
2. 42-165-31373
3. 103
4. Amerada Hess Corporation
5. Seminole San Andres Unit #3212
6. Seminole
7 Gaines TX
8. 9.0 Million Cubic Feet
9. August 7, 1979
10. Phillips Petroleum Company

1. 79-15465/01906
2. 42-165-31378
3. 103
4. Amerada Hess Corporation
5. Seminole San Andres Unit #3519
6. Seminole
7 Gaines TX
8. 23.0 Million Cubic Feet
9. August 7, 1979
10. Phillips Petroleum Company

1. 79-15466/01907
2. 42-165-31379
3. 103
4. Amerada Hess Corporation
5. Seminole San Andres Unit #3406
6. Seminole
7 Gaines TX
8. 254.0 Million Cubic Feet
9. August 7, 1979
10. Phillips Petroleum Company

1. 79-15467/01908
2. 42-165-31380
3. 103
4. Amerada Hess Corporation
5. Seminole San Andres Unit #3517
6. Seminole
7 Gaines TX.
8. 229.0 Million Cubic Feet
9. August 7, 1979
10. Phillips Petroleum Company

1. 79-15468/02226
2. 42-173-30951
3. 103
4. Sohio Natural Resources Co
5. M V Bryans A Well No 5
6. Calvin Dean
7 Glasscock TX
8. 20.0 Million Cubic Feet
9. August 7, 1979
10. El Paso Natural Gas Co

1. 79-15469/04405
2. 42-195-30622
3. 103
4. Andover Oil Company
5. Thorenson #1
6. Hitchland (Atoka)
7 Hansford TX
8. 70.0 Million Cubic Feet
9. August 7, 1979
10. Phillips Petroleum Company

1. 79-15470/04793
2. 42-103-31812
3. 103
4. Warren Pet Co Div/Gulf Oil Corp
5. W N Waddell et al #1099
6. Sand Hills (Judkins)
7 Crane TX
8. 1.0 Million Cubic Feet
9. August 7, 1979
10. H-T Gathering Company

1. 79-15471/01894
2. 42-165-30615
3. 103
4. Amerada Hess Corporation
5. Adair San Andres Unit #1804
6. Adair
7 Gaines TX
8. 4.0 Million Cubic Feet
9. August 7, 1979
10. Pioneer Natural Gas Company

1. 79-15472/01899
2. 42-165-31364
3. 103
4. Amerada Hess Corporation
5. Seminole San Andres Unit #3306
6. Seminole
7 Gaines TX
8. 119.0 Million Cubic Feet
9. August 7, 1979
10. Phillips Petroleum Company

1. 79-15473/01900
2. 42-165-31365
3. 103
4. Amerada Hess Corporation
5. Seminole San Andres Unit #3210
6. Seminole
7 Gaines TX
8. 67.0 Million Cubic Feet
9. August 7, 1979
10. Phillips Petroleum Company

1. 79-15474/01901
2. 42-165-31366
3. 103
4. Amerada Hess Corporation
5. Seminole San Andres Unit #3305
6. Seminole
7 Gaines TX
8. 96.0 Million Cubic Feet
9. August 7, 1979
10. Phillips Petroleum Company

1. 79-15478/03548
2. 42-475-31655
3. 103
4. Gulf Oil Corporation
5. Hutchings Stock Assn #1011
6. Ward-Estes North
7 Ward TX
8. 8.0 Million Cubic Feet
9. August 7, 1979
10. Cabot Corporation

1. 79-15479/04825
2. 42-435-32047
3. 103
4. Tucker Drilling Company Inc
5. Ned Dunbar #10
6. Sawyer (Canyon) Field
7 Sutton TX
8. 55.0 Million Cubic Feet
9. August 7, 1979
10. El Paso Natural Gas Company

1. 79-15480/04823
2. 42-435-32045
3. 103
4. Tucker Drilling Company Inc
5. Ned Dunbar #12
6. Sawyer (Canyon) Field
7 Sutton TX
8. 53.0 Million Cubic Feet
9. August 7, 1979
10. El Paso Natural Gas Company

1. 79-15481/04820
2. 42-497-31328
3. 103
4. Cities Service Company
5. Davenport A #2
6. Boonesville (Bend Conglomerate Gas)
7 Wise, TX
8. 182.5 million cubic feet
9. August 7, 1979
10. Cities Service Co

1. 79-15482/04781
2. 42-103-31813
3. 103
4. Warren Pet Co Div/Gulf Oil Corp
5. W N Waddell et al #1100
6. Sand Hills (Judkins)
7 Crane, TX
8. 1.0 million cubic feet
9. August 7, 1979
10. H-T Gathering Company

1. 79-15483/04663
2. 42-435-32046
3. 103
4. Tucker Drilling Company Inc
5. Ned Dunbar #11
6. Sawyer (Canyon) Field
7 Sutton, TX
8. 118.0 million cubic feet
9. August 7, 1979
10. El Paso Natural Gas Company

1. 79-15484/04643
2. 42-435-32050
3. 103
4. Tucker Drilling Company Inc
5. Collier Shurley #3
6. Sawyer (Canyon Field)
7 Sutton, TX
8. 83.6 million cubic feet
9. August 7, 1979
10. El Paso Natural Gas Company

1. 79-15485/03037
2. 42-219-32513
3. 103
4. Amoco Production Company
5. West RKM Unit #195
6. Slaughter
7 Hockley, TX
8. 15.4 million cubic feet
9. August 7, 1979
10. El Paso Natural Gas Co

1. 79-15486/03035
2. 42-219-32582
3. 103
4. Amoco Production Company
5. East RKM Unit #64
6. Slaughter
7 Hockley, TX
8. 4.7 million cubic feet
9. August 7, 1979
10. El Paso Natural Gas Company

1. 79-15487/03031
2. 42-219-32571
3. 103
4. Amoco Production Company
5. East RKM Unit #67
6. Slaughter
7 Hockley, TX
8. 8.0 million cubic feet
9. August 7, 1979
10. El Paso Natural Gas Company

1. 79-15488/03026
2. 42-219-32486
3. 103
4. Amoco Production Company
5. West RKM Unit #224

6. Slaughter
7. Hockley, TX
8. 22.6 million cubic feet
9. August 7, 1979
10. El Paso Natural Gas Co

1. 79-15489/03019
2. 42-219-32575
3. 103
4. Amoco Production Company
5. East RKM Unit #79
6. Slaughter
7. Hockley, TX
8. 4.7 million cubic feet
9. August 7, 1979
10. El Paso Natural Gas Company

1. 79-15490/03018
2. 42-219-32557
3. 103
4. Amoco Production Company
5. East RKM Unit #59
6. Slaughter
7. Hockley, TX
8. 8.0 million cubic feet
9. August 7, 1979
10. El Paso Natural Gas Company

1. 79-15491/03016
2. 42-219-32572
3. 103
4. Amoco Production Company
5. East RKM Unit #66
6. Slaughter
7. Hockley, TX
8. 17.5 million cubic feet
9. August 7, 1979
10. El Paso Natural Gas Company

1. 79-15492/03015
2. 42-219-32558
3. 103
4. Amoco Production Company
5. East RKM Unit #46
6. Slaughter
7. Hockley, TX
8. 8.0 million cubic feet
9. August 7, 1979
10. El Paso Natural Gas Company

1. 79-15493/03014
2. 42-219-32562
3. 103
4. Amoco Production Company
5. East RKM Unit #53
6. Slaughter
7. Hockley, TX
8. 20.4 million cubic feet
9. August 7, 1979
10. El Paso Natural Gas Company

1. 79-15494/04832
2. 42-435-32001
3. 103
4. Tucker Drilling Company Inc
5. Ned Dunbar #7
6. Sawyer (Canyon) Field
7. Sutton, TX
8. 75.4 million cubic feet
9. August 7, 1979
10. El Paso Natural Gas Company

1. 79-15495/04830
2. 42-435-32003
3. 103
4. Tucker Drilling Company Inc
5. Ned Dunbar #9
6. Sawyer (Canyon) Field
7. Sutton, TX
8. 51.1 million cubic feet
9. August 7, 1979
10. El Paso Natural Gas Company

1. 79-15496/04831
2. 42-435-32002
3. 103
4. Tucker Drilling Company Inc
5. Ned Dunbar #8
6. Sawyer (Canyon) Field
7. Sutton, TX
8. 131.3 million cubic feet
9. August 7, 1979
10. El Paso Natural Gas Company

1. 79-15497/04829
2. 42-435-32051
3. 103
4. Tucker Drilling Company Inc
5. Collier Shurley #2
6. Sawyer (Canyon) Field
7. Sutton, TX
8. 98.0 million cubic feet
9. August 7, 1979
10. El Paso Natural Gas Company

1. 79-15498/05886
2. 42-135-32758
3. 103
4. Continental Oil Company
5. Johnson-38 #4 (23134)
6. Johnson/Holt/
7. Ector, TX
8. 4.0 million cubic feet
9. August 7, 1979
10. Amoco Production Co

1. 79-15499/05895
2. 42-135-32786
3. 103
4. Continental Oil Company
5. Wight Unit #102 (20661)
6. Cowden North
7. Ector, TX
8. 16.1 million cubic feet
9. August 7, 1979
10. Amoco Production Co

1. 79-15500/05958
2. 42-135-32860
3. 103
4. Continental Oil Company
5. Wight Unit #114 (20661)
6. Cowden North
7. Ector, TX
8. 26.3 million cubic feet
9. August 7, 1979
10. Amoco Production Co

1. 79-15501/05954
2. 42-135-32790
3. 103
4. Continental Oil Company
5. Wight Unit #107 (20661)
6. Cowden North
7. Ector, TX
8. 19.7 million cubic feet
9. August 7, 1979
10. Amoco Production Co

1. 79-15502/05908
2. 42-135-32871
3. 103
4. Continental Oil Company
5. Wight Unit #117 (20661)
6. Cowden North
7. Ector, TX
8. 19.0 million cubic feet
9. August 7, 1979
10. Amoco Production Co

1. 79-15503/04501
2. 42-137-30694
3. 103
4. Amoco Production Company
5. Stanley B Mayfield #15
6. Sawyer/Canyon
7. Edwards, TX
8. 146.0 million cubic feet
9. August 7, 1979
10. Lone Star Gas Co

1. 79-15504/04503
2. 42-137-30693
3. 103
4. Amoco Production Company
5. Stanley B Mayfield #14
6. Sawyer/Canyon
7. Edwards, TX
8. 146.0 million cubic feet
9. August 7, 1979
10. Lone Star Gas Company

1. 79-15505/04626
2. 42-137-30697
3. 103
4. Amoco Production Company
5. Stanley B Mayfield #17
6. Sawyer/Canyon
7. Edwards, TX
8. 146.0 million cubic feet
9. August 7, 1979
10. Lone Star Gas Co

1. 79-15506/06077
2. 42-135-32748
3. 103
4. Continental Oil Company
5. East Cowden (Grayburg) #50 (22927)
6. Cowden North
7. Ector, TX
8. 14.6 million cubic feet
9. August 7, 1979
10. Amoco Production Co

1. 79-15507/06038
2. 42-003-31172
3. 103
4. Continental Oil Company
5. J W Boner B #24 (01664)
6. Fuhrman—Masco
7. Andrews, TX
8. 14.6 million cubic feet
9. August 7, 1979
10. Phillips Petroleum Co

1. 79-15508/06022
2. 42-135-32981
3. 103
4. Continental Oil Company
5. East Cowden (Grayburg) #55 (22927)
6. Cowden North
7. Ector, TX
8. 12.4 million cubic feet
9. August 7, 1979
10. Amoco Production Co

1. 79-15509/05959
2. 42-135-32785
3. 103
4. Continental Oil Company
5. Wight Unit #101 (20661)
6. Cowden North
7. Ector, TX
8. 70.1 million cubic feet
9. August 7, 1979
10. Amoco Production Co

1. 79-15510/03828
2. 42-219-32488
3. 103
4. Amoco Production Company
5. West RKM Unit #217
6. Slaughter
7. Hockley, TX
8. 15.4 million cubic feet
9. August 7, 1979
10. El Paso Natural Gas Company

1. 79-15511/01474
2. 42-375-30624
3. 103
4. Gas Producing Enterprises Inc
5. Bivins 28-20 RO
6. West Panhandle Red Cave
7. Potter, TX
8. 10.0 million cubic feet
9. August 7, 1979
10. Colorado Interstate Gas Co

1. 79-15512/01870
2. 42-165-331157
3. 103
4. Amerada Hess Corporation
5. Seminole San Andres Unit #2710
6. Seminole
7. Gaines, TX
8. 35.0 million cubic feet
9. August 7, 1979
10. Phillips Petroleum Company

1. 79-15513/01871
2. 42-165-31354
3. 103
4. Amerada Hess Corporation
5. Seminole San Andres Unit #3116
6. Seminole
7. Gaines, TX
8. 349.0 million cubic feet
9. August 7, 1979
10. Phillips Petroleum Company

1. 79-15514/01872
2. 42-165-31254
3. 103
4. Amerada Hess Corporation
5. Seminole San Andres Unit #2219
6. Seminole
7. Gaines, TX
8. 50.0 million cubic feet
9. August 7, 1979
10. Phillips Petroleum Company

1. 79-15515/01873
2. 42-165-31160
3. 103
4. Amerada Hess Corporation
5. Seminole San Andres Unit #2309
6. Seminole
7. Gaines, TX
8. 6.0 million cubic feet
9. August 7, 1979
10. Phillips Petroleum Company

1. 79-15516/01874
2. 42-165-31253
3. 103
4. Amerada Hess Corporation
5. Seminole San Andres Unit #2218
6. Seminole
7. Gaines, TX
8. 33.0 million cubic feet
9. August 7, 1979
10. Phillips Petroleum Company

1. 79-15517/01875
2. 42-165-31385
3. 103
4. Amerada Hess Corporation
5. Seminole San Andres Unit #3518
6. Seminole
7. Gaines, TX
8. 34.0 million cubic feet
9. August 7, 1979
10. Phillips Petroleum Company

1. 79-15518/01876
2. 42-165-31158
3. 103
4. Amerada Hess Corporation
5. Seminole San Andres Unit #2810
6. Seminole
7. Gaines, TX
8. 37.0 million cubic feet
9. August 7, 1979
10. Phillips Petroleum Company

1. 79-15519/01877
2. 42-165-31255
3. 103
4. Amerada Hess Corporation
5. Seminole San Andres Unit #2217
6. Seminole
7. Gaines, TX
8. 26.0 million cubic feet
9. August 7, 1979
10. Phillips Petroleum Company

1. 79-15520/01878
2. 42-165-31256
3. 103
4. Amerada Hess Corporation
5. Seminole San Andres Unit #2216
6. Seminole
7. Gaines, TX
8. 64.0 million cubic feet
9. August 7, 1979
10. Phillips Petroleum Company

1. 79-15521/011882
2. 42-165-31264
3. 103
4. Amerada Hess Corporation
5. Seminole San Andres Unit #2712
6. Seminole
7. Gaines, TX
8. 336.0 million cubic feet
9. August 7, 1979
10. Phillips Petroleum Company

1. 79-15522/011883
2. 42-165-31265
3. 103
4. Amerada Hess Corporation
5. Seminole San Andres Unit #2711
6. Seminole
7. Gaines, TX
8. 19.0 million cubic feet
9. August 7, 1979
10. Phillips Petroleum Company

1. 79-15523/01884
2. 42-165-31266
3. 103
4. Amerada Hess Corporation
5. Seminole San Andres Unit #2811
6. Seminole
7. Gaines, TX
8. 177.0 million cubic feet
9. August 7, 1979
10. Phillips Petroleum Company

1. 79-15524/01885
2. 42-165-31267
3. 103
4. Amerada Hess Corporation
5. Seminole San Andres Unit #2812
6. Seminole
7. Gaines, TX
8. 47.0 million cubic feet
9. August 7, 1979
10. Phillips Petroleum Company

1. 79-15525/01887
2. 42-165-31155
3. 103
4. Amerada Hess Corporation
5. Seminole San Andres Unit #2310
6. Seminole
7. Gaines, TX
8. 20.0 million cubic feet
9. August 7, 1979
10. Phillips Petroleum Company

1. 79-15526/02181
2. 42-105-31159
3. 103
4. Gulf Oil Corp
5. State IV No 3
6. Farmer (San Andres)
7. Crockett, TX
8. 2.0 million cubic feet
9. August 7, 1979
10. Big Lake Gas Corp

1. 79-15527/02183
2. 42-105-31162
3. 103
4. Gulf Oil Corp
5. State IT No 6
6. Farmer (San Andres)
7. Crockett, TX
8. 1.8 million cubic feet
9. August 7, 1979
10. Big Lake Gas Corp

1. 79-15528/02184
2. 42-105-31163
3. 103
4. Gulf Oil Corp
5. State IT No 7
6. Farmer (San Andres)
7. Crockett, TX
8. 2.4 million cubic feet
9. August 7, 1979
10. Big Lake Gas Corp

1. 79-15529/02185
2. 42-105-31164
3. 103
4. Gulf Oil Corp
5. State IT No 8
6. Farmer (San Andres)
7. Crockett, TX
8. 1.0 million cubic feet
9. August 7, 1979
10. Big Lake Gas Corp

1. 79-15530/02811
2. 42-033-30473
3. 103
4. Gulf Oil Corporation
5. Cannon Ranch Unit No 1009
6. Jo-Mill (Spraberry)
7. Borden, TX
8. 1.0 million cubic feet
9. August 7, 1979
10. Getty Oil Company

1. 79-15531/02816
2. 42-033-30478
3. 103
4. Gulf Oil Corporation
5. Cannon Ranch Unit No 1606
6. Jo-Mill (Spraberry)
7. Borden, TX
8. 3.4 million cubic feet
9. August 7, 1979
10. Getty Oil Company

1. 79-15532/02818
2. 42-033-30477
3. 103
4. Gulf Oil Corporation
5. Canon Ranch Unit No 1707
6. Jo-Mill (Spraberry)
7. Borden, TX
8. 6.4 million cubic feet
9. August 7, 1979
10. Getty Oil Company

1. 79-15533/02820
2. 42-033-30479
3. 103
4. Gulf Oil Corporation
5. Canon Ranch Unit No 1706

6. Jo-Mill (Spraberry)
7. Borden, TX
8. 3.9 million cubic feet
9. August 7, 1979
10. Getty Oil Company

1. 79-15534/02826
2. 42-033-30439
3. 103
4. Gulf Oil Corporation
5. Canon Ranch Unit No 1506
6. Jo-mill (Spraberry)
7. Borden, TX
8. 13.6 million cubic feet
9. August 7, 1979
10. Getty Oil Company

1. 79-15535/02829
2. 42-033-30480
3. 103
4. Gulf Oil Corporation
5. Canon Ranch Unit No 1506
6. Jo-Mill (Spraberry)
7. Borden, TX
8. 4.3 million cubic feet
9. August 7, 1979
10. Getty Oil Company

1. 79-15536/02839
2. 42-219-32362
3. 103
4. Texas Pacific Oil Company Inc
5. Southeast Levelland Unit #215
6. Levelland
7. Hockley, TX
8. 4.1 million cubic feet
9. August 7, 1979
10. Amoco Production Co

1. 79-15537/02840
2. 42-219-32363
3. 103
4. Texas Pacific Oil Company Inc
5. Southeast Levelland Unit #216
6. Levelland
7. Hockley, TX
8. 6.4 million cubic feet
9. August 7, 1979
10. Amoco Production Co

1. 79-15538/02841
2. 42-219-32361
3. 103
4. Texas Pacific Oil Company Inc
5. Southeast Levelland Unit #217
6. Levelland
7. Hockley, TX
8. 8.9 million cubic feet
9. August 7, 1979
10. Amoco Production Co

1. 79-15539/02842
2. 42-219-32356
3. 103
4. Texas Pacific Oil Company Inc
5. Southeast Levelland Unit #218
6. Levelland
7. Hockley, TX
8. 12.7 million cubic feet
9. August 7, 1979
10. Amoco Production Co

1. 79-15540/02843
2. 42-219-32357
3. 103
4. Texas Pacific Oil Company Inc
5. Southeast Levelland Unit #219
6. Levelland
7. Hockey, TX
8. 3.0 million cubic feet
9. August 7, 1979
10. Amoco Production Co

1. 79-15541/02844
2. 42-219-32358
3. 103
4. Texas Pacific Oil Company Inc
5. Southeast Levelland Unit #220
6. Levelland
7. Hockley, TX
8. 2.9 million cubic feet
9. August 7, 1979
10. Amoco Production Co

1. 79-15542/02845
2. 42-219-32483
3. 103
4. Texas Pacific Oil Company Inc
5. Southeast Levelland Unit #221-A
6. Levelland
7. Hockley, TX
8. 3.3 million cubic feet
9. August 7, 1979
10. Amoco Production Co

1. 79-15543/02846
2. 42-219-32360
3. 103
4. Texas Pacific Oil Company Inc
5. Southeast Levelland Unit #222
6. Levelland
7. Hockley, TX
8. 1.9 million cubic feet
9. August 7, 1979
10. Amoco Production Co

1. 79-15544/02847
2. 42-219-32351
3. 103
4. Texas Pacific Oil Company Inc
5. Southeast Levelland Unit #224
6. Levelland
7. Hockley, TX
8. 2.5 million cubic feet
9. August 7, 1979
10. Amoco Production Co

1. 79-15545/02848
2. 42-219-00000
3. 103
4. Texas Pacific Oil Company Inc
5. Southeast Levelland Unit #225
6. Levelland
7. Hockley, TX
8. 2.3 million cubic feet
9. August 7, 1979
10. Amoco Production Co

1. 79-15546/02849
2. 42-219-32540
3. 103
4. Texas Pacific Oil Company Inc
5. Southeast Levelland Unit #232
6. Levelland
7. Hockley, TX
8. 3.3 million cubic feet
9. August 7, 1979
10. Amoco Production Co

1. 79-15547/02850
2. 42-219-32530
3. 103
4. Texas Pacific Oil Company Inc
5. Southeast Levelland Unit #238
6. Levelland
7. Hockley, TX
8. 1.3 million cubic feet
9. August 7, 1979
10. Amoco Production Co

1. 79-15548/02873
2. 42-179-30362
3. 103
4. Sun Oil Company (Delaware)
5. Combs & Worley A No 15
6. Panhandle Gray County
7. Gray, TX
8. 1.0 million cubic feet
9. August 7, 1979
10. Phillips Petroleum Company

1. 79-15549/03013
2. 42-219-32568
3. 103
4. Amoco Production Company
5. East RKM Unit No 54
6. Slaughter
7. Hockley, TX
8. 17.2 million cubic feet
9. August 7, 1979
10. El Paso Natural Gas Co

Geological Survey Metairie, LA.

1. Control number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 79-15476/G9-757
2. 17-715-40181-00S2-0
3. 102
4. Exxon Corporation
5. OCS-G 028 No F-4 Unit
6. South Timbalier
7. 55
8. 12.0 million cubic feet
9. August 7, 1979
10. Tennessee Gas Pipeline Co

Casper, Wyoming

1. Control number (FERC/State)
2. API well number
3. Section of NGPA
4. Operator
5. Well name
6. Field or OCS area name
7. County, State or block No.
8. Estimated annual volume
9. Date received at FERC
10. Purchaser(s)

1. 79-15576/CC871-9
2. 05-103-05615-0000-0
3. 108
4. Fuel Resources Development Co
5. Potter #1
6. White River Dome
7. Rio Blanco, CO
8. 5.1 million cubic feet
9. August 8, 1979
10. Western Slope Gas Company

1. 79-15585/CC959-9
2. 05-045-06029-0000-0
3. 108
4. Belco Petroleum Corporation
5. West Salt Creek Fed 3-32 (6029)
6. South Canyon
7. Garfield, CO
8. 5.0 million cubic feet
9. August 8, 1979
10. Western Slope Gas Company

1. 79-15586/CC958-9
2. 05-045-06025-0000-0
3. 108
4. Belco Petroleum Corporation
5. West Salt Creek Fed 1-7 (6025)
6. South Canyon

7. Garfield, CO
8. 6.0 million cubic feet
9. August 8, 1979
10. Western Slope Gas Company
1. 79-15587/CC956-9
2. 05-045-06172-0000-0
3. 103
4. Mitchell Energy Corporation
5. Federal 1-34 (C-12701)
6. West Salt Creek
7 Garfield, CO
8. 100.0 million cubic feet
9. August 8, 1979
10. Colorado Interstate Gas Company
1. 79-15593/CC679-9
2. 05-103-08038-0000-0
3. 102
4. Twin Arrow Inc
5. Continental 1-20
6. Cathedral
7 Rio Blanco, CO
8. 23.7 million cubic feet
9. August 8, 1979
10. IGC Production Co
1. 79-15595/CC677-9
2. 05-103-08119-0000-0
3. 102
4. Twin Arrow Inc
5. Rainbow 2-30X
6. Cathedral
7 Rio Blanco, CO
8. .0 million cubic feet
9. August 8, 1979
10. IGC Production Company
1. 79-15598/CC610-9
2. 05-103-08108-0000-0
3. 108
4. Twin Arrow Inc
5. C & K 1-7
6. Cathedral
7. Rio Blanco, CO
8. 8.8 million cubic feet
9. August 8, 1979
10. IGC Production Company
1. 79-15602/CC775-9
2. 05-103-05098-0000-0
3. 108
4. Continental Oil Company
5. Dragon Trail Unit #9
6. Douglas Creek Senw 35-T2S R102W
7. Rio Blanco, CO
8. 4.4 million cubic feet
9. August 8, 1979
10. Western Slope Gas Company
1. 79-15608/CC870-9
2. 05-045-06039-0000-0
3. 108
4. Fuel Resources Development Co
5. Baumgarten #2-17
6. Carbonera
7 Garfield, CO
8. 6.3 million cubic feet
9. August 8, 1979
10. Western Slope Gas Company
1. 79-15609/CC 869-9
2. 05-103-7745-0000-0
3. 108
4. Fuel Resources Development Co
5. Federal #30-1
6. Cathedral
7 Rio Blanco, CO
8. 1.2 million cubic feet
9. August 8, 1979
10. Western Slope Gas Company
1. 79-15610/CC 868-9
2. 05-045-06074-0000-0
3. 108
4. Fuel Resources Development Co
5. Federal #1-9
6. Carbonera
7. Garfield, CO
8. 11.4 million cubic feet
9. August 8, 1979
10. Western Slope Gas Company
1. 79-15611/CC 867-9
2. 05-103-07820-0000-0
3. 108
4. Fuel Resources Development Co
5. Federal #1-2
6. Cathedral
7. Rio Blanco, CO
8. 7.0 million cubic feet
9. August 8, 1979
10. Western Slope Gas Company
1. 79-15612/CC 832-9
2. 05-099-06090-0000-0
3. 103
4. Texas Oil & Gas Corp
5. Hoffman Federal #1
6. Barrel Springs
7. Prowers, CO
8. 75.0 million cubic feet
9. August 8, 1979
10. Lamar Utilities Board
1. 79-15613/CC 786-9
2. 05-077-98134-0000-0
3. 102
4. Norris Oil Co
5. Federal 36-1
6. Shire Gulch
7. Mesa, Co
8. 100.0 million cubic feet
9. August 8, 1979
10. Rocky Mountain Natural Gas Co Inc
1. 79-15588/M 509-9
2. 25-025-21118-0000-0
3. 103
4. Shell Oil Company
5. Pennel Unit No 11-24
6. Pennel
7. Fallon, MT
8. 30.0 million cubic feet
9. August 8, 1979
10. Montana-Dakota Utilities Co
1. 79-15589/M 506-9
2. 25-025-21117-0000-0
3. 103
4. Shell Oil Company
5. Pennel Unit #31-23
6. Pennel
7. Fallon, MT
8. 3.0 million cubic feet
9. August 8, 1979
10. Montana-Dakota Utilities Co
1. 79-15590/M 504-9
2. 25-025-21119-0000-0
3. 103
4. Shell Oil company
5. Pennel Unit #33-14
6. Pennel
7. Fallon, MT
8. 22.0 million cubic feet
9. August 8, 1979
10. Montana-Dakota Utilities Co
1. 79-15591/M 503-9
2. 25-025-21129-0000-0
3. 103
4. Shell Oil company
5. Pennel Unit #33-23
6. Pennel
7. Fallon, MT
8. 13.0 million cubic feet
9. August 8, 1979
10. Montana-Dakota Utilities Co
1. 79-15592/M 433-9
2. 25-071-21636-0000-0
3. 102
4. Joseph J C Paine and Associates
5. Montana Power Federal #1-2671
6. Unnamed
7 Phillips, MT
8. 33.0 million cubic feet
9. August 8, 1979
10. Kansas-Nebraska Natural Gas Co
1. 79-15624/M 931-9
2. 25-071-21595-0000-0
3. 103
4. Southland Royalty Company
5. Bowdoin Federal #-27 33E
6. Bowdoin Dome
7 Phillips, MT
8. 60.0 million cubic feet
9. August 8, 1979
10. Kansas-Nebraska Gas Company
1. 79-15625/M 930-9
2. 25-071-21603-0000-0
3. 103
4. Southland Royalty Company
5. Bowdoin Federal 1-35-33NE
6. Bowdoin Dome
7 Phillips, MT
8. 50.0 million cubic feet
9. August 8, 1979
10. Montana Dakota Utilities
1. 79-15577/UC109-9
2. 43-019-30430-0000-0
3. 103
4. NP Energy Corporation
5. Federal 14-1
6. Cisco Dome Area
7 Grand County, UT
8. 150.0 million cubic feet
9. August 8, 1979
10. Northwest Pipeline Corporation
1. 79-15578/UC107-9
2. 43-019-30359-0000-0
3. 103
4. NP Energy Corporation
5. Federal 25-1
6. Cisco Dome Area
7. Grand County, UT
8. 90.0 million cubic feet
9. August 8, 1979
10. Northwest Pipeline Corporation
1. 79-15580/UC100-9
2. 43-019-30428-0000-0
3. 103
4. NP Energy Corporation
5. Federal 31-3
6. Cisco Dome Area
7. Grand County, UT
8. 60.0 million cubic feet
9. August 8, 1979
10. Northwest Pipeline Corporation
1. 79-15584/UC 937-9
2. 43-047-15054-0000-0
3. 108
4. Belco Petroleum Corporation
5. CWU-8(15054)
6. Chapita Wells
7 Uintah, Ut
8. 2.0 million cubic feet
9. August 8, 1979
10. Mountain Fuel Supply Co
1. 79-15604/UC 749-9

2. 43-047-30314-0000-0
3. 103
4. Chevron U S A Inc
5. Red Wash Unit 235
6. Red Wash
7. Uintah, UT
8. 46.0 million cubic feet
9. August 8, 1979
10. Northwest Pipeline Corp

1. 79-15605/UC 724-9
2. 43-047-30346-0000-0
3. 103
4. Chevron U S A Inc
5. Red Wash Unit 242
6. Red Wash
7. Uintah, UT
8. 18.0 million cubic feet
9. August 8, 1979
10. Northwest Pipeline Corp

1. 79-15606/UC 723-9
2. 43-047-30387-0000-0
3. 103
4. Chevron U S A Inc
5. Red Wash Unit 246
6. Red Wash
7. Uintah, UT
8. 18.0 million cubic feet
9. August 8, 1979
10. Northwest Pipeline Corp

1. 79-15615/UC 783-9
2. 43-013-30422-0000-0
3. 103
4. Santa Fe Energy Company
5. Tribal Federal 1-36
6. Cedar Rim Wasatch
7. Duchesne, UT
8. 24.0 million cubic feet
9. August 8, 1979
10. Koch Oil Company

1. 79-15621/UC 935-9
2. 43-047-15073-0000-0
3. 108
4. Belco Petroleum Corporation
5. Stagecoach 3 (15073)
6. Stagecoach
7. Uintah, UT
8. .4 million cubic feet
9. August 8, 1979
10. Mountain Fuel Supply Co

1. 79-15622/UC 933-9
2. 43-047-15058-0000-0
3. 108
4. Belco Petroleum Corporation
5. CWU-13 (15058)
6. Chapita Wells
7. Uintah, UT
8. 7.0 million cubic feet
9. August 8, 1979
10. Mountain Fuel Supply Co

1. 79-15623/UC 932-9
2. 43-047-15072-0000-0
3. 108
4. Belco Petroleum Corporation
5. Stagecoach 2 (15072)
6. Stagecoach
7. Uintah, UT
8. 8.0 million cubic feet
9. August 8, 1979
10. Mountain Fuel Supply Co

1. 79-15581/W555-9
2. 49-007-20090-0000-0
3. 108
4. The Kemmerer Coal Company
5. Barrel Springs Unit Ammi 5
6. Barrel Springs Unit
7. Carbon County, WY
8. 15.0 million cubic feet
9. August 8, 1979
10. Northwest Pipeline Corporation

1. 79-15582/W 946-9
2. 49-007-20396-0000-0
3. 102
4. CIG Exploration Inc
5. Highpoint 1-26-19-93
6. Echo Springs
7. Carbon, WY
8. 247.0 million cubic feet
9. August 8, 1979
10. Colorado Interstate Gas Co

1. 79-15583/W 945-9
2. 49-005-25172-0000-0
3. 103
4. Diamond Shamrock Corporation
5. Dale Federal #11-23
6. Porcupine
7. Campbell, WY
8. 182.0 million cubic feet
9. August 8, 1979
10.

1. 79-15594/W 666-9
2. 49-005-23996-0000-0
3. 103
4. Anadarko Production Company
5. South Pumpkin Creek Fed 1-3
6. Hartzog Draw
7. Campbell, WY
8. 2.0 million cubic feet
9. August 8, 1979
10. Panhandle Eastern Pipe Line Company

1. 79-15596/W 588-9
2. 49-005-24465-0000-0
3. 102
4. Reading & Bates Petroleum Co
5. Federal G #1
6. Hartzog Draw
7. Campbell, WY
8. .0 million cubic feet
9. August 8, 1979
10. Phillips Petroleum Company

1. 79-15597
2. 49-005-24466-0000-0
3. 102
4. Reading & Bates Petroleum Co
5. Federal P-D #1
6. Hartzog Draw
7. Campbell, WY
8. .0 million cubic feet
9. August 8, 1979
10. Phillips Petroleum Company

1. 79-15599/W 696-9
2. 49-013-20719-0000-0
3. 102
4. Dome Petroleum Corp
5. Shoshoni—Arapahoe Tribal 9-1
6. Boysen
7. Fremont WY
8. 146.0 Million cubic feet
9. August 8, 1979
10. Montana-Dakota Utilities Co

1. 79-15600/W 689-9
2. 49-013-20821-0000-0
3. 102
4. Dome Petroleum Corp
5. Shoshoni—Arapahoe Tribal 6-1
6. Boysen
7. Fremont WY
8. 146.0 Million cubic feet
9. August 8, 1979
10. Montana-Dakota Utilities Co

1. 79-15601/W 688-9
2. 49-013-20822-0000-0
3. 102
4. Dome Petroleum Corp
5. Shoshoni—Arapahoe Tribal 5-1
6. Boysen
7. Fremont WY
8. 146.0 Million cubic feet
9. August 8, 1979
10. Montana-Dakota Utilities

1. 79-15603/W 762-9
2. 49-037-21165-0000-0
3. 103
4. Houston Oil & Minerals Corporation
5. Federal 13X-10- (W-019995)
6. Table Rock
7. Sweetwater County WY
8. 110.0 Million cubic feet
9. August 8, 1979
10. Colorado Interstate Gas Co

1. 79-15607/W 700-9
2. 49-037-20250-0000-0
3. 102
4. Juniper Petroleum Corporation
5. Federal #1-4
6. Lost Creek
7. Sweetwater County WY
8. 400.0 Million cubic feet
9. August 8, 1979
10. Cities Service Gas Company

1. 79-15614/W 803-9
2. 49-005-25150-0000-0
3. 103
4. UV Industries Inc
5. UV Industries Fed #1-Porcupine
6. Porcupine Creek
7. Campbell WY
8. 73.1 Million cubic feet
9. August 8, 1979
10.

1. 79-15616/W 782-9
2. 49-013-20547-0000-0
3. 108
4. Palmer Oil & Gas Company
5. Federal #1
6. Alkali Butte
7. Fremont WY
8. 20.0 Million cubic feet
9. August 8, 1979
10. Kansas-Nebraska Natural Gas Co Inc

1. 79-15617/W 950-9
2. 49-037-21109-0000-0
3. 103
4. Elf Aquitaine Inc
5. Federal Amoco #13-3
6. Nitchie Gulch
7. Sweetwater WY
8. 365.0 Million cubic feet
9. August 8, 1979
10. Stauffer Chem Co of Wyoming

1. 79-15618/W 954-9
2. 49-035-07995-0000-0
3. 108
4. Belco Petroleum Corporation
5. C-48(07995)
6. Big Piney-Labarge
7. Sublette WY
8. 3.0 Million cubic feet
9. August 8, 1979
10. Northwest Pipeline Corporation

1. 79-15619/W 949-9
2. 49-037-21117-0000-0
3. 103
4. Elf Aquitaine Inc
5. Nitchie Gulch Amoco #13-33
6. Nitchie Gulch

7 Sweetwater WY
8. 73.0 Million cubic feet
9. August 8, 1979
10. Stauffer Chem Co of Wyoming
1. 79-15620/W 947-9
2. 49-037-20951-0000-0
3. 103
4. Elf Aquitaine Inc
5. Federal Duncan #1-4
6. Nitchie Gulch
7. Sweetwater WY
8. 365.0 Million cubic feet
9. August 8, 1979
10. Stauffer Chem Co of Wyoming
1. 79-15626/W 918-9
2. 49-035-07183-0000-0
3. 108
4. Belco Petroleum Corporation
5. B 60-25(07183)
6. Big Piney
7. Sublette WY
8. 21.0 Million cubic feet
9. August 8, 1979
10. Northwest Pipeline Corporation

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 September 11, 1979.

Please reference the FERC control number in all correspondence related to these determinations.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-26564 Filed 8-24-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. TC79-137[1]]

Northwest Pipeline Corp., Proposed Settlement and Request for Waiver

Issued August 16, 1979.

Take notice that on July 27, 1979, Northwest Pipeline Corporation (Northwest), P.O. Box 1526, Salt Lake City, Utah 84110, filed in Docket No. TC79-137 pursuant to Section 1.18(e) of the Commission's Rules and Part 281 of the Regulations under the Natural Gas Policy Act of 1978 (Order No. 29, issued May 2, 1979, in Docket No. RM79-15), a motion for approval of a stipulation and agreement with its customers regarding modifications to its curtailment plan. Citing Section 502(c) of the Natural Gas Policy Act of 1978 (NGPA) and Section 1.41 of the Commission's Rules (18 CFR 1.41), Northwest also requests any waiver of certain detailed requirements of Part 281 as may be required to effectuate the stipulation and agreement as well as the waiver of the notice requirements of § 154.22 of the Commission's Regulations under the Natural Gas Act (18 CFR 154.22) to permit immediate filing of proposed tariff sheets. Northwest's proposals are more fully set forth in the subject motion which is on file with the Commission and open to public inspection.

The stipulation indicates that Northwest and its customers have agreed to modifications in Northwest's existing curtailment plan which would, in substance, continue Northwest's current curtailment procedures, while protecting high priority and essential agricultural uses as required by Section 401 of the NGPA and Part 281 of the Regulations thereunder. The proposed modifications include the following:

1. Establishment of new Priorities 1 and 2 to protect high priority and essential agricultural uses, with subordination of all other uses.

2. Continued protection in a new Priority 3 of all other uses previously protected in Northwest's existing curtailment plan.

3. Establishment of a new emergency relief provision for protection of life and property.

4. Specification of Northwest's procedures for protecting high priority uses, including a form of certification required to be submitted to Northwest and signed by customers requesting protection.

Northwest maintains that since its curtailment procedures operate on the basis of daily requirements for protected uses rather than on fixed historical usage, entitlement sheets are not appropriate for its system. Further, Northwest states that it is not currently curtailing, nor does it anticipate curtailment of firm contractual obligations to its customers so that any data collected currently would soon be stale. Obtaining entitlement data, it is asserted, could be a serious administrative burden for Northwest's customers, requiring perhaps a year of data collection and analysis. For these reasons, Northwest requests waiver of those provisions of Part 281 requiring filing of entitlement sheets. For these same reasons and also because those users receiving protection for high priority and essential agricultural uses are required to submit a certification that such protection was utilized for such purpose, it is maintained that no data verification committee is required under Northwest's established curtailment procedures, and Northwest, therefor, requests waiver of the requirement for formation of such a committee. Northwest also seeks waiver of the notice requirements of Section 154.22 of the Commission's Regulations under the Natural Gas Act to permit current filing of the tariff sheets included in the stipulation and agreement.

It should be noted that the tariff sheets submitted with the stipulation and agreement are considered to be *pro forma* and that their submittal with the stipulation and agreement is not to be considered in lieu of the filing requirements of Section 4 of the Natural Gas Act. It is further noted that Northwest must comply with the requirements of Order No. 29 unless the stipulation and agreement are timely approved by the Commission or unless Northwest has sought and obtained, before the dates proscribed by the Order No. 29 series, an adjustment under Section 502(c) of the NGPA. [2] *See Arkansas Louisiana Gas Company*, Docket No. TC79-134, order issued July 18, 1979.

Pursuant to Section 1.7 of the Commission's Rule of Practice and Procedure, the procedural requirement of Section 1.18 of such Rules, as revised by Order No. 32 issued June 13, 1979, in Docket No. RM78-16, that comments be filed 20 days after a settlement is filed with the Commission is waived and any person desiring to be heard or to make any protest or comment with reference to the subject proposal should within 20 days after the date of this notice file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene, protest or comment in accordance with the requirements of the Commission's Rules of Practice and

[1] The subject motion and proposed settlement were filed in Docket No. RM79-15. The procedures for the submission of settlements in § 1.18(e) of the Commission's Rules of Practice and Procedure (18 CFR 1.18(e)) apply to proceedings before the Commission other than rulemakings of general applicability. Northwest filed in Docket No. RM79-15, a rulemaking proceeding. At present, Northwest does not have an on-going curtailment proceeding. However, the Commission finds it is in the public interest to allow the submission of this settlement even through it is not strictly within the scope of the new settlement procedures. Therefore, in accordance with § 1.7 of the Commission's Rules of Practice and Procedure (18 CFR 1.7) the Commission hereby waivers the relevant provisions of its rules of practice and procedure to allow the submission of this settlement, to be treated in accordance with the provisions of Section 1.18(e) of the Rules, except that notice is given and dates for comment will be adjusted. Accordingly, the filing has been individually docketed in Docket No. TC79-137.

[2] A request for adjustment from Order No. 29 may be sought in accordance with the procedure specified in § 1.41 of the Commission's Rules of Practice and Procedure.

Procedure (18 CFR 1.8 or 1.10). Reply comments may be filed on or before September 26, 1979. 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.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-26554 Filed 8-24-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP78-487]

Panhandle Eastern Pipe Line Co.; Petition To Amend

August 20, 1979.

Take notice that on July 30, 1979, panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642 Houston, Texas 77001, filed in Docket No. CP78-487 a petition to amend the order of December 21, 1978 issuing a certificate of public convenience and necessity in the instant docket pursuant to Section 7(c) of the Natural Gas Act by authorizing an increase in the horsepower of the Heydrick Compressor Station, the relocation of the proposed station, and the construction of an additional 1.1 miles of 16-inch pipeline, all as more fully set forth in the petition to amend which is on file with the Commission and open for public inspection.

Said order authorized Panhandle to establish the Heydrick Compressor Station to be equipped with 1,200 horsepower of compression facilities and to be located in Section 84 in Carson County, Texas. Since the issuance of said order, panhandle has reevaluated the operting conditions existing in the area of Carson County in the vicinity of the proposed Heydrick Compressor Station and has determined that the original proposed location is not acceptable. Thus, this reevaluation by Panhandle has caused it to conclude that more effective use could be made of the proposed facility, if the Heydrick Compressor Station is located in Section 94, in lieu of the previously authorized location in Section 84, which is immediately adjacent to Panhandle's existing Blair Booster.

Also, the petition indicates, as a result of the reevaluation of the operating conditions in the area, Panhandle has determined that the proposed compressor station should be equipped with 1,400 horsepower of compression facilities which would provide Panhandle with the ability to operate the station in either two, three or four stage operations.

Further, Panhandle previously anticipated the estimated cost of the station to be $1,120,000; however, if Panhandle is authorized to construct the Heydrick Compressor Station with 1,400 horsepower of compression facilities, it is estimated that the cost would increase to $1,124,000.

In order for Panhandle to utilize effectively the Heydrick Compressor Station at the new location, it would be necessary for Panhandle to construct a segment of 1.1 miles of 16-inch pipeline from Section 84 to the new location of the compressor station in Section 94 at an estimated cost of $266,000 to be financed from funds on hand.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before September 6, 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. 79-26555 Filed 8-24-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. GP79-102]

Santa Fe Energy Co., ODC Tribal Gulf Ute No. 3-9, JD79-11745; Preliminary Finding Regarding State of Wyoming Office Determination

Issued August 17, 1979.

On July 5, 1979, the Wyoming of United States Geological Survey (U.S.G.S.) submitted to the Commission a notice of determination which states that the Santa Fe Energy Company, ODC Tribal Gulf Ute #3-9 well meets all the requirements of a new, onshore production well under section 103 of the Natural Gas Policy Act (NGPA), Pub. L. No. 95-621. The Commission published notice of Wyoming's Office of U.S.G.S. determination on July 17, 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.

While the well completion record accompanying the determination indicates that surface drilling commenced on August 3, 1978, the location plat indicates that the subject well was originally spudded on January 25, 1967. This evidence indicates that the surface drilling for the subject well as spudded before February 19, 1977, and that reentry and redrilling of the old well occurred on August 3, 1978.

Accordingly, the Commission makes a preliminary finding; (pursuant to 18 CFR 275.202(a)(1)(i)) that the determination submitted by the Wyoming Office of the U.S.G.S., that the Santa Fe Energy Company, ODC Tribal Gulf Ute #3-9 well is not supported by substantial evidence in the record on which the determination was made.

By direction of the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79-26558 Filed 8-24-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-415]

Southern Natural Gas Co.; Application

August 15, 1979.

Take notice that on July 23, 1979, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202, filed in Docket No. CP79-415 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 for Texaco, Inc. (Texaco), and the construction and operation of certain facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Texaco has certain quantities of gas available to it on the East side of Bayou Mongoulois, St. Martin Parish, Louisiana, which it desires to have transported to the West side of Bayou Mongoulois, St. Martin Parish, it is stated. Because Applicant owns and operates authorized pipeline facilities extending across Bayou Mongoulois, Applicant and Texaco have entered into a transportation agreement dated April 11, 1979, whereby Applicant proposes to receive up to 5,000 Mcf of natural gas per day, or such greater or lesser volume per day as Applicant may accept depending upon available capacity and

operating conditions of its pipeline facilities, for Texaco at its platform on the East Bank of Bayou Mongoulois, in St. Martin Parish and to transport and redeliver a thermally equivalent volume, less gas lost, unaccounted for or utilized by Applicant in the transportation service to or for the account of Texaco on Applicant's platform on the West bank of Bayou Mongoulois, St. Martin Parish.

Applicant also requests authorization to install and operate one measuring station at the point of delivery on Applicant's existing platform and another measuring station at the point of redelivery on the West Bank, which stations would consist of orifice meters and other necessary equipment by which the volumes and Btu content of gas would be measured by Applicant and would cost an estimated $12,508. Applicant states that such station would be used to measure gas to be transported across the Bayou for the account of Texaco.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 6, 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 79-26556 Filed 8-24-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. GP79-83]

Southland Royalty Co., Davis No. 2-A, JD79-11860; Preliminary Finding Regarding Determination by U.S. Geological Survey at Albuquerque, N. Mex.

Issued August 14, 1979.

On July 6, 1979, the United States Geological Survey at Albuquerque, New Mexico (USGS), submitted to the Commission notice of its determination that the Southland Royalty Company's Davis #2-A well is a new onshore production well pursuant to Section 103 of the Natural Gas Policy Act of 1978 (NGPA), Pub. L. No. 95-621. The Commission published notice of the determination in the Federal Register on July 17, 1979.

Section 103(c)(1) of the NGPA provides that in order for a well to qualify as a new onshore production well, surface drilling of that well must have begun on or after February 19, 1977. Applicant's notice included a statement, made under oath, that the surface drilling of the subject well began on or after February 19, 1977.

The records show that there are two documents, the official USGS Well Completion Report and the New Mexico Form C-104 Request for Allowable, which indicate that the spud date of the subject well was February 14, 1977. Another document, which appears to be an internal well completion report, indicates that the spud date was February 24, 1977.

Since the record contains conflicting reports as to the actual date the surface drilling began, and it cannot be ascertained, therefore, whether the surface drilling began on or after February 19, 1977, the requirement of Section 103(c)(1) is not satisfied.

Accordingly, the Commission hereby makes a preliminary finding (pursuant to 18 CFR § 275.202(a)(1)(C)) that the determination of the USGS was 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. 79-26563 Filed 8-24-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP 78-248]

Tennessee Gas Pipeline Co., a Division of Tenneco Inc.; Petition To Amend

August 20, 1979.

Take notice that on July 31, 1979, Tennessee Gas Pipeline Company, A Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, filed in Docket No. CP78-248 a petition to amend the order of June 21, 1978 issuing a certificate of public convenience and necessity in the instant docket pursuant to Section 7(c) of the Natural Gas Act by authorizing a maximum transportation quantity of 20,000 Mcf per day, all as more fully set forth in the petition to amend which is on file with the Commission and open for public inspection.

Tennessee was authorized by said order to transport up to 10,000 Mcf per day for United Gas Pipeline Company (United). Such volumes are delivered by United to Tennessee at a point of interconnection on Tennessee's pipeline located in Colorado County, Texas, to be redelivered to United at an existing point of interconnection near West Monroe, Quachita Parish, Louisiana.

Tennessee and United have entered into a letter agreement dated July 20, 1979 to reflect an increase transportation of volumes from 10,000 Mcf per day to 20,000 Mcf per day of natural gas. Said letter agreement amends the transportation contract between Tennessee and United dated March 17, 1978 to include the increase in volumes transported.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before September 6, 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. 79-26569 Filed 8-24-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP78-453]

Transcontinental Gas Pipe Line Corp.; Petition To Amend

August 20, 1979.

Take notice that on July 26, 1979, Transcontinental Gas Pipe Line Corporation (Petitioner), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP78-453 a petition to amend the order of November 22, 1978,[1] issued in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize the continuation of transportation service for Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), for an extended term, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

Pursuant to the November 22, 1978, order, Petitioner is presently transporting, on an interruptible basis, for Tennessee for a one-year period which commenced November 22, 1978, up to 30,000 dekatherms of natural gas per day. Such gas is purchased by Tennessee at Ship Shoal Block 246A offshore Louisiana, and delivered to Petitioner at Ship Shoal Block 246B, it is stated. Petitioner states that it transports and delivers thermally equivalent quantities of gas, less compressor fuel and line loss make-up, at existing interconnections with Tennessee, onshore Louisiana and Texas. It is stated that Tennessee has deferred the installation of facilities rquired to take the Block 246A gas directly into its system and has requested Petitioner to continue its transportation service for an additional one year period. Consequently, Petitioner requests authorization to transport such gas for Tennessee until November 22, 1980, pursuant to the term of an amendatory agreement dated June 20, 1979, between Petitioner and Tennessee.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before September 10, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20425, 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. 79-26561 Filed 8-24-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP77-566]

Transcontinental Gas Pipe Line Corp. and Michigan Wisconsin Pipe Line Co.; Petition To Amend

August 20, 1979.

Take notice that on August 1, 1979, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77001, and Michigan Wisconsin Pipe Line Company (Mich Wis), One Woodward Avenue, Detroit, Michigan 48226, filed in Docket No. CP77-566 a petition to amend the order of March 22, 1979 issuing a certificate of public convenience and necessity in the instant docket pursuant to Section 7(c) of the Natural Gas Act for authorization of a new delivery point in an existing exchange arrangement between Transco and Mich Wis, all as more fully set forth in the petition to amend which is on file with the Commission and open for public inspection.

Pursuant to said order, Transco and Mich Wis were granted authorization to exchange natural gas. Transco delivers or causes to be delivered to Mich Wis natural gas at two points identified in the gas exchange agreement and Mich Wis delivers gas to Transco at one point identified in the gas exchange agreement.

Transco and Mich Wis amended their gas exchange agreement by adding a new delivery point designated Back Ridge located in Cameron Parish, Louisiana.

The petition indicates that the maximum daily quantity Transco would deliver at such point is 10,000 Mcf. The gas to be delivered at Back Ridge would be sold by Energy Development Corporation to Public Service Electric and Gas Company.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before September 6, 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. 79-26560 Filed 8-24-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket No. CP79-3]

Transcontinental Gas Pipe Line Corp. and Michigan Wisconsin Pipe Line Co.; Petition To Amend

August 15, 1979.

Take notice that on July 19, 1979,[1] Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77001, and Michigan Wisconsin Pipe Line Company (Mich Wisc), One Woodward Avenue, Detroit, Michigan 48226 (Petitioners), filed in Docket No. CP79-3 a petition to amend the order of April 4, 1979, issued in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize Petitioners to transport and exchange natural gas from one additional well, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

Pursuant to the order of April 4, 1979, Petitioners were authorized to transport and exchange natural gas pursuant to the terms of a gas transportation and exchange agreement dated September 8, 1978, between Mich Wisc and Transco whereby Transco causes to be delivered to Mich Wisc gas from nine wells in the Mayfield West Field, Beckham County, Oklahoma, and Mich Wisc redelivers thermally equivalent exchange volumes to Transco at specified points of redelivery, it is stated. Likewise Mich Wisc delivers to Transco gas at receipt points in Jefferson Davis and Covington Counties, Mississippi, and at other mutually agreeable points in other counties in Mississippi, and Transo

[1] It is indicated that such order was modified on rehearing by order issued January 22, 1979.

[1] The application was initially tendered for filing on July 19, 1979; however, the fee required by Section 158.1 of the regulations under the Natural Gas Act (18 CFR 159.1) was not paid until July 20, 1979; thus, filing was not completed until the latter date.

redelivers thermally equivalent exchange volumes to Mich Wisc at specified points of redelivery.

Petitioners request that the Commission amend the April 4, 1979, order in the instant docket so as to provide for the transportation and exchange of gas from the Lee No. 1 Well in the Thorndike Area, Wheeler County, Texas, pursuant to the terms of an amendatory agreement dated June 15, 1979, between Mich Wis and Transco. Petitioners state that Mich Wisc would receive gas from Transco from this well.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before September 6, 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. 79-26562 Filed 8-24-79; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1305-7]

Section 107(d) Designations of Particulate Matter Nonattainment Areas

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The purpose of this notice is to bring to the attention of interested persons, EPA's clarification of the charts appearing in 40 CFR Part 81 presenting the nonattainment area designations for particulate matter as required under Section 107(d) of the Clean Air Act as amended.

FOR FURTHER INFORMATION CONTACT: Lanny M. Deal, Control Programs Development Division, MD-15, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541-5365.

SUPPLEMENTARY INFORMATION: In the original designations published on March 3, 1978 on page 8962 of the Federal Register, for areas which were violating both the primary and secondary national ambient air quality standards (NAAQS), only the column entitled "Does Not Meet Primary Standards," was marked rather than marking both the "Does Not Meet Primary Standards" and "Does Not Meet Secondary Standards" columns. The rationale for this approach lies with the averaging times for the NAAQS for particulate matter. There is both an annual and a 24-hour averaging time for primary standards for TSP with values of 75 $\mu g/m^3$ and 260 $\mu g/m^3$, respectively. For secondary TSP NAAQS there is a 24-hour standard of 150 $\mu g/m^3$ and an annual value of 60 $\mu g/m^3$ which is to be used as a guide in assessing whether or not the secondary 24-hour standard has been achieved. EPA used the rationale that if an area was designated as violating either of the primary standards of 75 $\mu g/m^3$ or 260 $\mu g/m^3$ for the annual and 24-hour averaging times, then the area must, of necessity, be violating the 60 $\mu g/m^3$ annual guide and/or the 150 $\mu g/m^3$ 24-hour standard. Furthermore, EPA was not aware of any areas where primary TSP standards were being violated, while secondary TSP standards were not also being violated. Consequently, in order to avoid appearing redundant, there was no need to mark the "Does Not Meet Secondary Standards" column.

Much confusion, however, has resulted from this approach. Additionally, since the original designations were published, in an effort to avoid further confusion, EPA has prepared subsequent Federal Register packages revising various designations which have included changes in TSP designations where both columns indicating violations of both the primary and secondary NAAQS have been marked for the same area. However, this has resulted in some charts indicating both primary and secondary violations for TSP NAAQS while many of the original designations remain unchanged with only the primary nonattainment column marked. This has a potential for creating further confusion over the TSP designations.

In an effort to allay this confusion, EPA will, as additional revisions to the designations are made, modify all charts to mark both columns for those areas where both primary and secondary standards are being violated so as no doubt to the status of the area can arise with regard to both the primary and secondary TSP NAAQS. Unitl this is accomplished, the areas with only the primary standard column marked will be assumed to be nonattainment for secondary standards unless specific data are provided showing otherwise.

Dates: The provisions stated in this notice are effective immediately.

Dated: August 21, 1979.

Edward F. Tuerk,

Acting Assistant Administrator for Air, Noise, and Radiation.

[FR Doc. 79-26615 Filed 8-24-79; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL COMMUNICATIONS COMMISSION

Radio Technical Commission for Marine Services; Meetings

In accordance with Public Law 92-463, "Federal Advisory Committee Act," the schedule of future Radio Technical Commission for Marine Services (RTCM) meetings is as follows:

Special Committee No. 74

"Digital Selective Calling", Notice of 4th Meeting, Tuesday, September 11 and Wednesday, September 12, 1979—9:30 a.m. (Full-day meetings) Conference Room 7200, Nassif (DOT) Building, 400 Seventh Street, S.W. (at D Street), Washington, D.C.

Agenda

September 11, 1979

1. Call to Order; Chairman's Report.
2. Administrative Matters.
3. Meeting of Ship Station Working Group and Coast Station Working Group.

September 12, 1979

1. Administrative Matters.
2. Working Group Reports.

CDR J.G. Williams, Chairman, SC-74, U.S. Coast Guard Headquarters, Washington, D.C. Phone: (202) 426-1345.

Special Committee No. 73

"Minimum Performance Standards (MPS)—Marine Omega Receiving Equipment", Notice of 9th meeting, Wednesday, September 12, 1979—4:00 p.m., 4th Annual IOA Meeting, Bahia Hotel, San Diego, CA.

Agenda

1. Call to Order; Chairman's Report.
2. Administrative Matters.
3. Review and Approval of final Revised Draft MPS Specification.

M.H. Carpenter, Co-Chairman, CDR T.P. Nolan, Co-Chairman, Maritime Institute of Technology & Graduate Studies, Linthicum Heights, Maryland 21090. Phone: (301) 636-5700.

Special Committee No. 71

"VHF Automated Radiotelephone Systems", notice of 19th meeting,

Thursday, September 13, 1979—10:00 a.m. (Full-day meeting), Conference Room 10234/36, Nassif Building, 400 Seventh Street, SW., at D Street, Washington, D.C.

Agenda

1. Call to Order.
2. Administrative Matters.
3. Discussion of future work.

John J. Renner, Chairman, SC-71, Advanced Technology Systems, Inc., 3426 N. Washington Blvd., Arlington, VA 22201. Phone: (703) 525-2664.

Special Committee No. 70

"Minimum Performance Standards (MPS)—Marine Loran-C Receiving Equipment", notice of 19th meeting, Thursday, September 13 and Friday, September 14, 1979—10:00 a.m. Texas Instruments, Semi Conductor Bldg. (Cafeteria Entrance), Conference Room 2-B—September 13, Conference Room 1-B—September 14, 13536 North Central Expressway, Dallas, Texas.

Agenda

1. Call to Order.
2. Old Business.
3. Consideration of Terms of Reference.
4. Working Group Reports.
5. Approval of Interim Test Procedure for Marine Loran-C Receiving Equipment.
6. New Business.
7. Administrative Matters.

Edward Bregstone, Test Specifications Working Group Chairman, U.S. Coast Guard Headquarters, Washington, D.C. Phone: (202) 426-1201.

Captain Alfred E. Fiore, Chairman, U.S. Merchant Marine Academy, Kings Point, New York. Phone: (516) 482-8200.

Executive Committee Meeting

Notice of September Meeting, Thursday, September 20, 1979—9:30 a.m., Conference Room 7200, Nassif (D.O.T.) Building, 400 Seventh Street, S.W., at D Street, Washington, D.C.

Agenda

1. Administrative Matters.
2. Discussion of U.S. Coast Guard Maritime Safety Requirements.
3. Report on FCC Public Coast Station N.O.I.
4. Appointment of Auditor for FY-1979.
5. Approval of Membership Contribution Schedule for FY-1980.

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. All RTCM meetings are open to the public. Written statements are preferred, but by previous arrangement, oral presentations will be permitted within time and space limitations.

Those desiring additional information concerning the above meeting(s) may contact either the designated chairman or the RTCM Secretariat (phone: (202) 632-6490).

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 79-26494 Filed 8-24-79; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for review and approval, if required, pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10423; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within *10* days after publication of this notice in the Federal Register. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Agreement No. T-3843.

Filing Party: Robert W. Goethe, Assistant Executive Director, Georgia Ports Authority, P.O. Box 2406, Savannah, Georgia 31402.

Summary: Agreement No. T-3843, between the Georgia Ports Authority (Authority) and Trans Freight Lines, Inc. (TFL) provides for the 5-year lease by the Authority to TFL of certain paved premises within Container Central at Garden City Terminal. TFL shall have the exclusive use of the leased premises to be used only for the storage and the handling of containers, including trailers and chassis used to transport containers. By Order of the Federal Maritime Commission.

Francis C. Hurney,

Secretary.

Dated: August 21, 1979.

[FR Doc. 79-26502 Filed 8-24-79; 8:45 am]

BILLING CODE 6730-01-M

[Independent Ocean Freight Forwarder License No. 608R]

Murray H. Weiss & Son, Inc., Order of Revocation

On August 10, 1979, Murray H. Weiss & Son, Inc., 1115 Main Street, Bridgeport, Connecticut 06601, voluntarily surrendered its Independent Ocean Freight Forwarder License No. 608R for revocation.

Therefore, by virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised), section 5.01(c), dated August 8, 1977;

It is ordered, that Independent Ocean Freight Forwarder License No. 608R issued to Murray H. Weiss & Son, Inc., be and is hereby revoked effective August 10, 1979, without prejudice to reapplication for a license in the future.

It is further ordered, that a copy of this Order be published in the Federal Register and served upon Murray H. Weiss & Son, Inc.

Robert G. Drew,

Director, Bureau of Certification and Licensing.

[FR Doc. 79-26438 Filed 8-24-79; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Assistant Secretary for Health

Health Services Research and Development Grants Review Committee; Establishment

Pursuant to the Federal Advisory Committee Act, Public Law 92-463 (5 U.S.C. Appendix I), the Office of the Assistant Secretary for Health announces the establishment by the Secretary, HEW, with concurrence by the General Services Administration, of the following advisory committee:

Designation: Health Services Research and Developmental Grants Review Committee.

Purpose: The Committee shall advise the Secretary and make recommendations to the Director, National Center for Health Services Research, concerning the scientific and technical merit of health services research grant applications.

Grant applications considered by this Committee fall into two general types.

One type of application involves primarily analysis and the use of economic, statistical, and other theoretical approaches to examine problems associated with the delivery of health services. The other type of application involves the design and management of both large and small scale experiments and demonstrations, and the analysis of the data that derive from these experiments and demonstrations.

Authority for this Committee will expire on July 27, 1981, unless the Secretary, HEW, with the concurrence of the General Services Administration, formally determines that continuance is in the public interest.

Dated: August 20, 1979.

Marilyn McCarroll,

Acting Executive Secretary, Office of Health Research, Statistics, and Technology.

[FR Doc. 79-26522 Filed 8-24-79; 8:45 am]

BILLING CODE 4110-85-M

Office of Education

National Advisory Council on Extension and Continuing Education; Meeting

AGENCY: National Advisory Council on Extension and Continuing Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets-forth the schedule and proposed agenda of a meeting of the National Advisory Council on Extension and Continuing Education. It also describes the functions of the Council. Notice of the meeting is required under the Federal Advisory Committee Act (5 U.S.C., Appendix 1, 10(a)(2)). This document is intended to notify the general public of their opportunity to attend the meeting.

DATE: September 19, 20 and 21, 1979.

ADDRESS: The Mills House Hotel, Meeting and Queen Streets, Charleston, South Carolina.

FOR FURTHER INFORMATION: William G. Shannon, Executive Director, National Advisory Council on Extension and Continuing Education, 425 Thirteenth Street, NW., Suite 529, Washington, D.C. 20004, Telephone: (202) 376-8888.

The National Advisory Council on Extension and Continuing Education is authorized under Public Law 89-329. The Council is required to report annually to the President, the Congress, the Secretary of HEW, and the Commissioner of Education in the preparation of general regulations and with respect to policy matters arising in the administration of Part A of Title I (HEA) including policies and procedures governing the approval of State plans under Section 105; and to advise the Assistant Secretary of HEW on Part B (Lifelong Learning activities) of the title. The Council is required to review the administration and effectiveness of all Federally supported extension and continuing education programs.

The meetings of the Council are open to the public. However, those who are interested in attending any meeting are asked to call the Council's office beforehand. Limited seats will be assigned on a first-come basis.

An orientation for members newly appointed to the Council will be conducted on September 19, 1979, from 2:00 p.m. to 4:00 p.m. The Council's meeting will begin on September 19 at 7:00 p.m. recessing at 9:00 p.m. It will resume of September 20 at 9:00 a.m., recessing at 5:00 p.m., and continue on September 21 at 9:00 a.m., adjourning at 12:30 p.m.

The agenda for the meeting will include the following items:

1. Report of the Chairperson
2. Report of the Executive Director
3. Approval of Minutes of Previous Council Meeting
4. Budget Review
5. Review of legislative proposals and Council's position regarding reauthorization of Title I, HEA
6. Establishment of the structure and responsibilities of Council subcommittees
7. Review of the final draft of the Council's Special Report to the President and Congress
8. Report on programmatic and administrative issues regarding the Title I program in HEW Region IV.

All records of the Council proceedings are available for public inspection at the Council's staff office, located in Suite 529, 425 Thirteenth Street, NW., Washington, D.C.

Dated: August 20, 1979.

William G. Shannon,

Executive Director.

[FR Doc. 79-26553 Filed 8-24-79; 8:45 am]

BILLING CODE 4110-02-M

Office of Human Development Services

Statement of Authority of Organization, Functions, and Delegations

This notice amends Part D of the statement of reorganization, functions, and delegations of authority of the Department of Health, Education, and Welfare, Office of Human Development Service (HDS), published in Volume 43, Number 147, of the Federal Register on July 31, 1978, (pp. 33327-33347). The amendments are as follows:

1. The Office of the Assistant Secretary for Human Development Services. In the functional statement for the Office of the Assistant Secretary for Human Development services, changes in the statement of mission (DA.00) organization (DA.10) and functions (DA.20) have been made to reflect: (1) Movement of the Division of Equal Opportunity and Civil Rights from the Office of Policy and Management Control to the Office of the Assistant Secretary and (2) redesignation as the Office of Equal Opportunity and Civil Rights. The amended statement for the Office of the Assistant Secretary for Human Development service reads as follows:

DA.00 Mission. The Office of the Assistant Secretary for Human Development Services (HDS) advises the Secretary and Under Secretary on, and provides leadership and direction to, human services programs for such groups as the elderly, children, youth, families, Native Americans, persons living in rural areas, handicapped persons, and public assistance recipients. Recommends to the Secretary actions and strategies which improve coordination of human services programs among HEW programs, other Federal agencies, State and local government, and private sector organizations. Directs, coordinates, manages, and provides leadership in planning and developing HDS programs; supervises use of research and impact evaluation funds; and promotes the development of simplified and coherent human services delivery systems. Directs equal employment opportunity and civil rights policies and programs for HDS. Is responsible for directing coordinated public affairs, legislative, and regional and intergovernmental relations activities.

DA.10 Organization. The Office of Human Development Services is headed by the Assistant Secretary for Human Development Services (ASHDS), who reports directly to the Secretary, and consists of:

Immediate Office of the Assistant Secretary for Human Development Services (DA)
Office of Regional and Intergovernmental Relations (DAR)
Office of Legislative Affairs (DAL)
Office of Public Affairs (DAP)
Office of Equal Opportunity and Civil Rights (DAE)

DA.20 Functions. A. The Immediate Office of the Assistant Secretary for Human Development Services (DA).

provides executive direction, leadership and guidance to all HDS components, including the Regional Offices of HDS. ASHDS serves on the National Coordinating Committee for the Work Incentive Program (WIN), which establishes uniform reporting and similar requirements for the administration of WIN and establishes and clarifies policy under these regulations. Serves as the designee for the Secretary of HEW on the Architectural and Transportation Barrier Compliance Board. Serves as the Director of Equal Employment Opportunity for HDS. The Deputy Assistant Secretary for Human Development Services (DASHDS) acts as the Assistant Secretary in the absence of the ASHDS. In addition to the Immediate Office, there are the following staffs:

1. Office of Regional and Intergovernmental Relations (DAR) serves as principal advisor to ASHDS on intergovernmental matters and regional concerns; provides HDS liaison with State and local governments, public interest groups and other voluntary organizations; develops, in conjunction with the Offices of Planning, Research, and Evaluation, mechanisms for outside groups to participate in HDS planning, policy, and program development; assists in the formulation of policies on the delivery of services and advises on shaping assistance to meet specific needs. Provides leadership, management oversight, coordination, evaluation, and administrative direction to the Regional Administrators. Works with OPMC to develop, implement and review Regional Office performance standards; assists the ASHDS and DASHDS in identifying and resolving problems involving Regional Operations; provides the staff work necessary for field visits to HDS Regional Offices by personnel within and outside HEW, including pre-planning and follow-up work for the Assistant Secretary's travel. Serves as HDS liaison with the Deputy Under Secretary for Intergovernmental Affairs. Represents within the Department the concerns of veterans, focusing attention on those with special needs: the handicapped, minorities, under-educated, unemployed, untrained, and those ineligible for benefits because of type of discharge. Is the focus within the Department for inter-agency activities and communication concerning veterans; and represents the Department on inter-departmental committees and task forces concerned with removal of barriers preventing veterans from full participation in society. Reviews programs and policies within the Department that affect veterans; develops and presents strategies, proposals, and plans for expanding services to veterans within HEW, placing emphasis on increased veteran participation in ongoing programs of the Department. Maintains liaison for the Department with veterans' organizations in the public and private sector.

2. Office of Legislative Affairs (DAL) serves as principal contact point for Congressional or legislative issues affecting HDS. Counsels and advises ASHDS and program commissioners on various aspects of Congressional relations and legislation. Develops legislative guidance for ASHDS approval and monitors implementation. Coordinates information and technical assistance provided to Congressional committees, members of Congress and their staffs. Assists in the development of legislative proposals and programs for HDS. Prepares or coordinates the preparation of analyses on legislation, position papers, and reports of proposed legislation; assists in the preparation of testimony and backup material on HDS legislative proposals before Congress; monitors hearings and other Congressional activities which affect HDS; coordinates constituent group concerns about legislation which affects HDS programs. Keeps the calendar of expiring legislation and key legislative activities, such as hearings. Serves as HDS liaison with the Office of the Assistant Secretary for Legislation and coordinates Congressional relations activities with that office.

3. Office of Public Affairs (DAP) plans and implements public information activities and projects of national scope which involve the ASHDS and DASHDS. Develops and implements a public affairs strategy for HDS. Exercises review and approval responsibility over annual public information work plans of HDS components and other aspects of public affairs, as mandated by Office of the Assistant Secretary for Public Affairs in its Public Affairs Manual; serves as HDS liaison with OASPA; oversees and evaluates HDS' program administration public information activities and products; plans and implements a field liaison program with State public information officers of programs related to HDS. Provides centralized printing management and graphics design services to HDS, and exercises printing authority to deal directly with contractors and, through the Government Printing Office, with printers; represents HDS in activities involving major print and broadcast media; provides centralized publication and audio-visual distribution services for all HDS agencies. Serves as the Freedom of Information office for HDS.

4. Office of Equal Opportunity and Civil Rights (DAE) reports directly to ASHDS as Director of Equal Opportunity for HDS; provides direction and leadership on equal employment opportunity and civil rights policies and programs for the HDS; plans, develops, and evaluates programs and procedures designed to eliminate discrimination in employment, training, incentive awards, promotion, and career opportunities. Assures non-discriminatory implementation and operation of Federally supported HDS programs and projects; assures the prompt and fair adjudication of discrimination complaints and provides staff support to the ASHDS in processing and preparing final decisions on EEO complaints. Develops, implements and monitors the HDS affirmative action plan. Develops and implements evaluations designed to assess overall EEO program progress. Maintains liaison with various non-Federal organizations and State and local governments concerned with equal opportunity and civil rights; represents minorities, handicapped individuals, and women by identifying particular problems and recommending solutions related to their employment, career development, and upward mobility.

Implements the Disadvantaged Enterprise program as mandated under section 8(a) of the Small Business Act; serves as focal point for 8(a) contracts by advising minority enterprises of protential opportunities; participates in procurement planning to ensure that 8(a) affirmative action objectives are met; and keeps key program and procurement officials apprised of the 8(a) program through conferences, seminars and presentations. Develops, in conjunction with the HEW Office for Civil Rights (OCR), a civil rights operating plan that delineates civil rights management responsibilities and monitoring activities to assure civil rights compliance by all recipients of HDS funds. Develops civil rights procedures to be used to implement Departmental civil rights policies in HDS program reviews and audits to assure that benefits and services are delivered equitably to eligible minority, women, and handicapped persons. Serves as HDS liaison with the HEW Office for Civil Rights, the OS EEO Office, and ASPER on related responsibilities.

2. The Office of Policy and Management Control: In the functional statement for the Office of Policy and Management Control, changes in the

statement of mission (DU.00), organization (DU.10), and function (DU.20) have been made to reflect the movement of all Equal Opportunity and Civil Rights functions to the Office of the Assistant Secretary and to clarify the roles of the remaining three divisions. The amended statement for the Office of Policy and Management Control reads as follows:

DU.00 Mission. The Office of Policy and Management Control (OPMC) formulates HDS policy which provides direction in establishing agency goals and objectives of an operational or administrative nature. Serves as the focal point for the HDS policy system and provides leadership to the agency in initiating, conceptualizing and overseeing the implementation of HDS-wide policy. Develops HDS operational strategies, through consultation with HDS Executive Staff, HDS Regional Administrators, other elements in the Department and outside groups. Provides guidance to the ASHDS and HDS components in defining policy coordination and management problems and establishing directions to resolve critical issues. Is responsible for executive secretariat, operational planning, regulations development, and management analysis functions.

DU.10 Organization. The Office of Policy and Management Control is headed by a Director, who reports directly to the Assistant Secretary for Human Development Services, and consists of:

Office of the Director (DU)
Division of Management Analysis and Review (DUM)
Executive Secretariat (DUS)
Division of Policy Coordination (DUP)

DU.20 Functions. A. Office of the Director (DU) provides executive leadership to OPMC. Serves as the focal point for the HDS policy system, develops operational strategies for implementing HDS policy, provides guidance to the agency in defining policy coordination and management problems and focuses top level management attention on resolving these issues. Oversees the responsibility of the 3 operating divisions.

B. Division of Management Analysis and Review (DUM) plans, organizes, and conducts surveys and management reviews of processes or functions in HDS program and staff components. Coordinates the development of standards for and conducts Regional Office/Central Office performance reviews. Directs special management systems projects of concern to more than one HDS component (e.g., State plan simplification, development of policy issuance system), establishes management systems to implement recommendations of such studies. Serves as HDS principal staff for examining organization and management problems of particular interest to the Assistant Secretary. Performs analyses of the overall organizational structure and functions of HDS and the elements which comprise HDS. Coordinates preparation of or prepares organizations proposals requiring Secretarial approval. Serves as HDS committee management office. Maintains official organization files for HDS, including organization charts, and disseminates these materials as appropriate throughtout HDS. Prepares formal delegations of authority of the ASHDS.

C. Executive Secretariat (DUS) ensures that issues requiring the atttention of the ASHDS, DASHDS, or HDS Executive Staff are developed on a timely and coordinated basis. Facilities decisions on matters requiring immediate action including White House and Secretariat assignments. Serves as HDS liaison to HEW Executive Secretariat. Manages the Secretary's major initiatives tracking system (MITS) with HDS. Aids in formulation of and tracking the operational objectives developed by each HDS unit for the Assistant Secretary. Receives, assesses, and controls incoming correspondence and assignments to the appropriate HDS unit for response. Provides assistance and advice to HDS staff on the development of responses to correspondence and on the content and style of special assignments. Track development of periodic reports and facilities Departmental clearance. Exercises quality control for all major written products for the ASHDS and DASHDS signature.

D. Division of Policy Coordination (DUP) designs, implements, and coordinates a uniform policy development, regulatory, and issuance system for HDS and acts as HDS principal liaison for these functions. Implements special HDS and Departmental regulatory reform initiatives; provides substantive HDS input at Departmental meetings on regulatory matters, staffs the Secretary's regulations review panels and represents HDS on all policy and regulatory matters. Coordinates with the General Counsel on all legal matters. Coordinates Privacy Act functions for HDS. Develops and maintains close liasion working relationships with other primary components of DHEW such as Health, SSA, HCFA, as well as other Federal agencies such as Department of Labor, Agriculture, INS, and BIA in order to coordinate activities pertaining to functional duties and to discuss the legal and technical aspects of OHDS programs. Proposes and analyzes regulations and policy issuances of a binding nature in the area of social service programs, and clears all DHEW regulations.

Provides analysis of HDS statutory authorities to identify policy issues and alternatives for the Assistant Secretary to guide the substantive development of regulations and other policy documents. Prepares guidance that outlines the policy implications of HDS legislative and regulatory authorities and documents for Assistant Secretary issuance. Negotiates and resolves policy and regulatory issues between HDS administrations and other HEW POC's and OS. Performs analyses of legal decisions, opinions, rulings, and other legal instruments affecting HDS programs and policies. Designs and provides training and technical assistance to program administrations, regional components, and HDS constituencies. Assists program administrations in establishing a regulations development capacity. Controls the HDS calendar of regulatory activities; coordinates with fiscal, administrative and legislative cycles for HDS.

Dated: August 18, 1979.

Frederick M. Bohen,

Assistant Secretary for Management and Budget.

[FR Doc. 79-26523 Filed 8-24-79; 8:45 am]
BILLING CODE 4110-92-M

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health, Education, and Welfare (40 FR 22859, May 27, 1975, as amended most recently at 44 FR 7234, February 6, 1979), is amended to reflect: (1) The modification of the functions of the Office for Medical Applications of Research; (2) the modification of the functions of the Division of Library Operations in the National Library of Medicine; and the modification of the functions of the Division of Extramural Programs in the National Library of Medicine. These changes will reflect current organizational references and bring into conformity the functions of

the respective organizations with current operations.

Sec. HN-B, Organization and Functions, is amended as follows:

(1) Under the heading *Office for Medical Applications of Research (HNA9),* make the following changes: Amend item (3) by deleting "PHS Office of Health Technology (OHT)" and substituting "National Center for Health Care Technology (NCHCT)." Amend item (4) by deleting "OHT" after "NIH and the" and substituting "NCHCT."

(2) Under the heading *National Library of Medicine (HNL),* make the following changes:

Division of Library Operations (HNL2). Delete item (5) and substitute the following: "(5) plans and administers a national on-line biomedical information and retrieval system (MEDLINE)."

Division of Extramural Programs (HNL5). Insert item (4) as follows: "; (4) provides administrative and programmatic coordination for the Regional Medical Library Program in meeting the Library's objectives relative to the development and maintenance of a national network designed to provide biomedical information to health professionals."

Dated: August 18, 1979.

Frederick M. Bohen,

Assistant Secretary for Management and Budget.

[FR Doc. 79-26524 Filed 8-24-79; 8:45 am]

BILLING CODE 4110-08-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-79-943]

Privacy Act of 1974; Proposed Amendments to Systems of Records

AGENCY: Department of Housing and Urban Development.

ACTION: Notice of proposed amendments to existing systems of records.

SUMMARY: The Department is giving notice that it intends to amend the routine uses of two systems of records.

EFFECTIVE DATE: The amendments shall become effective without further notice on September 26, 1979, unless comments are received on or before September 26, 1979, which would result in in a contrary determination.

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

FOR FURTHER INFORMATION CONTACT: Mr. Harold Rosenthal, Departmental Privacy Act Officer, telephone 202-755-5192. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department is adding real estate licensing groups and local private fair housing groups and agencies to the routine uses section of the Equal Opportunity Housing Complaints (HUD/DEPT-15) system of records to enable the Department to extend the enforcement of Title VIII of the Civil Rights Act of 1968.

To better clarify the Specific routine uses for the record system entitled Rehabilitation Grants and Loan Files (HUD/DEPT-29), the following changes are made:

1. Dealers, contractors and tax assessors are deleted.

2. Financial institutions replaces lenders.

3. Federal National Mortgage Association, loan servicers, credit reporting agencies, employers and retail consumer credit grantors are added.

The routine uses paragraph for Equal Opportunity Housing Complaints is to read:

HUD/DEPT-15

SYSTEM NAME:

Equal Housing Opportunity Complaints

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Routine Uses paragraphs in prefatory statement. Other routine uses: to state and local government EO-concerned agencies, the U.S. Department of Justice (including the FBI), the U.S. Department of Labor (including the Office of Federal Contract Compliance), U.S. Courts, the Veterans Administration, the Farmers' Home Administration, complainants, respondents and attorneys—for investigation, preparing litigation, and monitoring compliance; to real estate licensing groups and local private fair housing enforcement groups and agencies operating under cooperative agreements with HUD—to carry out for HUD investigations and studies of alleged acts of discrimination covered under Title VIII of the Civil Rights Act of 1968.

* * * * *

The routine uses paragraph for Rehabilitation Grants and Loans Files is to read:

HUD/DEPT-29

SYSTEM NAME:

Rehabilitation Grants and Loan Files

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

See Routine Uses paragraphs in prefatory statement. Other routine uses: to local agencies—for monitoring and carrying out the program; to financial institutions—for providing supplemental rehabilitation funds; to credit reporting agencies, employers, financial institutions, and retail consumer credit grantors—for verification of employment and financial status; and to Federal National Mortgage Association and loan servicers—for loan servicing.

* * * * *

Authority: 5 U.S.C. 552a; 88 Stat. 1896; Sec. 7(d) Department of HUD Act (42 U.S.C. 3535(d))

Issued at Washington, D.C., August 13, 1979.

Vincent J. Hearing,

Acting Assistant Secretary for Administration.

[FR Doc. 79-26512 Filed 8-24-79; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Outer Continental Shelf Western and Central Gulf of Mexico; Proposed Oil and Gas Lease Sale No. 58A; Correction

In FR DOC. 79-25314 appearing at page 48356 in the issue of Friday, August 17, 1979, make the following changes:

(1) On page 48356, third column, under heading "2. Filing of Bids.", last line, "FR 1979" should be corrected to read "44FR——1979."

(2) On page 48373, second column, under "Stipulation No. 5", land descriptions,
"NW¼SW¼NW¼
S1½SW¼NW¼"
should be corrected to read
"NW¼SW¼NW¼
S½SW¼NW¼."

(3) On page 48373, third column, under "Stipulation No. 5", land descriptions, "N½NW¼W¼SE¼NW¼NW¼" should be corrected to read "N½NW¼NW¼SE¼NW¼NW¼".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

DEPARTMENT OF STATE

Environmental Impact Statement—Caribou Convention; Scoping Meeting

ACTION: Notice of Public Meeting.

SUMMARY: The Departments announce that they will hold a public meeting on September 11, 1979, to discuss the preparation of an environmental impact statement (EIS) under the provisions of the National Environmental Policy Act on the proposed caribou convention. The purpose of this meeting is to determine the scope of issues to be addressed and to identify significant issues to be analyzed in depth in preparing the EIS.

DATES: The public meeting will be held September 11, 1979, from 9:00 a.m. to 5:00 p.m. at the Department of the Interior, Room 7000A, 18th and C Streets NW., Washington, DC 20240.

SUPPLEMENTARY INFORMATION: Caribou herds that migrate between Alaska and Canada have substantially declined in numbers in the past quarter century. Joint management of this resource by the United States and Canada may be essential to insure its conservation, since these caribou migrate thousands of miles and frequently cross the international boundary. The Secretary of the Interior and the Canadian Environment Minister believe, after consulting respectively with the Departments of State and External Affairs, that such joint management can best be implemented by an international agreement between the two nations.

The United States Fish and Wildlife Service of the Department of the Interior and the Canadian Wildlife Service have held a number of preliminary meetings to determine what matters should be included in the proposed agreement. Both Services have also consulted initially with local governments, native groups, and other interested organizations to determine their views on this question. The Department of the Interior has also requested of the Department of State authority to formally negotiate an international agreement for migratory caribou.

The two Departments believe that any agreement should establish a comprehensive management scheme to insure the conservation of caribou herds that migrate between the two nations. Possible alternatives, however, include more narrow managment programs or no international agreement. The Departments will prepare an EIS and will consider it in formulating their positions on the proposed agreement. The Departments request that all interested persons or organizations participate in the scoping process so the final EIS will focus on significant issues and be a more valuable decision-making tool.

FOR FURTHER INFORMATION CONTACT: Charles Kaiser, Office of the Solicitor, Department of the Interior, Room 6549, 18th and C Streets NW., Washington, DC 20240 (202–343–2172) or William H. Mansfield, Office of Environment and Health, Department of State, Room 7820, Washington, DC 20520 (202–632–9266).

Dated: August 22, 1979.

Lynn A. Greenwalt,

Director, United States Fish and Wildlife Service, Department of the Interior.

William Alston Hayne,

Deputy Assistant Secretary, Environment, Health, and Natural Resources, Department of State.

[FR Doc. 79-26594 Filed 8-24-79; 8:45 am]

BILLING CODE 4310-55-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Reliability and Probabilistic Assessment; Meeting

The ACRS Subcommittee on Reliability and Probabilistic Assessment will hold an open meeting on September 11 and 12, 1979, in Century IV Room. Quality Inn, Airport, 5249 West Century Boulevard, Los Angles CA 90045 to discuss the concept of establishing quantitative safety goals for nuclear power reactors, the development of a status report concerning nuclear power plant component failure rates, and a review of the NRC Probabilistic Analysis Staff's research program to develop information for the ACRS Annual Report to Congress on the NRC Safety Research Program. Notice of this meeting was published August 23, 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, recording 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 a follows:

Tuesday, September 11 and Wednesday, September 12, 1979, 8:30 a.m. until the conclusion of business each day.

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 recommandations 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, 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.

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., e.s.t.

Dated August 20, 1979.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc 79-26394 Filed 8-24-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-361A and 50-362A]

Southern California Edison Company, et al.; Receipt of Additional Antitrust Information: Time for Submission of Views on Antitrust Matters

Southern California Edison Company, pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, has filed information requested by the Attorney General for Antitrust Review as required by 10 CFR Part 50, Appendix L. This information concerns two proposed additional ownership participants, the City of Riverside and the City of Anaheim, for the San Onofre Nuclear Generating Station, Units 2 and 3. The current holders of the construction permits are Southern California Edison Company and San Diego Gas and Electric Company.

The information was filed in connection with the application by Southern California Edison Company and San Diego Gas and Electric Company for construction permits and operating licenses for two pressurized water reactors. Construction was

authorized on October 18, 1973 at the San Onofre site located in San Diego County, California.

The original application was dated May 28, 1970, and the Notice of Receipt of Application for Construction Permits and Facility Licenses and Availability of Applicant's Environmental Report; Time for Submission of Views on Antitrust Matters was published in the Federal Register on February 20, 1971 (36 FR 3278). The Notice of Receipt of Application for Facility Operating Licenses; Notice of Availability of Environmental Report; and the Notice of Consideration of Issuance of Facility Operating Licenses and Notice of Opportunity for Hearing was published in the Federal Register on April 7, 1977 (42 FR 18460). Subsequently, the Notice of Hearing was published in the Federal Register on October 26, 1977 (42 FR 57575).

A copy of the above documents are available for public examination and copying for a fee at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the Mission Viejo Branch Library, 24851 Chrisanta Drive, Mission Viejo, California.

Any person who wishes to have his views on the antitrust matters with respect to the City of Riverside and the City of Anaheim presented to the Attorney General for consideration or who desires additional information regarding the matters covered by this notice, should submit such views or requests for additional information to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Chief, Antitrust and Indemnity Group, Office of Nuclear Reactor Regulation, on or before October 26, 1979.

Dated at Bethesda, Maryland, this 13th day of August, 1979.

For the Nuclear Regulatory Commission,

Robert L. Baer,

Chief, Light Water Reactors Branch No. 2 Division of Project Management.

[FR Doc. 79-26185 Filed 8-24-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-409, (SFP License Amendment)]

Dairyland Power Cooperative, (La Crosse Boiling Water Reactor); Prehearing Conference and Evidentiary Hearing

August 21, 1979.

Notice is hereby given that a prehearing conference authorized by 10 CFR 2.752 will be held on September 20 and 21, 1979, at Room 303, Cartwright Center, of the University of Wisconsin at La Crosse, La Crosse, Wisconsin 54601. The conference will commence at 1 p.m. on Thursday, September 20 and continue at 9 a.m. on Friday, September 21, 1979. It will adjourn no later than 3 p.m. on September 21.

The conference is being convened to discuss the motions for summary disposition which have been filed by the Dairyland Power Cooperative (Applicant) and by the NRC Staff in this proceeding, as well as other matters specified in 10 CFR 2.752(a). (At the conference, the parties may also be asked questions related to the environmental contentions in the ongoing operating license proceeding.) Prior to the conference, on the morning of September 20, the Board wishes to tour the facility, and particularly the spent fuel pool. The Board requests the Applicant to make arrangements for the Board and parties to participate in such a tour.

Notice is also given that, to the extent that the foregoing motions for summary disposition are not granted, the evidentiary hearing in this proceeding will commence at 9:30 a.m. on Tuesday, October 2, 1979. To the extent necessary, further sessions will be held on October 3–5, 1979, beginning at 9 a.m. The hearing will be held at Hall of the Presidents, Cartwright Center, of the University of Wisconsin at La Crosse, La Crosse, Wisconsin 54601. The hearing will be conducted by an Atomic Safety and Licensing Board consisting of Dr. George C. Anderson, Mr. Ralph S. Decker, and Mr. Charles Bechhoefer, Chairman.

A Notice of Opportunity for Hearing in this proceeding was published on May 25, 1978 (43 FR 22462). A petition for leave to intervene filed by George R. Nygaard, Mark Burmaster, and Anne K. Morse on behalf of the Coulee Region Energy Coalition was subsequently granted and a Notice of Hearing was published on August 4, 1978 (43 FR 34565).

The Board intends to render its decision on the summary disposition motions no later than the conclusion of the prehearing conference. Direct testimony for those issues upon which we rule that summary disposition is not appropriate will be required to be filed on the following schedule:

1. For issues, if any, upon which a ruling not to dismiss has been made by September 12: testimony to be filed by Monday, September 17, 1979.

2. For issues, if any, as to which a determination not to dismiss is made as late as the conclusion of the prehearing conference: testimony to be filed by Monday, September 24, 1979.

In the case of the Applicant and Staff, copies of direct testimony for all three Board members are requested to be hand-delivered to the office of the Chairman in Bethesda, MD. (Additional copies should also be served on the Board members through normal service channels.)

Any person who has not been admitted as a party to this proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.715(a). A person making a limited appearance may make an oral or written statement on the record. He or she does not become a party but may state a position and raise questions which he or she would like to have answered, to the extent that the questions are within the purview of matters which may be considered in a license amendment proceeding of this type. Limited appearances will be permitted at both the prehearing conference and, if one is held, the evidentiary hearing, within such limits and on such conditions as may be fixed by the Board. At the prehearing conference, such statements will be heard on September 21, 1979, after completion of the formal business of the conference. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, ATTN: Docketing and Service Branch.

Dated at Bethesda, Maryland, this 21st day of August, 1979.

For the Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman.

[FR Doc. 79-26342 Filed 8-24-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. STN 50-495]

Stone & Webster Engineering Corp. Reference Safety Analysis Report for SWESSAR-PI Balance-of-Plant Standard Design and its Relationship to the Resar-41 Standard Design; Notice of Issuance of Amendment to Preliminary Design Approval

Notice is hereby given that the staff of the Nuclear Regulatory Commission has issued Amendment No. 4 to Preliminary Design Approval No. PDA-4, dated August 18, 1979, for the reference system design of a balance-of-plant portion of a pressurized water reactor nuclear power plant utilizing the Westinghouse RESAR-41 nuclear steam supply system design, and as described in the application by Stone & Webster Engineering Corporation (SWESSAR-PI). Preliminary Design Approval No.

PDA–4 was issued by the staff of the Nuclear Regulatory Commission on May 5, 1976.

The amendment extends the expiration date for Preliminary Design Approval No. PDA–4 from August 18, 1979 to May 5, 1981. This change was made as a result of the Nuclear Regulatory Commission's August 1978 policy statement on standardization of nuclear power plants which provided for an extension to five years of the effective terms for preliminary design approvals for reference system designs which previously were set to terminate three years after issuance.

The Nuclear Regulatory Commission's August 1978 policy statement identified certain matters that PDA holders would be required to address prior to the granting of PDA extensions. These matters were identified in an NRC staff letter to the Stone & Webster Engineering Corporation, R. Boyd to W. Kennedy, dated January 24, 1979. By letters dated July 16, 1979 and August 17, 1979, W. Kennedy to R. Boyd, the Stone & Webster Engineering Corporation submitted Amendments 40 and 41, respectively, to the SWESSAR–PI application, which addressed each of these matters. The NRC staff has reviewed Amendments 40 and 41 for completeness and has concluded that the Stone & Webster Engineering Corporation has addressed each of these matters. The NRC staff considers this to be an acceptable basis for extending PDA–4 for two additional years. If the NRC staff is informed by a utility-applicant that it intends to reference the SWESSAR–PI/RESAR–41 design after August 18, 1979, it will then perform a detailed review of Amendments 40 and 41 to assure that each of the identified matters has been acceptably resolved for the SWESSAR–PI/RESAR–41 design.

The NRC staff has implemented this procedure for extending PDA's in consideration of the high degree of confidence it places in reference system designs for which PDA's have been issued. This procedure permits the detailed review of the identified matters to be deferred on these designs until a utility-applicant requirement for that review is identified.

Amendment No. 4 to PDA–4 is effective as of its date of issuance and shall expire on May 18, 1981, unless earlier superseded by issuance of final design approval for the SWESSAR–PI/RESAR–41 design, or unless extended by the NRC staff. The expiration of PDA–4, as amended, should not affect use of the SWESSAR–PI/RESAR–41 design for reference in any construction permit application docketed prior to such date.

A copy of Preliminary Design Approval No. PDA–4, Amendment No. 4 dated August 18, 1979 is available for public inspection at the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. 20555.

Dated at Bethesda, Maryland, this 18th day of August 1979.

For the Nuclear Regulatory Commission.

C. J. Heltemes, Jr.,

Chief, Standardization Branch Division of Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 79-26544 Filed 8-24-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. STN 50-495]

Stone & Webster Engineering Corp. Reference Safety Analysis Report for SWESSAR-P1 Balance-of-Plant Standard Design and its Relationship to the CESSAR Standard Design; Notice of Issuance of Amendment to Preliminary Design Approval

Notice is hereby given that the staff of the Nuclear Regulatory Commission has issued Amendment No. 2 to Preliminary Design Approval No. PDA–6, dated August 18, 1979, for the reference system design of a balance-of-power portion of a pressurized water reactor nuclear power plant utilizing the Combustion Engineering CESSAR nuclear steam supply system design, and as described in the application by Stone & Webster Engineering Corporation (SWESSAR–P1). Preliminary Design Approval No. PDA–6 was issued by the staff of the Nuclear Regulatory Commission on August 18, 1976.

The amendment extends the expiration date for Preliminary Design Approval No. PDA–6 from August 18, 1979 to August 18, 1981. This change was made as a result of the Nuclear Regulatory Commission's August 1978 policy statement on standardization of nuclear power plants which provided for an extension to five years of the effective terms for preliminary design approvals for reference system designs which previously were set to terminate three years after issuance.

The Nuclear Regulatory Commission's August 1978 policy statement identified certain matters that PDA holders would be required to address prior to the granting of PDA extensions. These matters were identified in an NRC staff letter to the Stone & Webster Engineering Corporation, R. Boyd to W. Kennedy, dated January 24, 1979. By letters dated July 16, 1979 and August 17, 1979, W. Kennedy to R. Boyd, the Stone & Webster Engineering Corporation submitted Amendments 40 and 41, respectively, to the SWESSAR–P1 application, which addressed each of these matters. The NRC staff has reviewed Amendments 40 and 41 for completeness and has concluded that the Stone & Webster Engineering Corporation has addressed each of these matters. The NRC staff considers this to be an acceptable basis for extending PDA–6 for two additional years. If the NRC staff is informed by a utility-applicant that it intends to reference the SWESSAR–P1/CESSAR design after August 18, 1979, it will then perform a detailed review of Amendments 40 and 41 to assure that each of the identified matters has been acceptably resolved for the SWESSAR–P1/CESSAR design.

The NRC staff has implemented this procedure for extending PDA's, in consideration of the high degree of confidence it places in reference system designs for which PDA's have been issued. This procedure permits the detailed review of the identified matters to be deferred on these designs until a utility-applicant requirement for that review is identified.

Amendment No. 2 to PDA–6 is effective as of its date of issuance and shall expire on August 18, 1981, unless earlier superseded by issuance of a final design approval for the SWESSAR–P1/CESSAR design, or unless extended by the NRC staff. The expiration of PDA–6, as amended, should not affect use of the SWESSAR–P1/CESSAR design for reference in any construction permit application docketed prior to such date.

A copy of Preliminary Design Approval No. PDA–6, Amendment No. 2 dated August 18, 1979 is available for public inspection at the Commission's Public Document Room at 1717 H Street, NW., Washington, D.C. 20555.

Dated at Bethesda, Maryland, this 18th day of August 1979.

For the Nuclear Regulatory Commission.

C. J. Heltemes, Jr.,

Chief, Standardization Branch, Division of Project Management, Office of Nuclear Reactor Regulation.

[FR Doc 79-26543 Filed 8-24-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-338]

Virginia Electric and Power Co.; Notice of Issuance of Amendment to Facility Operating License and Negative Declaration

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 14 to Facility Operating License No. NPF–4, issued to the Virginia Electric and Power Company, which revised Technical Specifications for operation of the North Anna Power Station, Unit No. 1 (the

facility) located in Louisa County, Virginia. The amendment is effective as of its date of issuance.

The amendment revises the provisions in the Technical Specifications to permit and increase in fuel storage capacity from 400 to 966 fuel assemblies in the spent fuel pool of the North Anna Power Station, Units No. 1 and No. 2. The amendment revises design features and associated operating limits for the storage pool, as necessary, to accommodate the increased storage capacity, in accordance with the licensee's application for amendment, dated May 1, 1978. the Technical Specifications issued with Facility Operating License NPF–4 for the North Anna Power Station, Unit No. 1 will also be used for the North Anna Power Station, Unit No. 2 when the latter is operating.

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 regulations. The Commission has made appropriate findings as required by the Act and the Commission's 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 this action was published in the Federal Register on May 22, 1978 (43 FR 21957). A contested licensing proceeding ensued. On August 6, 1979 the Atomic Safety and Licensing Board issued *Board Decisions* granting the licensee's motion for summary disposition, denying the Intervenors' motion to amend petition to intervene and cancelling the prehearing conference and hearing in the proceeding.

The Commission has prepared an environmental impact appraisal relative to the instant amendment and has concluded that an environmental impact statement for this particular action is not warranted because there will be no 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, dated April 1973, and in the Addendum to the Final Environmental Statement, dated November 1976, or evaluated in the environmental impact appraisal related to this action. Accordingly, the Commission has determined that a negative declaration is appropriate pursuant to 10 CFR 51.7.

For further details with respect to this action, see (1) the application for amendment, dated May 1, 1978, (2) Amendment No. 14 to License No. NPF–4, (3) the Commission's related Safety Evaluation, dated January 29, 1979, and (4) the Commission's Environmental Impact Appraisal dated April 2, 1979. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C., at the Board of Supervisor's Office, Louisa County Courthouse, Louisa, Virginia, 23093, and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia, 22901. A copy of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington D.C., 20555, Attention: Director, Division of Project Management, Office of Nuclear Reactor Regulation.

Dated at Bethesda, Maryland, this 17th day of August 1979.

For the Nuclear Regulatory Commission.

Olan D. Parr,

Chief, Light Water Reactors, Branch #3, Division of Project Management.

[FR Doc. 79-26545 Filed 8-24-79; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Agency Forms Under Review

Background

August 22, 1979.

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Federal Reports Act (44 U.S.C. Chapter 35). Departments and agencies use 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, extensions, or reinstatements. 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 of 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 that 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 prompty, 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 predicatable 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 Officer—Richard J. Schrimper—447–6201

New Forms

Food and Nutrition Service
Integrated Quality Review Schedule
On occasion
Food Stamp participants, applicants & State agencies, 27,000 responses, 211,200 hours
Charles A. Filett, 395–5080

Revisions

Economics, Statistics, and Cooperatives Service

*Evaulation of Automated Cotton Fiber Test Line Results in Marketing
Annually
Textile mills, 378 responses, 126 hours
Charles A. Felett, 395–5080

DEPARTMENT OF ENERGY

Agency Clearance Office—John Gross—252–5214

New Forms

Schedule (E) Alternative Sites for Powerplants
ERA–321
Single time
Powerplants, 47 responses, 94 hours
Jefferson B. Hill, 395–5867

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Agency Clearance Officer—Peter Gness—245–7488

New Forms

Alcohol, Drug Abuse and Mental Health Adminstration
Survey of Facilities and Programs for Mentally Disordered Offenders
Single time
State & local mental health & correc. agen. officials
Off. of Federal Statistical Policy & Standard, 673–7974
Health Care Financing Administration (Medicaid)
Integrated Quality Control Review Worksheet
HCFA–316
Semi-annually
Title XIX cases, 14,172 responses, 150,223 hours
Richard Eisinger, 395–3214
Health Care Financing Administration (Medicaid)
*Installation and Operation for Medicaid Management Information system
HCFA–140
Quarterly
States with certified MMIS, 120 responses, 60 hours
Richard Eisinger, 395–3214
Office of the Secretary
*Project-by-Project Cost-Sharing Agreement
HEW 490, OS–17–79
On occasion
Applicants for HEW research grants, 5,000 responses, 1,500 hours
Budget Review Division, 395–4775

Revisions

Health Care Financing Administration (Medicaid)
Medicaid Quality Control Review Schedule and Worksheet
HCFA–301
Semi-annually
Title XIX cases, 141,714 responses, 1,502,168 hours
Richard Eisinger, 395–3214
Social Security Administration
Quality Control in Aid to Families With Dependent Children and Quality Control in Adult Programs
SSA–4341/4342
Semi-annually
Welfare Recipients, 66,500 responses, 944,500 hours
Barbara F. Young, 395–6132

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Agency Clearance Officer—Robert G. Masarsky—755–5184

New Forms

Policy Development and Research
CDBG Evaluation: Multipurpose, Childcare and Elderly Facilities Users
Single time
Users of childcare, multipur. & elderly fac. in 9 cities, 5,792 responses, 2,056 hours
Arnold Strasser, 395–5080
Policy Development, and Research
Household Survey—Years 1B, 2, and 3
Annually
Households in 9 cities, 11,250 responses, 11,250 hours
Arnold Strasser, 395–5080

Extensions

Housing Production and Mortgage Credit
Request for Pre-Application Analysis
FHA 3550
On Occasion
Spon. seeking insur. finan. for land acquisition/develop., 50 responses, 50 hours
Arnold Strasser, 395–5080
Housing Production and Mortgage Credit
*Application for Land Development Mortgage Insurance
FHA 3551
On occasion
Sponsors of land development projects, 1,000 responses, 500 hours
Arnold Strasser, 395–5080

DEPARTMENT OF THE INTERIOR

Agency Clearance Officer—William L. Carpenter—343–6716

New Forms

Geological Survey
Supplementary Application for Natural Gas Category Determination
On occasion
Lessees and operators of Federal, Indian, and OCS leases, 4,000 responses, 16,000 hours
Charles A. Ellett, 395–5080

DEPARTMENT OF JUSTICE

Agency Clearance Officer—Donald E. Larue—633–3526

Revisions

Drug Enforcement Administration
Arcos Transaction Reporting
DEA 333
Monthly
Registrants under the Controlled Substance Act, 279,364 responses, 56,984 hours
Laverne V. Collins, 395–3214
Drug Enforcement Administration
*Application for Individual Manufacturing Quota
DEA 189
Annually
Pharmaceutical manufacturers, 60 responses, 30 hours
Laverne V. Collins, 395–3214
Immigration and Naturalization Service
*Application of Waiver of Grounds of Excludability
I–601
On Occasion
Aliens asking for a waiver of excludability 2,600 responses, 1,300 hours
Laverne V. Collins, 395–3214
Immigration and Naturalization Service
Petition To Classify Nonimmigrant as Temporary Worker or Trainee
I–129B
On occasion
Employ. seek. to bring alien into U.S. as temp. wkr/trnee, 35,000 responses, 26,250 hours
Laverne V. Collins, 395–3214

Extensions

Immigration and Naturalization Service
*Waiver of Rights, Privileges, Exemptions and Immunities Immigration and Naturalization Act
I–508A
On occasion
Aliens requesting to retain status as an immigrant, 1,000 responses, 80 hours
Laverne V. Collins 395–3214
Immigration and Naturalization Service
*Application for a New Naturalization or Citizenship Paper
N–565
On occasion
Individuals needing a new natural. or citizenship paper, 2,000 responses, 500 hours
Laverne V. Collins, 395–3214
Immigration and Naturalization Service
*Questionnaire Submitted by Petitioner at Final (Naturalization) Hearing
N–445
On occasion
Petitioners at final naturalization hearings, 150,000 responses, 12,500 hours
Laverne V. Collins, 395–3214

Immigration and Naturalization Service
*Annual Report of Status by Treaty Trader Investor
I-126
Annually
Nonimmigrant aliens, 30,000 responses, 15,000 hours
Laverne V. Collins, 395-3214
Immigration and Naturalization Service
Petition for Approval of School for Attendance by Nonimmigrant Students
I-17
On occasion
Schools seeking approval for nonimmigrant students, 1,000 responses, 1,000 hours
Laverne V. Collins, 395-3214
Immigration and Naturalization Service
*Request for determination that Prospective Immigrant is an Investor
I-526
On occasion
Prospective immigrants 4,000 responses, 2,000 hours
Laverne V. Collins, 395-3214

DEPARTMENT OF TRANSPORTATION

Agency Clearance Officer—Bruce H. Allen—426-1887

New Forms

National Highway Traffic Safety Administration DOT Survey of Public Response to Energy Problems[1] (Roper Poll)
Single time
Nationwide sample of adult persons, 2,005 responses, 140 hours
Susan B. Geiger, 395-5867

RAILROAD RETIREMENT BOARD

Agency Clearance Officer—Pauline Lohens—312-751-4693

Extensions

*Application and Statement of Sickness, Miscarriage, or Childbirth
SI-2 (6-63)
On occasion
Applicants for benefits; doctors, 2,000 responses, 1,000 hours
Barbara F. Young, 395-6132

SMALL BUSINESS ADMINISTRATION

Agency Clearance Officer—John Reidy—653-6081

New Forms

SBA Application for Loan and Sea Lender's Application for Guarantee or Participation
RO X 40 and RO X 42
Single time
Lenders and small business firms, 1,600 responses, 16,000 hours
Richard Sheppard, 395-3211

Stanley E. Morris,
Deputy Associate Director for Regulatory Policy and Reports Management.

[FR Doc. 79-26606 Filed 8-24-79; 8:45 am]
BILLING CODE 3110-01-M

[1] OMB review and action on this report may already have been completed by the time this notice appears. Prompt action is warranted because of urgent need expressed by the agency to obtain the information. Public comments will still be carefully considered, and any changes indicated will be made whenever possible.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-16116; File No. SR-NASD-79-8]

Self-Regulatory Organization; National Association of Securities Dealers, Inc.

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 August 13, 1979 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Change

Text of Proposed Rule Change

The following is the full text of the proposed amendment to Article III, Schedule A of the Association's By-Laws which adds a new Section 9 thereto. The language of new Section 9 is set forth in its entirety below.

Section 9—Fees for Clearance and settlement

Each member shall be assessed a charge of 12 cents for each over-the-counter transaction with another member of the Association cleared through a registered clearing agency and in which the member acts as either agent or principal for the purchase and/or sale of equity securities. Payments of such charge to a registered clearing agency which has entered into an agreement with the NASD for the collection by such agency of such fees from its participants shall be recognized as constituting payment of the charge imposed hereby.

Purpose of Proposed Rules Change

When the NASD, NYSE and AMEX determined to consolidate their respective clearing facilities into a single clearing entity in 1977, it was recognized that these affiliates had been a source of revenue which were used to pay in part for the self-regulatory activities carried on by their parent organizations. While the new consolidated clearing entity, National Securities Clearing Corporation, was intended to be used or controlled and operated for the sole benefit of the member firm community, it was felt that the NASD and the two exchanges should continue to receive some revenues from clearing operations to help cover regulatory costs. Therefore, the agreements establishing NSCC provided that the NASD, NYSE and AMEX should each be paid 12 cents a side for each round-lot transaction executed in their respective markets and cleared through NSCC.

At present, the NASD does not receive the 12 cent revenue for trades of members which are cleared through clearing agencies other than NSCC. In order to prevent an erosion of revenues from this source, it is proposed that the 12 cent charge be imposed by the NASD, payable either directly to the NASD or to any clearing agency agreeing to collect the charge and remit it to the NASD.

The SEC has approved a NYSE proposal which is similar to the above proposal (SR-NYSE-77-33) and currently has under review another similar proposal submitted by the AMEX (SR-Amex-78-27).

Basis Under the Act for the Proposed Rule Change

The adoption of an alternate method for collection of the 12 cent charge will assure the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the Association operates or controls, as required by Section 15A(b)-5 of the Act.

Comments Received From Members, Participants, or Others on Proposed Rule Change

No comments were solicited or received with respect to the proposed rule change.

Burden on Competition

Section 15A of the Securities Exchange Act places on the Association the responsibility to regulate the activities of its members, and provides the statutory basis for the assessment of equitable fees. Thus, it is felt that there is no burden on competition imposed by the proposed rule change, and that any incidental financial burdens on the membership is in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six (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 on or before September 17, 1979.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

August 17, 1979.

[FR Doc. 79-26530 Filed 8-24-79; 8:45 am]

BILLNG CODE 8010-01-M

[Release No. 34-16120; file No. SR-DTC-79-3]

Self-Regulatory Organizations; Proposed Rule Change by the Depository Trust Co.

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 July 23, 1979, the above mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change provides for an addition to the Fee Schedule for major Services filed on form 19b-4A, File No. SR-DTC-78-6:

N. Participant Output Services (Optional)

[Paragraph N(1) is unchanged and is omitted here.]

2. Position Statement:

Total share position on deposit in DTC detailed by the accounts in which the position is resident. Share position is listed by issue.

Hardcopy, monthly—no charge (1st copy).
Additional hardcopy, upon request—$25 per copy.
Cards, upon request—$50 per copy.
Mag tape, upon request—$50 per tape.
Mag tape (supplied by participant), daily—$550 monthly.
Microfiche in lieu of hardcopy monthly—No charge for first microfiche copy; $.25 for each additional microfiche copy.
Microfiche in addition to hardcopy monthly—$1.00 for first microfiche copy; $.25 for each additional microfiche copy.

3. Daily Activity Statement:

A detailed statement of activity on a given business day.

Hardcopy, daily—No charge (1st copy)
Additional, hardcopy upon request—$25 per copy.
Additional hardcopy, daily—$200 monthly.
Cards, daily—$100 monthly.
Mag tape (supplied by participant), daily—$250 monthly.
Microfiche in lieu of hardcopy, daily—No charge for first microfiche copy; $.25 for each additional microfiche copy.
Microfiche in addition to hardcopy, daily—$1.00 for first microfiche copy; $.25 for each additional microfiche copy.

Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change are as follows:

The purpose of the proposed addition to the Fee Schedule for Major Services is to establish a fee to be charged to DTC Participants who choose to receive their DTC daily activity statements and monthly position statements in computer output microfiche form in lieu of, or in addition to, the present hardcopy (paper) form.

The proposed addition to the Fee Schedule for Major Services relates to DTC's carrying out the purposes of Section 17A of the Securities Exchange Act of 1934 by equitably allocating fees among DTC Participants.

DCT surveyed its Participants to ascertain their interest in receiving reports from DTC in computer output microfiche form in lieu of, or in addition to, hardcopy form. The survey was made with the stated assumption that there would be no fee if microfiche were received in lieu of hardcopy but that there might be a fee if microfiche were received in addition to hardcopy. Written comments on the proposed fee have not been solicited or received. All Participants will be notified of the proposed fee by a DTC Important Notice at least ten business days before reports in microfiche form become available.

DTC perceives no burden on competition by reason of the proposed rule change.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the public reference room, 1100 L Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submisssions should refer to the file number referenced in the caption above and should be submitted on or before September 17, 1979.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

August 17, 1979.

[FR Doc. 79-26528 Filed 8-24-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-16121; File No. SR-DTC-79-4]

Self-Regulatory Organizations; Proposed Rule Change by the Depository Trust Co.

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 August 6, 1979 the above mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Text of Proposed Rule Change

Revision in surcharges for services in securities issues which carry transfer agent fees: Deposits, $1.60 [.67] per deposit; Withdrawals, $4.30 [$3.36] per withdrawal by Transfer-Transfer Control Form (W/T-TCF); $5.10 [$3.38] per Urgent Withdrawal Request (COD).

Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change are as follows:

The purpose of the proposed rule change is to permit surcharge revenue to cover transfer agent fees.

The proposed rule change relates to DTC's carrying out the purposes of Section 17A of the Securities Exchange Act of 1934 by equitably allocating charges other than dues or fees among DTC Participants.

Written comments on the proposed rule change have not been solicited or received from Participants. All Participants have been notified of the proposed rule change by the DTC Important Notice attached as Exhibit 2

to DTC's filing on Form 19b–4A, File No. SR–DTC–79–4.

DTC perceives no burden on competition by reason of the proposed rule change.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necesssary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the public reference room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All Submissions should refer to the file number referenced in the caption above and should be submitted on or before September 17, 1979.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

August 17, 1979.

[FR Doc. 79–26529 Filed 8–24–79; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–16127; August 21, 1979; File No. SR–CBOE–79–9]

Chicago Board Options Exchange, Inc.; Self-Regulatory Organizations; Proposed Rule Changes

Proposed Rule Changes By: Chicago Board Options Exchange, Incorporated.

Relating to: Responses to the *Recommendations of the Special Study* of the Options Markets as promulgated by the Securities and Exchange Commission in Release No. 34–15575.

Comments requested by: October 1, 1979.

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 August 16, 1979, the Chicago Board Options Exchange, Incorporated ("CBOE") filed with the Securities and Exchange Commission the proposed rule changes as 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 changes from interested persons.

The Commission has determined that it is necessary and appropriate to provide additional time for public comment on and Commission consideration of the proposed rule changes. Because the subject filing contains numerous rule proposals which, if approved, would affect significantly the operation of the standardized options markets, the Commission believes that additional time is necessary to enable commentators to address meaningfully the substance of the proposals and to enable the Commission to give the proposals the careful consideration they warrant before determining whether to approve the proposals or to initiate proceedings to determine whether they should be disapproved.

Accordingly, the Commission, pursuant to Section 19(b)(2) of the Act, hereby extends until 90 days from the date of publication of notice of filing of the proposed rule changes captioned above the time period within which the Commission must either approve the proposed rule changes or institute proceedings to determine whether the proposed rule changes should be disapproved.

I. Self-Regulatory Organization's Statement of Terms of Substance of the Proposed Rule Changes

The following is a summary of the rule changes proposed by CBOE. The text of the proposed rule changes is attached as Appendix A, with brackets used to indicate words to be deleted and italics used for words to be added.

Rule 9.7. A new Interpretation .01 has been added to the Rule which lists specific categories of minimum information that a member organization must seek to obtain before opening an options account for a customer. Paragraph (b) of the Rule is proposed to be amended to require that customer background and financial information be retained by the member organization as provided in Rule 9.8. Paragraph (c) of the Rule is proposed to be amended to require that such information be furnished to each new options customer (that is a natural person) for his verification. Also, it is proposed that this information must be sent again to a customer whenever the firm is aware of any material change in the customer's financial situation.

Rule 9.12. This Rule is proposed to be amended to require customer account statements to bear a legend asking customers to notify the firm of any changes in their financial situation.

Rule 9.8 A new paragraph (c) of this Rule is proposed to be added to require that customer background and financial information be maintained by members at the branch office servicing the customer's account and the principal supervisory office having jurisdiction over that branch office. Also, it is proposed that monthly account statements for the most recent months and other records necessary to the proper supervision of accounts be maintained at, or easily accessible to, both offices. A new paragraph (b) is proposed to be added which would require member firms that do a public business to specifically identify a Compliance Registered Options Principal ("CROP") having no sales functions to be responsible for the review of the firm's options compliance program and to propose any appropriate remedial action. Final responsibility for supervision of all of the firm's options activities would remain with the Senior Registered Options Principal ("SROP") although the CROP would be required to furnish reports on a regular basis directly to the firm's senior management. The requirement for a non-sales CROP will not apply to firms earning less than $1,000,000 in options commissions annually or having 10 or less options registered representatives.

Rule 9.9. The Rule is proposed to be amended to prohibit a broker-dealer from recommending any opening transaction to a customer unless he has a reasonable basis for believing that the customer is able to evaluate the risks of the transaction and is financially able to bear them.

Rule 9.23. This new Rule would require firms to maintain a central, firm-wide file containing specified information concerning all options-related complaints. Copies of such complaints would be required to be forwarded to the central location and maintained at the branch office that is the subject of the complaint.

Rule 4.9. The Rule is proposed to be amended to call for written notification to the CBOE of disciplinary action taken against persons associated with a member as well as against the member itself, including notification of significant action taken by the member against its associated persons.

Rule 17.1. Existing Interpretation .01 of the Rule is proposed to be redesignated

as paragraph (b). Also, the period of continued disciplinary jurisdiction over terminated members is proposed to be extended if an inquiry is commenced within one year following notice of termination, and the requirement that disciplinary proceedings themselves must commence within any stated time is proposed to be deleted.

Rule 9.21. The Rule is proposed to be amended to require the approval by the CROP of all communications to customers and to further defined the standards applicable to such communications. The proposed amendments would also exempt advertisements from certain of the approval requirements if such advertisements had been previously submitted to another self-regulatory organization having comparable standards regarding advertising. Interpretations .01, .02 and .03 contain further detail concerning what should or should not be included in particular types of communications to customers. Relevant costs and other assumptions used in computing annualized rates of return would also be required to be disclosed by Interpretation .03 under the Rule. This Interpretation would also contain other standards and disclosure requirements pertaining to projected performance figures. Other provisions of Interpretation .03 would impose requirements applicable to options work sheets utilized by member firms, including the requirement that such work sheets must be uniform within a given firm. Complete work sheets would be required to be retained by member firms the same as all other written communications to customers. Interpretation .03 would also include performance reports within the definition of "sales literature," require that they be approved by the CROP and be retained by the firm, and establish standards for their content.

Rule 11.2. The Rule is proposed to be amended to require members who utilize random allocation of exercise notices to use either an automated method that has been approved by a self-regulatory organization, or the manual method that has been uniformly specified by all of the self-regulatory organizations. FIFO methods of allocation would also be required to be approved by a self-regulatory organization. Members would be required to notify their customers of the method of allocation utilized and explain how it works. Also, it is proposed that the Rule be amended to require that records relating to exercise allocation be preserved for three years.

Rule 8.9. The Rule is proposed to be amended to require that Market-Makers inform the CBOE of all accounts in which they trade stock or options, and also notify the CBOE of all orders for and positions in underlying securities and related securities.

Front-running educational circular. Several editorial changes in CBOE's existing Educational Circular under the Rule relating to front-running are proposed in order to conform it to a uniform document to be jointly promulgated by other self-regulatory organizations.

Rule 9.6. This Rule is proposed to be amended to require every branch manager to be qualified as a Registered Options Principal ("ROP"), unless the branch office has not more than three Registered Representatives, and is otherwise under the supervision of a ROP.

Rule 9.10. The Rule is proposed to be amended to require that customers over whose accounts members exercise investment discretion be furnished with a written explanation of the risks involved in the systematic use of one or more options strategies in these accounts. All such descriptive material would be required to meet the "sales literature" minimum standards of the proposed Rule 9.21. The proposed amendment would also require that the SROP review the acceptance of each discretionary account to determine whether the ROP accepting the account had a reasonable basis for believing that the customer was able to understand and bear the risks of the proposed strategies or transactions.

II. Self-Regulatory Organization's Statement of Purpose and Statutory Basis of Proposed Rule Change

In its filing with the Commission, CBOE included the following statements concerning the purpose and basis of the proposed rule changes and discussed comments it received on the proposed rule change. Such statements are reproduced in sections (A), (B) and (C) below.

(A) Self-Regulatory Organization's Statement of Purpose of and Statutory Basis for Proposed Rule Changes

The rule changes filed herewith represent responses to the recommendations of the Special Study of the Options Markets as promulgated by the Commission in Release No. 34-15575.

A discussion of the purpose of each of the rule changes included in this filing is presented below under the caption of the respective recommendation of the Options Study to which the rule change is responsive. To facilitate the Commission's review, the captions of the various responses to recommendations of the Options Study are keyed to the numbering system used in Release No. 34-15575.

The statutory basis for these rule changes, as stated in Release No. 34-15575, is that the implementation of the recommendations of the Options Study is "[c]onsistent with the scheme of self-regulation embodied in the Securities Exchange Act of 1934."

I.A.l.a, b, and c. (Rule 9.7). These related recommendations call for the collection and recording of background and financial information concerning customers in order to support the approval of their accounts for options transactions and subsequent suitability determinations, and they also call for the verification by the customer of this information. In response, we propose to add a new Interpretation .01 to Rule 9.7, governing the opening of accounts, that lists specific categories of minimum information that a member organization must seek to obtain before opening an options account for a customer. We have not required that all member organizations adopt a uniform options customer information form, since we believe it appropriate to permit the firms to have some flexibility in this regard, so long as the minimum information required by Interpretation .01 is included. However, we understand on the basis of discussions with representatives of the Securities Industry Association that the SIA expects to develop and make available contemporaneously with the effective date of this Interpretation a standard options customer information form that would satisfy the new requirements.

We also propose to add specific record keeping requirements applicable to options customer information by including in paragraph (b) of Rule 9.7 a cross-reference to the provisions of rule 9.8 that state how options customer information should be maintained. (See I.A.l.d. below.)

Paragraph (c) to Rule 9.7 will require that every new options customer that is a natural person be sent for his verification the background and financial information reflected in his customer account information form within 15 days of the approval of his account for options transactions. In addition, this information must again be sent to the customer for verification whenever the firm is aware of any material change in the customer's financial situation. Customer account statements will contain a legend asking that customers notify the firm of any changes in their financial situation (see proposed change to rule 9.12).

I.A.1.d. (Rule 9.8). In response to this recommendation concerning the maintenance of records of customer background and financial information, we propose to add to Rule 9.8 a requirement that background and financial information of customers approved for options transactions must be maintained both at the branch office and at the principal supervisory office having jurisdiction over the branch office. In addition, Rule 9.8 will require that monthly account statements for the most recent six months be maintained at both offices and that other records necessary to the proper supervision of accounts be easily accessible to both offices. With these new record keeping requirements, not only the registered representative servicing a customer's account, but also the persons responsible for supervising the registered representative, will have easy access to all relevant information concerning the customers and his account.

I.A.1.e. (Rule 9.9). The purpose of the proposed amendment to Rule 9.9 is to make applicable to all recommended opening options transactions the more stringent suitability requirements (that the customer be able to evaluate the risks of the transaction and be financially able to bear them) that now apply only to recommendations for uncovered call writing or put writing. Under the amended suitability rule, a broker-dealer would be prohibited from recommending any opening options transaction to a customer unless these requirements are met.

I.A.1.f. (Rule 9.23). In response to the recommendation that copies of customer complaints be maintained at a central office and at relevant branch offices, we propose to amend what is currently contained in Interpretation .01 to Rule 15.1 and to redesignate it as Rule 9.23(a). This will require member firms to maintain a central, firm-wide file of all options-related complaints containing specified information concerning each complaint. Copies of the complaints themselves would also be forwarded to and maintained at the same central location. In addition, a copy of every options-related complaint would be maintained at the branch office that is the subject of the complaint.

I.A.1.g. (Rule 9.8). This proposed amendment to Rule 9.8 would require member firms that do a public business to specifically identify a Compliance Registered Options Principal having no sales functions to be responsible for the review of the firm's options compliance program and to propose any appropriate remedial action. Final responsibility for supervision over all of the firm's options activities would remain with the SROP, although the CROP would be required to furnish reports on a regular basis directly to the firm's senior management. The separation of responsibilities between the CROP and the SROP (except in those firms that choose to have a non-sales SROP) provides for audit of compliance by someone having no sales functions, and yet recognizes that the leadership of most securities firms appropriately has and will continue to have sales functions in combination with supervisory responsibilities. In order to avoid placing unacceptable economic burdens upon smaller firms, the requirement for a non-sales CROP will not apply to firms earning less than $1,000,000 in options commissions or having 10 or less options registered representatives.

I.A.1.h. (Rules 4.9 and 17.1). The proposed amendment to Rule 4.9 expands the existing requirement for notification to the Exchange of disciplinary action taken against members. As amended, the Rule will call for written notification of disciplinary action taken against persons associated with a member as well as against the member itself, including notification of significant action taken by the member against its associated persons.

The proposed amendment to Rule 17.1 redesignates the present Interpretation .01 thereunder as paragraph (b) of the Rule itself, extends the period of continued disciplinary jurisdiction over terminated members so long as an inquiry is commenced within one year following notice of termination, and deletes the requirement that disciplinary proceedings themselves must commence within any stated time.

I.A.1.i, j, k, and *l. and I.A.3.a, b and c.* (Rule 9.21). We propose to expand existing Rule 9.21, which currently deals with advertisements, market letters and sales literature, so as to cover all communications to customers. The expanded rule, together with interpretations thereunder, will incorporate a number of different recommendations of the Options Study.

Proposed revisions to Rule 9.21 itself are designed to require the approval by the Compliance Registered Options Principal of all communications to customers and to further define the standards applicable to such communications. The Rule would also provide for better coordination among the self-regulatory organizations with respect to the approval of advertisements. Interpretations .01, .02 and .03 contain further detail concerning what should or should not be included in particular type of communications to customers.

The recommendations that relevant costs and other assumptions used in computing annualized rates of return must be disclosed will be included in Interpretation .03 under the Rule. This interpretation also contains other standards and disclosure requirements pertaining to projected performance figures. Other provisions of Interpretation .03 would impose requirements applicable to options work sheets utilized by member firms, including the requirement that such work sheets must be uniform within a given firm. Completed work sheets would be required to be retained by member firms the same as all other written communications to customers. Interpretation .03 also includes performance reports within the definition of "sales literature" and requires that they be approved by the Compliance Registered Options Principal and retained by the firm, and it contains standards for performance reports to assure that each such report is confined to a specifically identifiable and relevant universe.

Finally, the Rule and its interpretations contemplate the distribution to all member firms of a publication entitled "Guidelines for Options Communications" that would provide further information concerning the standards applicable to communications to customers. A copy of this publication is available for inspection and copying in the Commission's Public Reference Room, but is not filed as a proposed rule change.

I.A.1.m. (Rule 11.2). We proposed to amend Rule 11.2 by requiring members who choose to utilize random allocation of exercise notices to use either an automated method that has been approved by an SRO, or the manual method that has been uniformly specified all of the SROs. FIFO methods of allocation must also be approved by an SRO. Members will be required to notify their customers of the method of allocation utilized, explaining how it works.

I.A.1.n (Rule 11.2). We proposed adding to Rule 11.2 a requirement that records relating to exercise allocation be preserved for three years. This period of retention will facilitate auditing compliance with required methods of exercise allocation.

I.A.1.o and p (Rule 8.9). Rule 8.9 will be ameded by adding a new requirement that Market-Makers must inform the Exchange of all of the accounts in which they trade stock or

options, and must also notify the Exchange of all orders for and positions in underlying securities and related securities. Both of these requirements will improve Exchange surveillance over the options-related trading activities of Market-Makers.

I.A.1.q. (Front-running Educational Circular). We are proposing a few minor editorial changes to the Exchange's existing Educational Circular on this subject in order to conform it to a uniform document that will be jointly promulgated by other SROs.

I.A.2.b. (Rule 9.6). The proposed amendment to this Rule will require every branch manager to be qualified as a ROP, unless the branch office has not more than three RRs, and is otherwise under the supervision of a ROP. This requirement is one of a number of changes intended to improve internal supervision of firms' options activities.

I.A.2.c. and d. (Rule 9.10). The proposed amendment to this Rule will require that customers over whose accounts members exercise investment discretion must be furnished with a written explanation of the risks involved in the systematic use of one or more options strategies in these accounts. All such descriptive material would be required to meet the "sales literature" minimum standards of the proposed "Communications to Customers" rule. The amendment would also require that the SROP review the acceptance of each discretionary account to determine whether the ROP accepting the account had a reasonable basis for believing that the customer was able to understand and bear the risks of the proposed strategies or transactions. Under existing Rule 9.10, a ROP must personally accept every discretionary account, and the added step of a SROP's review of the ROP's acceptance is intended to provide an additional level of supervisory audit over the acceptance of these kinds of accounts.

(B) Self-Regulatory Organization's Statement on Burden on Competition

CBOE recognizes that, as is pointed out in several of the comments received from members, certain of the proposed rule changes will increase the costs to members of handling customers' options transactions, which in turn may place smaller member organizations at a competitive disadvantage. The Commission will have to determine whether the possible competitive burden of these rule changes is necessary or appropriate in furtherance of the Act in deciding whether to approve these rule changes.

(C) Self-Regulatory Organization's Statement on Comments Received From Members, Participants, or Others on Proposed Rule Changes

Comments on the proposed rule changes were solicited and received from members in several ways. First, representatives of the Securities Industry Association attended and actively participated in most of the meetings of the joint SRO task force that developed the rule changes. Second, a preliminary draft of the rule changes was mailed to every member of each of the SROs involved, with a request that comments be forwarded to any one of the seven signatory SROs. A large number of detailed comments were received in response to this mailing; these are available for inspection and copying in the Commission's Public Reference Room. Many of the comments received in response to the preliminary draft led to revisions in the rule changes that are reflected in the proposals presented in Item 1 hereof. Where the SROs determined not to make changes in response to member comments, often the SROs were sympathetic to the concerns raised by the commentators, but felt that these concerns were outweighed by the emphasis that the Commission had placed upon the particular rule change that was the subject of the comment. The following is a summary of those comments received from members that are relevant to the proposed rule changes in their present form.

Recommendations I.A.1.a.–c. (Opening of Accounts). A number of members commented that many customers will consider it burdensome and an invasion of privacy to have to provide personal financial information to their brokers, and will refuse to do so. Others questioned the relevance of much of the information that must be sought. In response to these comments, the list of information that must be obtained has been reduced, as explained in Item 3 above. Verification of customer information was subject to much criticism as being very expensive (especially for smaller firms) and not likely to be meaningful. While much of this comment was directed at the requirement for periodic verification, which has since been significantly reduced; the requirement for *any* verification was criticized by many members. One member criticized the inclusion of specific time requirements governing when the record of a new customer's background information must be first sent to him for verification, claiming that such time limits are arbitrary and artificial.

Recommendations I.A.1.d. & f. (Record-Keeping). Many members criticized as unnecessarily duplicative and expensive the requirement that customer account records be kept both at headquarters and at the branch office.

Recommendation I.A.1.e. (Suitability). Several firms expressed the belief that expanded concepts of suitability exposed firms to inappropriate risks of liability. Other comments were that customers should be able to make their own decisions without having to satisfy a third party, and that strict options suitability rules would drive customers into other, riskier, less regulated products. Specific criticism was made of the requirement that a broker must assess the customer's ability to evaluate risks, claiming that this goes beyond traditional concepts of suitability.

Recommendation I.A.1.g. (Non-sales options compliance person). This proposal drew many comments pointing out the cost it would present for small firms. The expanded exemptive provisions of the rule as filed are included in response to this concern. Other comments objected to the concept of separating the sales function from compliance and supervision functions, while others expressed the view that the non-sales compliance officer would amount to a token appointment, but at a high cost. Many comments noted that the costs of complying with this requirement would place smaller firms at a competitive disadvantage.

Recommendation I.A.1.h. (Disciplinary reports and jurisdiction). Some firms observed that a reporting requirement might inhibit firms from taking disciplinary action. Others noted the absence of clear standards defining what constitutes disciplinary action. Several comments objected to the apparent need to file duplicate reports (which will be eliminated upon the implementation of proposed 17d-2 plans). One comment endorsed the extension of SRO disciplinary jurisdiction over former members, while another comment expressed the view that this was improper and inconsistent with the spirit of the Act.

Recommendation I.A.1 and. I.A.3.a.–c. (Communications to Customers). Comments suggested that this rule imposed too many responsibilities on the CROP, that centralized approval of communications to customers is unworkable, especially in a large firm, and that advance SRO approval of advertising is contrary to the trend in such matters. Many comments were addressed to the requirements applicable to specific types of written communications, generally criticizing them for being inflexible, unworkable,

expensive to administer, and enlarging the firms' exposure to liabilities.

Recommendations I.A.1.m. & h. (Allocation of exercise notices). Comments suggested that firms should be given more flexibility than this rule would permit, and that an explanation of exercise allocation would be confusing to customers. Others noted the expense involved in conforming data processing equipment to required methods of allocation.

Recommendations I.A.1.o. & p. (Market-makers' account and stock orders). Many comments characterized these requirements as burdensome and costly. It was suggested that these requirements should apply to exchange floor members only, and not to upstairs traders.

Recommendation I.A.1.q. (Front-Running). No comments solicited.

Recommendation I.A.2.b. (ROP Qualification of Branch Managers). This requirement was criticized as being costly and not likely to result in improved supervision. Some suggested that it should be sufficient if an assistant manager or other supervisor is ROP-qualified, without requiring that the branch manager be so qualified.

Recommendation I.A.2. c. and d. (Discretionary Accounts). Several firms commented that these requirements would be so onerous as to inhibit firms from offering discretionary accounts. The requirement for providing an explanation of each strategy utilized in the account was the focus of special criticism. We have attempted to respond to this criticism by making the requirement apply to "programs" for trading options, but not to each separate strategy that might be used.

III. Date of Effectiveness of Proposed Rule Change and Timing for Commission Action

On or before November 26, 1979, the Commission will:

(A) By order approve such proposed rule changes; or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

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, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Copies of the 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. 522, will be available for inspection and copying in the Commission's Public Reference Section, 1100 L Street NW., Washington, D.C. Copies of such filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to file number SR-CBOE-79-9 and should be submitted on or before October 1, 1979.

For the Commission, by the Division of Market Regulation, pursuant to delegated Authority.

George A. Fitzsimmons,

Secretary.

August 21, 1979.

Appendix A

Text of Proposed Rule Change (supplied by CBOE)

The following proposed amendments to CBOE's rules reflect the uniform response of a joint SRO task force to certain recommendations of the SEC Options Study, departing from the uniform response only to the extent necessary to conform to the style of CBOE's rules. Departures from the uniform response are indicated in red on the "Marked Copy" of this filing.

Following the text of the proposed rules changes set forth below is a table showing the anticipated effective date of the rule changes expressed as the number of days following Commission approval when the rule changes will go into effect. CBOE reserves the right to grant members additional time to comply with certain of the proposed rule changes on a case-by-case basis where circumstances warrant. The interval between Commission approval and effectiveness is to provide member firms with the time needed to familiarize themselves with the new rules in their final form, and to make the necessary internal administrative and procedural changes necessary to bring themselves into compliance. During this interval, CBOE intends to provide member firms with various educational materials explaining the new rules, and otherwise to assist the firms in complying with them. Since uniformity among SROs is essential to the implementation of the proposed new regulatory requirements, the anticipated time of their becoming effective contemplates that other SROs will institute comparable requirements at the same time. If this condition is not met, CBOE may have to defer the effectiveness of some or all of these new rules until substantial uniformity among SROs can be achieved.

Opening of Accounts

Rule 9.7. (a) No change.

(b) *Diligence in Opening Account.* In approving a customer's account for options transactions, a member organization shall exercise due diligence to learn the essential facts as to the customer *and* his investment objectives *and* financial situation [and needs.], *and shall make a record of such information which shall be retained in accordance with Rule 9.8.* [A record of this information shall be maintained by the member organization and,] Based upon such information, [a] *the branch office manager or other* Registered Options Principal [who is an officer or partner of the member organization] shall approve in writing the customer's account for options transactions: *Provided,* That [in the case of a branch office, an account may be approved for options transactions by the manager of such branch office, in which event the action of the branch office manager] *if the branch office manager is not a Registered Options Principal, his approval* shall within a reasonable time be confirmed by [the] *a* Registered Options Principal.

(c) Verification of Customer Background and Financial Information. The background and financial information upon which the account of every new customer that is a natural person has been approved for options trading, unless the information is included in the customer's account agreement, shall be sent to the customer for verification within fifteen (15) days after the customer's account has been approved for options transactions. A copy of the background and financial information on file with the member organization shall also be sent to the customer for verification within fifteen (15) days after the member organization becomes aware of any material change in the customer's financial situation.

[(c)] *(d)* No change.

[(d)] *(e)* No change.

. . . Interpretations and Policies:

.01 In fulfilling its obligations pursuant to paragraph (b) of Rule 9.7 with respect to options customers that are natural persons, a member organization shall seek to obtain the following information at a minimum (information shall be obtained for all participants in a joint account):

1. Investment objectives (e.g., safety of principal, income, growth, trading profits, speculation)

2. Employment status (name of employer, self-employed or retired)

3. Estimated annual income from all sources

4. Estimated net worth (exclusive of family residence)

5. Estimated liquid net worth (cash, securities, other)

6. Marital status; number of dependents

7. Age

8. Investment experience and knowledge (e.g., number of years, size, frequency and type of transactions) for options, stocks and bonds, commodities, other

In addition, the customer's account records shall contain the following information, if applicable:

a. Source or sources of background and financial information (including estimates) concerning the customer

b. Discretionary trading authorization: agreement on file, name, relationship to customer and experience of person holding trading authority

c. Date prospectus furnished to customer

d. Types of transactions for which account is approved (e.g., buying, covered writing, uncovered writing, spreading)

e. Name of registered representative

f. Name of ROP approving account; date of approval

g. Dates of verification of currency of account information

The member organization should consider utilizing a standard account approval form so as to ensure the receipt of all the required information.

.02 Refusal of a customer to provide any of the information called for in Interpretation .01 shall be so noted on the customer's records at the time the account is opened. Information provided shall be considered together with other information available in determining whether and to what extent to approve the account for options transactions.

.03 The requirement of paragraph (c) of Rule 9.7 for the initial and subsequent verification of customer background and financial information is to be satisfied by sending to the customer the information required in Items 1 through 6 of Interpretation .01 above as contained in the member's records and providing the customer with an opportunity to correct or complete the information. In all cases, absent advice from the customer to the contrary, the information will be deemed to be verified.

Statements of Account to Customers

Rule 9.12. Except with the permission of the Exchange, every member organization shall send to its customers statements of account showing security and money positions and entries. Such statements of account shall be sent at least quarterly to all accounts having a money or a security position during the preceding quarter and at least monthly to all accounts having an entry during the preceding month. *The statement shall bear a legend requesting the customer to promptly advise the member of any material change in the customer's investment objectives or financial situation.*

Suitability of Recommendations

Rule 9.9. Every member, Registered Options Principal or Registered Representative who recommends to a customer the purchase or sale (writing) of any option contract shall have reasonable grounds for believing that the recommendation is not unsuitable for such customer on the basis of the information furnished by such customer after reasonable inquiry as to his investment objectives, financial situation and needs, and any other information known by such member, Registered Options Principal or Registered Representative.

[A recommendation to a customer of the writing of a call option contract when the customer does not have a corresponding long position in the underlying security, or the writing of a put option contract, shall be deemed unsuitable for the customer,] *No member, Registered Options Principal or Registered Representative shall recommend to a customer an opening transaction in any option contract* unless [upon the information furnished by the customer,] the person making the recommendation has a reasonable basis for believing at the time of making [a] *the* recommendation that the customer has such knowledge and experience in financial matters that he may reasonably be expected to be capable of evaluating the risks of [such] *the recommended* transaction, and [such financial capacity as to be able to carry such position in the option contract] *is financially able to bear the risks of the recommended position in the option contract.*

Maintenance, Retention and Furnishing of Books, Records and Other Information

Rule 15.1. No change.

. . . *Interpretations and Policies*:

[.01 Every member organization conducting a non-member customer business shall make and keep current a separate, central file for all options-related complaints. The term "separate, central file" shall be deemed to include any log, index or other listing through which options-related complaints can be easily identified and retrieved. The term "options-related complaint" shall mean any written statement by a customer or person acting on behalf of a customer alleging a grievance respecting listed options. Such file shall be maintained in the principal of business of the member organization or such other principal office as shall be designated by the member organization and shall include a record of what action, if any, has been taken by the member organization with respect to each complaint. Each options-related complaint received by a branch office of the member organization shall be forwarded to the office in which the separate, central file is located not later than 30 days after receipt by the branch office.]

.01 The following Rules contain specific requirements with regard to the maintenance and retention of books, records and other information: Rules 3.5, 3.7, 8.9, 9.6, 9.7, 9.8, 9.10, 9.21, 9.23, 11.2, 12.12 and Chapter XV. In addition, the following Rules contain specific requirements with regard to the furnishing of information to the Exchange: Rules 3.6, 3.8, 3.14, 3.15, 3.16, 3.18, 4.9, 4.13, 6.49, 6.51, 6.56, 6.59, 6.71, 6.72, 7.2, 7.3, 7.6, 8.2, 8.3, 8.5, 8.10, 8.11, 9.1, 9.2, 9.3, 12.11, 13.4, 14.2 and 19.2. The foregoing list is not intended to be exhaustive and members must comply with all applicable record-keeping and reporting requirements whether or not listed above.

Customer Complaints

Rule 9.23 Every member organization conducting a non-member customer business shall make and keep current a separate central log, index or other file for all options-related complaints, through which these complaints can easily be identified and retrieved. The term "options-related complaint" shall mean any written statement by a customer or person acting on behalf of a customer alleging a grievance arising out of or in connection with listed options. The central file shall be located at the principal place of business of the member organization or such other principal office as shall be designated by the member organization. At a minimum, the central file shall include: (i) Identification of complainant, (ii) date complaint was received, (iii) identification of Registered Representative servicing the account, (iv) a general description of the matter complained of, and (v) a record of what action, if any, has been taken by the member organization with respect to the complaint. Each options-related complaint received by a branch office of a member organization shall be forwarded to the office in which the

separate, central file is located not later than 30 days after receipt by the branch office. A copy of every options-related complaint shall be maintained at the branch office that is the subject of the complaint.

Supervision of Accounts

Rule 9.8 *(a) Senior Registered Options Principal.* Every member organization shall [provide for the supervision by a Senior Registered Options Principal who is specifically identified to the Exchange, and] *designate and specifically identify to the Exchange a Senior Registered Options Principal* who is an [executive] officer *(in the case of a corporation)* or general partner *(in the case of a partnership)* of the member organization [of] *who shall supervise* all of the organization's non-member customer accounts and all orders in such accounts, insofar as such accounts and orders relate to option contracts.

(b) Compliance Registered Options Principal. Every member organization shall designate and specifically identify to the Exchange a compliance Registered Options Principal (who may be the Senior Registered Options Principal), who shall have no sales functions and shall be responsible to review and to propose appropriate action to secure the member organization's compliance with securities laws and regulations and Exchange rules in respect of its options business. The Compliance Registered Options Principal shall regularly furnish reports directly to the compliance officer (if the Compliance Registered Options Principal is not himself the compliance officer) and to other senior management of the member organization. The requirement that the Compliance Registered Options Principal shall have no sales functions does not apply to a member organization that has received less than $1,000,000 in gross commissions on options business as reflected in its FOCUS Report for either of the preceding two fiscal years or that currently has 10 or fewer Registered Representatives.

(c) Maintenance of Customer Records. Background and financial information of customers who have been approved for options transactions shall be maintained at both the branch office servicing the customer's account and the principal supervisory office having jurisdiction over that branch office. Copies of account statements of options customers shall be maintained at both the branch office supervising the accounts and the principal supervisory office having jurisdiction over that branch for the most recent six-month period. Other records necessary to the proper supervision of accounts shall be maintained at a place easily accessible both to the branch office servicing the customer's account and to the principal supervisory office having jurisdiction over that branch office.

. . . Interpretations and Policies:

.01 No change.

.02 No change.

Disciplinary Action by Other Organizations

Rule 4.9. Every member shall promptly notify the Exchange *in writing* of any disciplinary action, *including the basis therefor,* taken by any [other] national securities [or commodities] exchange *or association,* clearing corporation, [national securities association] *commodity futures market* or government regulatory body against the member *or its associated persons,* and shall *similarly* notify the Exchange of any [such] *disciplinary* action taken by [any such body or by] the member itself against any of its [Approved Persons or persons registered as Options Principals or Representatives under Chapter IX.] *associated persons involving suspension, termination, the withholding of commissions or imposition of fines in excess of $2,500, or any other significant limitation on activities.*

Disciplinary Jurisdiction

Rule 17.1. *(a)* No change.

[*. . . Interpretations and Policies:*

.01] *(b)* Any member or person associated with a member shall *continue to* be subject to the disciplinary jurisdiction of the Exchange following such person's termination of membership or association with a member *with respect to matters that occurred prior to such termination; Provided,* That [the Exchange serves] written notice *of the commencement of an inquiry into such matters is given by the Exchange* to such former member or associated person within [ninety days] *one year* of *receipt by the Exchange of* written notice of [termination that the Exchange is making inquiry into a matter or matters which occurred prior to] the termination of such person's status as a member or person associated with a member. [Further, disciplinary proceedings, if any, must be initiated within one year from the date of termination of membership or association with a member.]

. . . Interpretations and Policies

[.02] *.01* No change.

Communications to Customers [Advertisements, Market Letters and Sales Literature]

Rule 9.21 [(a) *Approval by Registered Options Principal.* All advertisements, market letters and sales literature issued by a member organization pertaining to options shall be approved in advance by a Registered Options Principal who is an officer or partner of the member organization, and copies thereof together with the names of persons approving their issuance, the names of persons who prepared the material and the source of any recommendations contained therein shall be retained by the member organization and be readily available for examination by the Exchange for a period of three years.]

[(b) *Standards of Approval.* No advertisement, sales literature or market letter shall be approved under paragraph (a) of this Rule which:

(i) Contains any untrue statement or omission of a material fact or is otherwise false or misleading.

(ii) Contains promises of specific results, exaggerated or unwarranted claims, opinions for which there is no reasonable basis or forecasts of future events which are unwarranted or which are not clearly labeled as forecasts;

(iii) Fails to meet general standards of good taste and judgment common to the securities industry;

(iv) Would constitute a prospectus as that term is defined in the Securities Act of 1933, unless it meets the requirements of Section 10 of said Act.]

[(c) *Exchange Approval Required for Advertisements.* In addition to the approval required by paragraph (a) of this Rule, every advertisement of a member organization pertaining to options shall be submitted to the Department of Compliance of the Exchange at least ten days prior to use (or such shorter period as the Department may allow in particular instances) and, if expressly disapproved by the Exchange, shall be withheld or withdrawn from circulation until such changes specified by the Exchange have been made and the advertisement re-submitted for Exchange approval.]

[(d) *Definitions.* For purposes of this Rule, the following definitions shall apply:]

[(i) Advertisements include any material for use in any newspaper or magazine or other public media or by radio, telephone recording, motion picture or television.

[(ii) Sales literature and market letters include any communication for distribution to customers or the public which contains any analysis, report, recommendation, option, prediction or

comment with respect to options, underlying securities, or market conditions.]

[. . . *Interpretation and Policies:*]

[.01 In addition to adhering to the general standards of truthfulness and good taste prescribed by Rule 9.21, the advertisements, market letters and sales literature or Exchange members covering Chicago Board Options should reflect the following factors.]

[I. Chicago Board Options are securities registered under the Securities Act of 1933, and they are the subject of a currently effective registration statement. Section 5 of the Securities Act prohibits the use of any written material or radio or television advertisements (or other material constituting a "prospectus" as defined in the Act) relating to a registered security unless certain conditions are met. With respect to advertisements and sales literature covering Chicago Board Options, the following rules must be observed:]

[A. Except as provided in paragraph B below, no written material with respect to Chicago Board Options may be sent to any person unless prior to or at the same time with the written material a current Options Prospectus was sent to such person.]

[B. Advertisements may be used (and copies of the advertisements may be sent to persons who have not received a Prospectus) if the material meets the requirements of Rule 134 under the Securities Act of 1933, as that Rule has been interpreted as applying to Chicago Board Options. Under Rule 134, advertisements are limited to general descriptions of the security being offered and of its issuer. In the case of Chicago Board Options, advertisements under this Rule must have the following characteristics: (i) The advertisement should state the name and address of the person from whom a current Options Prospectus may be obtained (this would usually be the member sponsoring the advertisement); (ii) The text of the advertisement may contain a brief description of Chicago Board Options, including as statement that the issuer of every Chicago Board Option is the Chicago Board Options Exchange Clearing Corporation. The text may also contain a brief description of the general attributes and method of operation of the Exchange and the Clearing Corporation, including a discussion of how the price of an Option is determined on the Exchange's trading floor; (iii) The advertisement may include any statement or legend required by any state law or administrative authority; (iv) Advertising designs and devices including borders, scrolls, arrows, pointers, multiple and combined logos and unusual type faces and lettering as well as attention-getting headlines and photographs and other graphics may be used, provided such material is not misleading.]

[II. There are special risks attendant to options transactions and certain options transactions involve complex investment strategies. These factors should be reflected in any communication (including advertising, sales literature and similar material) which purport to include any discussion of the uses or advantages of Chicago Board Options. Although it is up to each member in preparing its communications concerning Chicago Board Options to take into consideration these factors, the following points of particular importance are presented for the general guidance of members in this regard:]

[A. Any statement referring to the opportunities or advantages presented by Chicago Board Options should be balanced by a statement of the corresponding risks. The risk statement should reflect the same degree of specificity as the statement of opportunities, and broad generalities should be avoided. Thus, a statement such as, "With options, an investor has an opportunity to earn profits while limiting his risk of loss," should be balanced by a statement such as, "Of course, an options investor may lose the entire amount committed to options in a relatively short period of time."]

[B. It should not be suggested that options are suitable for most investors, or for small investors. Indeed, it is strongly suggested that there be included in all Chicago Board Options literature discussing the uses of options a warning to the effect that options are not for everybody.]

[C. Until the existence of the Exchange's secondary market has been demonstrated by experience, Chicago Board Options literature should reflect the untried nature of this aspect of the Exchange. Accordingly, statements suggesting the certain availability of the Exchange's secondary market should not be made. Instead, any reference to the secondary market should be expressed in such terms as, "The Exchange's secondary market *is intended* to provide a means for the liquidation of positions in options," or, "If the price of the underlying stock goes down, the holder of a Chicago Board Option *may* be able to realize any remaining value of the Option by selling it in the secondary market." (Italics used for illustrative purposes only.)]

Rule 9.21. (a) *General Rule. No member or member organization, and no partner or employee thereof, shall utilize any advertisement, sales literature or other communications to customers or the public concerning options which:*

(i) Contains any untrue statement or omission of a material fact or is otherwise false or misleading;

(ii) contains promises of specific results, exaggerated or unwarranted claims, opinions for which there is no reasonable basis or forecasts of future events which are unwarranted or which are not clearly lableled as forecasts;

(iii) contains hedge clauses or disclaimers which are not legible, which attempt to disclaim responsibility for the content of such literature or for opinions expressed therein, or which are otherwise inconsistent with such advertisement or sales literature;

(iv) fails to meet general standards of good taste and truthfulness; or

(v) would constitute a prospectus as that term is defined in the Securities Act of 1933, unless it meets the requirements of Section 10 of said Act.

(b) Approval by Compliance Registered Option Principal. All advertisements and sales literature (except completed worksheets) issued by a member or member organization pertaining to options shall be approved in advance by the Compliance Registered Options Principal or his designee. Copies thereof, together with the names of the persons who prepared the material, the names of the persons who approved the material and, in the case of sales literature, the source of any recommendations contained therein, shall be retained by the member or member organization and be kept at an easily accessible place for examination by the Exchange for a period of three years.

(c) Exchange Approval Required for Options Advertisements. In addition to the approval required by paragraph (b) of this Rule, every advertisement of a member or member organization pertaining to options shall be submitted to the Department of Compliance of the Exchange at least ten days prior to use (or such shorter period as the Department may allow in particular instances) for approval and, if changed or expressly disapproved by the Exchange, shall be withheld from circulation until any changes specified by the Exchange have been made or, in the event of disapproval, until the advertisement has been resubmitted for, and has received, Exchange approval. The requirements of this paragraph shall not be applicable to:

(i) advertisements submitted to another selfregulatory organization having comparable standards pertaining to advertisements; and

(ii) advertisements in which the only reference to options is contained in a listing of the services of a member organization.

(d) Except as otherwise provided in the Interpretations and Policies hereunder, no written materials respecting options may be disseminated to any person who has not previously or contemporaneously received a current Clearing Corporation prospectus.

(e) Definitions. For purposes of this Rule, the following definitions shall apply:

(i) The term "advertisement" shall include any sales material that reaches a mass audience through public media such as newspapers, periodicals, magazines, radio, television, telephone recording, motion picture, audio or video device, billboards, signs, or through written communications to customers or the public not required to be accompanied or preceded by a current Clearing Corporation prospectus.

(ii) The term "sales literature" shall include any written communication (not defined as an "advertisement") distributed or made generally available to customers or the public that contains any analysis, performance report, projection or recommendation with respect to options, underlying securities or market conditions, any standard forms of worksheets, or any seminar text which pertains to options and which is communicated to customers or the public at seminars, lectures or similar such events, or any Exchange-produced materials pertaining to options.

. . .Interpretations and Policies:

.01 The special risks attendant to options transactions and the complexities of certain options investment strategies shall be reflected in any communication which discusses the uses or advantages of options. In the preparation of communications respecting options, the following guidelines shall be observed:

A. Any statement referring to the potential opportunities or advantages presented by options should be balanced by a statement of the corresponding risks. The risk statement should reflect the same degree of specificity as the statement of opportunities, and broad generalities should be avoided. Thus, a statement such as "with options, and investor has an opportunity to earn profits while limiting his risk of loss", should be balanced by a statement such as "of course, an options investor may lose the entire amount committed to options in a relatively short period of time."

B. It should not be suggested that options are suitable for all investors. All communications discussing the use of options should include a warning to the effect that options are not for everyone.

C. Statements suggesting the certain availability of a secondary market for options should not be made.

.02 Advertisements pertaining to options shall conform to the following standards:

A. Advertisements may only be used (and copies of the advertisements may be sent to persons who have not received a Clearing Corporation prospectus) if the material meets the requirements of Rule 134 under the Securities Act of 1933, as that Rule has been interpreted as applying to options. Under Rule 134, advertisements must be limited ot general descriptions of the security being offered and of its issuer. Advertisements under this Rule shall state the name and address of the person from whom a current Clearing Corporation prospectus may be obtained. Such advertisements may have the following characteristics:

(i) The text of the advertisement may contain a brief description of such options, including a statement that the issuer of every such option is the Clearing Corporation. The test may also contain a brief description of the general attributes and method of operation of the exchange or exchanges on which such options are traded and of the Clearing Corporation, including a discussion of how the price of an option is determined on the trading floor(s) of such exchange(s);

(ii) The advertisement may include any statement required by any state law or administrative authority;

(iii) Advertising designs and devices, including borders, scrolls, arrows, pointers, multiple and combined logos and unusual type faces and lettering as well as attention-getting headlines and photographs and other graphics may be used, aprovided such material is nto misleading.

B. The use of recommendations or of past or projected performance figures, including annualized rates of return, is not permitted in any advertisement pertaining to options.

.03 Written communications (other than advertisements) pertaining to options shall confrom to the following standards:

A. Such communications shall state that supporting documentation for any claims (including any claims made on behalf of options programs or the options expertise of sales persons), comparisons, recommendations, statistics or other technical data, will be supplied upon request.

B. Such communications may contain projected performance figures (including projected annualized rates of return): Provided, That:

(i) no suggestion of certainty of future performance is made;

(ii) parameters relating to such performance figures are clearly established (e.g., to indicate exercise price of option, purchase price of the underlying stock and its market price, option premium, anticipated dividends, etc.);

(iii) all relevant costs, including commissions and interest charges (if applicable with regard to margin transactions) are disclosed;

(iv) such projections are plausible and are intended as a source of reference or a comparative device to be used in the development of a recommendation;

(v) all material assumptions made in such calculations are clearly identified (e.g., "assume option expires", "assume option unexercised", "assume option exercised," etc.);

(vi) the risks involved in the proposed transactions are also discussed;

(vii) in communications relating to annualized rates of return, that such returns are not based upon any less than a sixty-day experience; any formulas used in making calculations are clearly displayed; and a statement is included to the effect that the annualized returns cited might be achieved only if the parameters described can be duplicated and that there is no certainty of doing so.

C. Such communications may feature records and statistics which portray the performance of past recommendations or of actual transactions: Provided, That:

(i) any records or statistics must be confined to a specific "universe" that can be fully isolated and circumscribed and that covers at least the most recent 12-month period;

(ii) such communications include or offer to provide the date of each initial recommendation or transaction, the price of each such recommendation or transaction as of such date, and the date and price of each recommendation or transaction at the end of the period or when liquidation was suggested or effected, whichever was earlier;

(iii) such communications disclose all relevant costs, including commissions and interest charges (if applicable with regard to margin transactions) and, whenever annualized rates of return are used, all material assumptions used in the process of annualization;

(iv) in the event such records or statistics are summarized or averaged, such communications include the number of items recommended or transacted, the number that advanced and the number that declined;

(v) an indication is provided of the general market conditions during the period(s) covered, and any comparison made between such records and statistics and the overall market (e.g., comparison to an index) is valid;

(vi) such communications state that the results presented should not and cannot be viewed as an indicator of future performance; and

(vii) a Registered Options Principal determines that the records or statistics fairly present the status of the recommendations or transactions reported upon and so initials the report.

D. In the case of an options program (i.e., an investment plan employing the systematic use of one or more options strategies), the cumulative history or unproven nature of the program and its underlying assumptions shall be disclosed.

E. Standard forms of options worksheets utilized by member organizations, in addition to complying with the requirements applicable to sales literature, must be uniform within a member organization.

F. Communications that portray performance of past recommendations or actual transactions and completed worksheets shall be kept at a place easily accessible to the sales office for the accounts or customers involved.

Allocation of Exercise Notices

Rule 11.2 *(a)* Each Member Organization shall establish fixed procedures for the allocation of exercise notices assigned in respect of a short position in such Member Organization's customers' accounts. The allocation shall be on a "first in, first out [basis]", *or automated* [on a basis of] random selection *basis that has been approved by the Exchange, or on a manual random selection basis that has been specified by the Exchange. Each member organization shall inform its customers in writing of the method it uses to allocate exercise notices to its customers' accounts, explaining its manner of operation and the consequences of that system* [or another allocation method that is fair and equitable to the members' customers: *Provided,* That such method of allocation may provide that an exercise notice of block size shall be allocated to a customer or customers having an open short position of block size and that an exercise notice of less than block size shall be allocated to a customer having a short position of block size: *And provided further,* That the member organization shall allocate an exercise notice pertaining to a call option contract to a customer who has made a specific deposit of the underlying security if it is directed to do so by the Clearing Corporation. For the purposes of this Rule, an exercise notice or a short position with respect to 25 or more units of trading of the same class of options shall be deemed to be of "block size"].

[. . . Interpretations and Policies]

[.01] *(b)* Each member organization shall report its proposed method of allocation to the Exchange and obtain the Exchange's prior approval thereof, and no member organization shall change its method of allocation unless the change has been reported to and approved by the Exchange. *The requirements of this paragraph shall not be applicable to allocation procedures submitted to and approved by another self-regulatory organization having comparable standards pertaining to methods of allocation.* [Each Member Organization shall, upon the request of a customer, furnish to such customer a description of the method used by it in assigning exercise notices to the accounts of customers.]

(c) Each member organization shall preserve for a three-year period sufficient work papers and other documentary materials relating to the allocation of exercise notices to establish the manner in which allocation of such exercise notices is in fact being accomplished.

. . . Interpretations and Policies:

[.02] *.01* No change.

Securities Accounts and Orders of Market Makers

[Interest in Joint Accounts]

Rule 8.9. (a) *Identification of Accounts. In a manner prescribed by the Exchange, each Market-Maker shall file with the Exchange and keep current a list identifying all accounts for stock, option, and related securities trading in which the Market-Maker may, directly or indirectly, engage in trading activities or over which he exercises investment discretion. No Market-Maker shall engage in stock, option, or related securities trading in an account which has not been reported pursuant to this Rule 8.9.*

(b) Reports of Orders. In a manner prescribed by the Exchange, each Market-Maker shall, on the business day following order entry date, report to the Exchange every order entered by the Market-Maker for the purchase or sale of a security underlying options traded on the Exchange or a security convertible into or exchangeable for such underlying security as well as opening and closing positions in all such securities held in each account reported pursuant to Paragraph (a) of this Rule. The report pertaining to orders must include the terms of each order, identification of the brokerage firms through which the orders were entered, the times of entry or cancellation, the times reports of executions were received and, if all or part of the order was executed, the quantity and execution price.

(c) Joint Accounts. No Market-Maker shall, directly or indirectly, hold any interest or participate in any joint account for buying or selling any option contract unless each participant in such joint account is a member or member organization and unless such account is reported to and not disapproved by the Exchange. Such reports in form prescribed by the Exchange shall be filed with the Exchange before any transaction is effected on the Exchange for such joint account.

. . . Interpretation and Policies:

.01 No change.

.02 No change.

.03 No change.

.04 No change.

.05 No change.

.06 Reports of accounts and orders required to be filed pursuant to paragraphs (a) and (b) of Rule 8.9 relate only to accounts in which a Market-Maker, individually, directly or indirectly, controls trading activities. Thus, reports would be required for accounts over which a Market-Maker exercises investment discretion as well as for his proprietary accounts. Reports would not be required simply because a Market-Maker has a passive interest in his firm's proprietary accounts. For purposes of Rule 8.9, related securities include securities convertible into or exchangeable for underlying securities.

Educational Circular Under Rule 4.1

Front-Running of Blocks

This educational circular presents the Exchange's enforcement policy with respect to certain practices generally referred to as "front-running of blocks". Because a block transaction in an underlying security may have an impact on the market for that security or the options covering that security (or vice versa), the Exchange would be concerned if its members were to engage in the practice of trading in options or in underlying securities when they are in possession of material non-public information concerning block transactions in these securities. In keeping with its responsibility to assure

the fairness of its market, the Exchange wishes to emphasize that this kind of activity on the part of market professionals is conduct inconsistent with just and equitable principles of trade and will be dealt with in enforcement proceedings under Chapter XVII.

Although it is not possible to provide an all-inclusive definition of front-running in all of its forms, the Exchange believes that it is important to provide, so far as possible, clear and unambiguous standards describing the kind of conduct that will not be permitted, both in order to provide guidance for members and to avoid interfering with entirely legitimate transactions that do not involve front-running. For this purpose, the Exchange has prepared this educational circular containing a discussion and examples of conduct involving the front-running of blocks that would be considered to be in violation of Rule 4.1. It must be recognized that the following discussion of prohibited conduct is not exclusive, and that conduct not specifically described in this circular may nonetheless constitute front-running that comes within the broad prohibition of Rule 4.1. Although this circular concentrates on proprietary trading of members, front-running violations may also occur in certain agency situations, such as where a member passes on non-public information concerning block transactions to a customer who then trades on the basis of the information.

The Exchange considers it to be conduct inconsistent with just and equitable principles of trade in violation of Rule 4.1 for a member or person associated with a member for an account in which such member or person has an interest, or for an account with respect to which such member or person exercises investment discretion, to cause to be executed

(1) An order to buy or sell an option when such member or person causing such order to be executed has knowledge of a block transaction in the underlying security, or

(2) An order to buy or sell an underlying security when such member or person causing such order to be executed has knowledge of a block transaction in an option covering that security.

prior to the time information concerning the block transaction has been made publicly available. Front-running may be based upon knowledge of less than all of the terms of the transaction, so long as there is knowledge that all of the material terms of the transaction have been or will imminently be agreed upon. Notwithstanding the foregoing, if a member firm receives at or about the same time a customer's order of block size relating to both an option and the underlying security, the member may position the other side of one or both components of the order, subject to applicable exchange rules governing crosses. However, the member firm would not be able to cover any resulting proprietary position by entering an offsetting order until information concerning all block transactions involved has been made publicly available.

The application of this circular is limited to transactions that are required to be reported on the last sale reporting systems administered by CTA or OPRA, and information as to a block transaction shall be considered to be publicly available when it has been disseminated via the tape or high speed communication line of one of those systems. Public outcry on the Exchange Floor shall not be deemed to make such information publicly available except in unusual circumstances with the advance approval of two Floor Officials.

A transaction involving 10,000 shares or more of an underlying security or options covering such number of shares shall be conclusively deemed to be a block transaction, although transactions of less than 10,000 shares may also be block transactions in appropriate cases. A block transaction that has been agreed upon does not lose its identity as such by arranging partial execution of the transaction in portions which themselves are not of block size. In this situation, the requirement that information concerning the transaction be made publicly available will not be satisfied until the entire block transaction has been completed and publicly reported.

The application of Rule 4.1 to front-running is illustrated by, but not limited to, the following examples:

Example No. 1. Member A has agreed to a transaction involving the sale for its own account or for the account of a customer of 10,000 shares of XYZ common stock, a security listed on the New York Stock Exchange, at a price of 18½. Regardless of whether this price is within or without the bid or offer quoted for XYZ, Member A may not buy or sell any XYZ options for its own account until the sale of the 10,000 shares of XYZ has been reported over CTA Network A. Once the sale has been reported, Member A is free to trade XYZ options.

Example No. 2. Member A has agreed to a transaction involving the purchase of 100 XYZ July 20 options for a premium of 2⅛ for its own account or for the account of a customer. Until this block option transaction has been reported over the OPRA high speed network, Member A may not buy or sell any shares of XYZ common stock for its own account.

Branch Offices of Member Organizations

Rule 9.6 *(a)* No change.

(b) No branch office of a member organization shall transact options business with the public unless the manager of such branch office has been qualified as a Registered Options Principal: Provided, That this requirement shall not apply to branch offices in which not more than three Registered Representatives are located so long as the member organization can demonstrate that the options activities of such branch offices are appropriately supervised by a Registered Options Principal.

Discretionary Accounts

Rule 9.10 (a) *Authorization and Approval Required.* No member organization shall exercise any discretionary power with respect to [Exchange transactions] *trading in options contracts* in a customer's account unless such customer has given prior written authorization and the account has been accepted in writing by a Registered Options Principal [who is an officer or partner of the member organization]. *The Senior Registered Options Principal shall review the acceptance of each discretionary account to determine that the Registered Options Principal accepting the account had a reasonable basis for believing that the customer was able to understand and bear the risks of the strategies or transactions proposed, and he shall maintain a record of the basis for his determination.* Each discretionary order shall be approved and initialled on the day entered by [a] *the branch office manager or other* Registered Options Principal, [or, in the case of a branch office, by a branch office manager: *Provided,* That such] *provided that if the branch office manager is not a Registered Options Principal, his* approval shall be confirmed within a reasonable time by a Registered Options Principal. Every discretionary order [must] *shall* be identified as discretionary on the order at the time of entry. Discretionary accounts shall receive frequent appropriate supervisory review by the [Senior] *Compliance* Registered Options Principal [or his designee].

(b) No change.

(c) No change.

(d) No change.

(e) Options Programs. Where the discretionary account utilizes options programs involving the systematic use of one or more options strategies, the customer shall be furnished with a written explanation, meeting the requirements of Rule 9.21, of the nature and risks of such programs.

Effectiveness Timetable

	No of days following Commission approval
9.7(b)	30 days.
9.7(c)	30 days for initial verification. 60 days for subsequent verification.
9.12	60 days.
9.9	30 days.
9.23	60 days.
9.8(a)	30 days
9.8(b)	90 days.
9.8(c)	90 days.
4.9	30 days.
17.1	Immediately.
9.21(a)	Immediately.
9.21(b)	90 days; until then approval under present 9.21(a).
9.21 (c), (d) & (e)	Immediately.
11.2(a)	60 days.
11.2(b)	Immediately.
11.2(c)	60 days.
8.9 (a) & (b)	60 days.
"Front-running" circular	Immediately.
9.6(b)	90 days.
9.10(a)	60 days.
9.10(e)	90 days.

[FR Doc. 79-26520 Filed 8-24-79; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-16125; File No. SR-CSE-79-4]

Cincinnati Stock Exchange; 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 August 1, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

The Cincinnati Stock Exchange's Statement of the Terms of Substance of the Proposed Rule Change

The Board of Trustees of The Cincinnati Stock Exchange has established a maximum Multiple Dealer Trading System fee charge effective August 1, 1979, as follows:

Multiple Dealer Trading System (CIN/NMS) Fees

(a) 2¢ per share will be charged non-members when acting as principal.

(b) 1½¢ per share will be charged members when acting as principal.

(c) ½¢ per share will be charged both members and non-members on public agency transactions.

(d) Charge on any single transaction executed by an individual firm shall not exceed $100 per transaction (inclusive of both sides of the transaction).

The Cincinnati Stock Exchange's Statement of Basis and Purpose.

In response to comments received from Multiple Dealer Trading System participants, the Board of Trustees reviewed the Multiple Dealer Trading and in so doing determined that fees charged on large transactions were perhaps excessively high. Therefore, the Board deemed it advisable to reduce fees on these executions by setting a maximum charge.

Section 6(b)(4) of the Act is the basis for these fees since specified charges are reasonable and equitably allocated to those who avail themselves of such Exchange services.

No comments were solicited from Members nor were any received.

Fees as set forth impose no burden on competition.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and 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 references in the caption above and should be submitted on or before September 17, 1979.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons

Secretary.

August 17, 1979.

[FR Doc. 79-26527 Filed 8-24-79; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-16119; File No. SR-NSCC-79-9]

National Securities Clearing Corp.; Self-Regulatory Organizations; Proposed Rule Changes

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 14 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on August 14, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Change.

The proposed Rule change consists of a new fee to be charged in connection with submission of certain dividend claims to National Securities Clearing Corporation (NSCC).

State of Basis and Purpose

The basis and purpose of the foregoing proposed rule change is as follows:

The proposed Rule change establishes a $10.00 processing fee for each dividend claim made against NSCC's NCC & CO. nominee, which fee will be utilized by NSCC to defray the costs of processing such claims as arise against securities which members have elected not to transfer out of the NCC & Co. nominee name subsequent to September 1, 1979.

The proposed Rule change relates to the equitable allocation of reasonable dues, fees and other charges among NSCC's participants.

No comments on proposed rule change have been solicited or received.

The Corporation does not perceive that the proposed rule change would constitute a burden on competition.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written

submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, 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 on or before September 17, 1979.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

August 17, 1979.

[FR Doc. 79-26531 Filed 8-24-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-16122; File No. SR-OCC-79-5]

Options Clearing Corp.; 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 July 24, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Article III, Section 8 of the By-Laws of The Options Clearing Corporation ("OCC"), and in accordance with the principles set forth in Article IX, Section 9 of said By-Laws, the Board of Directors of OCC has determined to revise OCC's clearing fees by reducing the fee for all Exchange transactions cleared through OCC (other than market-maker scratch transactions) from $0.095 per contract to $0.085 per contract. The reduction is to become effective with the August, 1979 billing (covering the month of July, 1979).

Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of the fee reduction is to adjust OCC's clearing fees to a level more closely approximating OCC's operating costs, while at the same time enabling OCC to maintain capital, surplus and reserves sufficient for its needs and consistent with the principles set forth in Article IX, Section 9 of its By-Laws.

OCC believes that the reduction of clearing fees for transactions is reasonable in light of OCC's anticipated revenue from clearing fees and those anticipated operating costs and other needs. The fee reduction results in fees for all transactions other than market-maker scratch transactions being $0.085 which approximates the cost to OCC of handling such contracts. Accordingly, OCC believes that the proposed fee reduction allocates reasonable fees in an equitable manner among OCC's Clearing Members.

Comments were not and are not intended to be solicited with respect to the proposed fee reduction.

OCC does not believe that the proposed fee reduction would impose any burden on competition.

The foregoing rule change has become effective, pursuant to Section 19b-3 of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C., 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before September 17, 1979.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

August 17, 1979.

George A. Fitzsimmons,

Secretary.

[FR Doc 79-26532 Filed 8-24-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 16124; SR-PSE-79-9]

Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change

August 17, 1979.

On June 4, 1979, the Pacific Stock Exchange, Incorporated ("PSE"), 301 Pine Street, San Francisco, California 94104, 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 amending PSE Rule I, Sections 3(b) and 3(e) which set forth criteria for initial and continued listing of stocks, bonds, and warrants. Adoption of the revised criteria will enable the PSE to become a national securities exchagne certified by the State of California's Commissioner of Corporations. As a result, issuers of securities listed on the PSE will be exempted from certain filing requirements imposed by that State.

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. 15947, June 25, 1979) and by publication in the **Federal Register** (44 FR 38037, June 29, 1979).[1] All written statements with respect to the 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 finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and in particular, the requirements of Section 6 and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the

[1] The PSE submited one amendment to this rule filing on August 13, 1979. The amendatory material clarified the stated purpose of the rule filing but did not alter the previously proposed amendments to listing and delisting criteria. Since the amendment did not effect a material change in the original submission, the commission did not publish notice of filing of the amendment.

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. 79-26533 Filed 8-24-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-16117; File No. SR-SCCP 79-7]

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 August 6, 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

The Stock Clearing Corporation of Philadelphia (SCCP) proposes an amendment to its Rule 5 which presently requires its members to use continuous-net-settlement depository clearing.

The change will afford members the ability to exempt selected round-lot purchases from CNS processing and thereby utilize trade-for-trade clearance.

A pro-forma amendment has been made to paragraph 4 of Rule 5 for purposes of clarity.

SCCP also proposes a related amendment to its Rule 23 on Compensation which deals with charges for services rendered. Changes to Sections 3 and 6 of the Rule established fees for special clearing arrangement for C.O.D. purchases of round lots at a higher clearance charge than for CNS processing.

Statement of Basis and Purpose of Proposed Rule Change

The purpose of the change to Rule 5 is to allow members the use of trade-for-trade clearance services in cases where CNS processing can be considered to be a burden.

The purpose of the change to Rule 23 is to make it more cost related to the additional servicing involved in the clearing of C.O.D. purchases.

The proposed change to Rule 5 will enable SCCP to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible in accordance with the purposes set forth in Section 17A(b)(3)(D) of the Act.

The proposed change to Rule 23 provides equitable allocation of fees and other charges among members in accordance with standards set forth in section 17A(b)(3)(D) of the Act.

Formal comments were not solicited.

No burden on competition will be imposed by the proposed Rule changes. The proposed rate schedule does not discriminate between marketplaces nor does it inhibit clearing interfaces.

On or before October 1, 1979, or within such longer period (i) as the Commission may designate up to 90 days of such date it 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 on or before September 17, 1979.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

August 17, 1979.

[FR Doc. 79-26534 Filed 8-24-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-16118; File No. SR-SCCP 79-10]

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 June 18, 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 interpretation to an existing agreement between the Philadelphia-Baltimore Stock Exchange (now the Philadelphia Stock Exchange, Inc.) and the Boston Stock Exchange (now the Boston Stock Exchange, Incorporated) dated March 5, 1957. The interpretation relates specifically to an amendment to the agreement dated March 5, 1957, which states in part that: "All securities delivered shall conform to the delivery requirements of the receiving Stock Clearing Corporation . . . ." It is not in conflict with SCCP's requirements if Boston Stock Exchange Clearing Corporation (BSECC) wishes to deliver securities to New England Securities Depository Trust Company (NESDTC), which will act as a depository facility for SCCP pursuant to an agreement signed by SCCP and NESDTC.

Statement of Basis and Purpose of Proposed Rule Change

The purpose of the proposed interpretation is to reduce costs and promote greater efficiency in clearance between SCCP and BSECC.

The proposed interpretation will enable SCCP to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible in accordance with the purposes set forth in Section 17A(b)(3)(F) of the Act.

No formal comments were solicited from members.

No burden on competition will be imposed by the proposed interpretation.

On or before October 1, 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.

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 submissions will be

available for inspection and copying in the Public Reference Room, 1100 "L" Street NW, Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before September 17, 1979.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

August 17, 1979.

[FR Doc. 79-26535 Filed 8-24-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-16123; File No. SR-SCCP 79-12]

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 August 7, 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 a new Rule 27 as follows:

Stock Clearing Corporation of Philadelphia may act as the agent of Philadelphia Depository Trust Company to receive and deliver securities and to effect daily money settlements on behalf of those organizations or entities which are participants in both Stock Clearing Corporation and Philadelphia Depository Trust Company.

Statement of Basis and Purpose of Proposed Rule Change

The purpose of the proposed Rule is to authorize SCCP to act as agent for Philadelphia Depository Trust Company (PHILADEP) for the acceptance of PHILADEP deposits at SCCP branch locations.

Its purpose is also to authorize SCCP to effect PHILADEP money settlement on behalf of participants which are members of both SCCP and PHILADEP.

The proposed Rule change will promote the prompt and accurate clearance and settlement of securities transactions and foster cooperation and coordination with persons engaged in such process.

No formal comments were solicited or received from members.

No burden on competition will be imposed by the proposed Rule.

On or before October 1, 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 or 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 submissions will be available for inspection and copying in the Public Reference Room, 1100 "L" Street NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before September 17, 1979.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

Secretary.

August 17, 1979.

[FR Doc. 79-26536 Filed 8-24-79; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Delegation of Authority No. 3A]

Associate Deputy Administrator for Support Services

I. Pursuant to the authority vested in the Administrator by the Small Business Act, 72 Stat. 384, as amended, and the Small Business Investment Act of 1958, 72 Stat. 689, as amended, there is hereby delegated to the Associate Deputy Administrator for Support Services the following authority:

a. To contract for supplies and services for the agency pursuant to Chapter 4 of Title 41, United States Code, subject to the limitations contained in section 257 (a) and (b) of that chapter.

b. To execute grants or cooperative agreements authorized by Federal statute except Section 7(j) of the Small Business Act subject to the limitations contained in PL 95-224, OMB Circular A-110 and OMB Circular A-110.

II. This delegation is not in derogation of any authority residing in the Deputy Administrator.

III. The authority delegated herein may be redelegated.

IV. The authority delegated herein may be exercised by any employee officially designated as Acting Associate Deputy Administrator for Support Services.

Effective Date: August 17, 1979.

William H. Mauk Jr.,

Acting Administrator.

[FR Doc. 79-26483 Filed 8-24-79; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-79-17]

Petitions for Exemption: Summary of Petitions Received and Dispositions of Petitions Issued

AGENCY: FEDERAL AVIATION ADMINISTRATION (FAA), DOT.

ACTION: Notice of petitions for exemptions received and of dispositions of petitions issued.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I) and of dispositions of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Publication of this notice and any information it contains or omits is not intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before: September 17, 1979.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-24), Petition Docket No. , 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION: The petition, any comments received and a copy of any final disposition are filed in the assigned regulatory docket and are

available for examination in the Rules Docket (AGC-24), Room 916, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW, Washington, D.C. 20591; telephone (202) 426-3644.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, D.C., on August 20, 1979.

Carl B. Schellenberg,

Assistant Chief Counsel, Regulations and Enforcement Division.

Petitions for Exemptions

Docket No.	Petitioner	Regulations affected	Description of relief sought
19466	Nevada Systems	14 CFR parts 61, 91, and 121	To permit the petitioner to operate its large transport aircraft for hire without a part 121 certificate and to utilize both flight attendants and flight crewmembers who are not qualified in accordance with part 121.

Dispositions of Petitions for Exemptions

19333	Graham Thompson, Ltd	14 CFR § 91.27	To permit a Glasflugel Hornet C to participate in the U.S. National Standard Class Soaring Championships without complying with current airworthiness certificate requirements of Section 91.27(a)(1). *Granted 7/13/79.*
19174	Boeing Commerical Airplane Co	14 CFR § 91.32(b)(ii)	To Permit petitioner to exclude the requirement for one pilot to wear oxygen equipment for operation of B-747 and B-747SP airplanes between 41,000 and 45,100 feet altitude. *Granted 8/14/79.*
13141	Trans World Airlines	14 CFR §§ 121.433, 121.441, and 121.443.	To allow petitioner an extension of the October 1, 1979, termination date of Exemption No. 1465G which permits the second-in-command pilot to occupy the pilot-in-command position and permits the International relief officer to occupy the second-in-command position during the enroute cruise portions of international flights. *Granted 8/14/79.*
14477	Altair Airlines, Inc	14 CFR §§ 121.371(a) and 121.378.	To allow petitioner an extension of the August 31, 1979, termination date of Exemption No. 2158B which permits Altair to use on its Nord 26A airplane certain engines, propellers, and spare parts that have been repaired, overhauled, or inspected by persons outside the U.S. who do not hold U.S. airman certificates. *Granted 8/14/79.*
19242	Northwest Orient Airlines	14 CFR §§ 91.32(b)(1)(ii) and 121.333(c)(2).	To permit operation of their B-747-200 airplane fleet up to 45,100 feet without one pilot at the controls wearing and using an oxygen mask when operating above 41,000 feet. *Granted 8/14/79.*
19279	Dorado Wings, Inc	14 CFR § 135.243(a)	To allow petitioner to utilize the services of commerical pilots in their commuter air taxi operations in lieu of using Airline Transport Pilots. *Denied 8/14/79.*
19297	Wings Airways	14 CFR § 135.243(a)	To allow the operation of a commuter air taxi when the Pilot-in-Command has only a commercial pilot certificate. *Denied 8/14/79.*
19157	Capt. Stillman A. Bell	14 CFR § 121.383(c)	To permit petitioner to continue to serve as a pilot in air carrier operations after age 60. *Denied 8/14/79.*
19160	Capt. T.H. Fowler	14 CFR § 121.383(c)	To permit petitioner to continue to serve as a pilot in air carrier operations after age 60. *Denied 8/14/79.*
19161	John Thornton Mills	14 CFR § 121.383(c)	To permit petitioner to continue to serve as a pilot in air carrier operations after age 60. *Denied 8/14/79.*
19168	Warren C. Wilkerson	14 CFR § 121.383(c)	To permit petitioner to serve as a pilot for Trans World Airlines after he has reached his 60th birthday. *Denied 8/14/79.*
19240	Rufus T. Rundlett	14 CFR § 121.383(c)	To allow him to serve as pilot in command in air carrier operations after he has reached his 60th birthday. *Denied 8/14/79.*
19245	Newton L. Edwards	14 CFR § 121.383(c)	To permit him to continue to serve as pilot in air carrier operations after reaching his 60th birthday on May 19, 1979. *Denied 8/14/79.*

[FR Doc. 79-26525 Filed 8-24-79; 8:45 am]
BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. IP79-8; Notice 1]

General Motors Corp.; Receipt of Petition for Inconsequential Noncompliance

General Motors Corporation of Detroit, Michigan, ("GM" herein) has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act for two noncompliances with 49 CFR 571.105, Motor Vehicle Safety Standard No. 105: *Hydraulic Brake Systems.* The basis of the petition is that the noncompliances are inconsequential as they relate to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S5.3.5 of Standard No. 105-75 requires school buses to be equipped with a brake system indicator lamp, whose lens is labelled "BRAKE". If a separate indicator lamp is used to indicate a gross loss of brake pressure it shall include additional appropriate

labelling, i.e., "BRAKE PRESSURE". GM has discovered that the separate indicator for this function is simply labelled "BRAKE". The noncompliance exists on 4250 GMC and Chevrolet school bus chassis manufactured between the start of 1979 model production and April 1979.

Paragraph S5.3.2 of Standard No. 105 requires that all brake system indicator lamps shall be activated as a check of lamp function when the ignition switch is turned to the "on" position when the engine is not running. GM also says that this will not occur in the "PARK BRAKE" indicator unless the park brake is also applied. GM's arguments that these noncompliances are inconsequential as they relate to motor vehicle safety may be summarized as follows: The indicator labelled "BRAKE" is the only indicator that identifies any brake system hydraulic failure, and "this wording conveys the same information as the words 'BRAKE PRESSURE' specified by the Standard, which is that a problem may exist in the service brake hydraulic system." with respect to the check function of the "PARK BRAKE" indicator, the operator's manual accompanying each vehicle advises that the driver apply the parking brake before the engine is started. GM further states that the system is designed to illuminate whenever the ignition switch is turned on and the parking hand brake is applied. If these directions are followed, the indicator will illuminate as a check function, and, in any event, may be checked by application of the parking brake.

Interested persons are invited to submit written data, views and arguments on the petition of General Motors Corp., described above. comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street, S.W., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date:

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on August 15, 1979

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc. 79-26507 Filed 8-24-79; 8:45 am]

BILLING CODE 4910-59-M

[Docket IP79-9; Notice 1]

Gillig Corp.; Petition for Determination of Inconsequential Noncompliance

Gillig Corporation of Hayward, California ("Gillig" herein) has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for an apparent noncompliance with 49 CFR 571.108, Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment*, on the basis that it is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and 49 CFR Part 556 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Standard No. 108 incorporates by reference SAE Standard J 592e, *Clearance, Side Marker, and Identification Lamps*, July 1972. One of the requirements for a front side marker lamp is that, at 45 degrees to the right or left (i.e., to the rear of the vehicle) it shall emit not less than 0.62 candela. Until October 1978 Gillig school buses were equipped with combination front clearance side marker lamps whose light output at the test point in question was .05/.06. Gillig argues that the noncompliance is inconsequential because "a number of other lamps are closely visible in the 45 degrees area which is apparently deficient", and that it is not aware of any complaints or accidents attributable to the noncompliant lamp. The other lighting devices that are visible are the front amber reflector, the intermediate and read side marker lamps and reflectors, and all rear lighting devices. It manufactures between 150 and 200 buses a year and "all recent" production has been equipped with the lamps in question.

Interested persons are invited to submit written data, views and arguments on the petition of Gillig Corporation described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street, S.W., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The petition and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date: September 24, 1979.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417) delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on August 16, 1979.

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[FR Doc 79-26506 Filed 8-24-79; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 11 (Rev. 11)]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of Authority.

SUMMARY: This Delegation Order amends Delegation Order No. 11 (Rev. 10) issued January 29, 1979. Section 4 is amended to authorize Regional Directors of Appeals; Chiefs, Appeals Offices and Associate Chiefs, Appeals Offices, to accept offers in compromise when the liability sought to be compropmised (including interest, penalty, additional amount or addition to the tax) is less than $100,000; to accept offers involving specific penalties; and to reject offers in compromise regardless of the amount of the liability sought to be compromised. The text of the Delegation Order appears below.

EFFECTIVE DATE: November 1, 1979.

FOR FURTHER INFORMATION CONTACT: Bruce J. Conyne CP:AP:PP, 1111 Constitution Avenue, N.W., Room 2324, Washington, D.C. 20224; Telephone (202) 566-6131.

Bruce J. Conyne,

Chief, Programs & Procedures Branch, National Office Appeals Division.

Issued: August 23, 1979.

Authority to Accept or Reject Offers in Compromise

The authority vested in the Commissioner of Internal Revenue by Treasury Department Order No. 150-25, dated June 1, 1953, Order No. 150-36 dated August 17, 1954, 26 CFR 301.7122-1 and 26 CFR 301.7701-9, and Treasury Department Order No. 150-60 dated June 3, 1964, is hereby delegated as follows:

1. Regional Commissioners of Internal Revenue are delegated authority, under Section 7122 of the Internal Revenue Code, to accept offers in compromise of tax, based solely on doubt as to liability, if the unpaid liability (including any interest, penalty, additional amount or addition to tax) is $100,000 or more. This authority does not pertain to offers in compromise of liabilities arising under laws relating to alcohol, tobacco and firearms taxes. The authority delegated herein may not be redelegated.

2. For the Office of International Operations, the Assistant Commissioner (Compliance) is delegated authority, under Section 7122 of the Internal Revenue code, to accept offers in compromise of tax, based solely on doubt as to liability, if the unpaid liability (including any interest, penalty, additional amount or addition to tax) is $100,000 or more. This authority does not pertain to offers in compromise of liabilities arising under laws relating to alcohol, tobacco and firearms taxes. The authority delegated herein may not be redelegated.

3. Regional Commissioners and the Director, Collection Division are delegated authority, under Section 7122 of the Internal Revenue Code, to accept offers in compromise based on doubt as to collectibility and those based on doubt as to both collectibility and liability if the unpaid liability (including any interest, penalty, additional amount or addition to to tax) is $100,000 or more. In addition, Regional Commissioners and the Director, Collection Division, are delegated authority to accept offers in compromise submitted under Section 3469 of the Revised Statutes, as amended (31 U.S.C. 194) insofar as claims arising in the administration of the Internal Revenue laws are concerned. The authorities delegated herein do not pertain to offers in compromise of liabilities arising under laws related to alcohol, tobacco and firearms taxes. The authorities delegated herein may not be redelegated.

4. District Directors, Assistant District Directors, the Director of International Operations and the Assistant Director of International Operations, Regional Directors of Appeals, Chiefs and Associate Chiefs, Appeals Offices, are delegated authority, under Section 7122 of the Internal Revenue Code, to accept offers in compromise in cases in which the liability sought to be compromised (including any interest, penalty, additional amount or addition to the tax) is less than $100,000, to accept offers involving specific penalties, and to reject offers in compromise regardless of the amount of the liability sought to be compromised. This authority does not pertain to offers in compormise of liabilities arising under laws relating to alcohol, tobacco and firearms taxes. The authority delegated to District Directors, Assistant District Directors and the Director of International Operations herein may not be redelegated, except that the authority to reject offers in compormise may be redelegated, but not lower than to Division Chief. The District Director in a streamlined district may not redelegate this authority. The Regional Director of Appeals, Chiefs and Associate Chiefs, Appeal Offices, may not redelegate this authority.

5. Service Center Directors and Assistant Service Center Directors are delegated authority, under Section 7122 of the Internal Revenue Code, to accept offers in compromise, limited to penalties based solely on doubt as to liability, if the unpaid liability is less than $100,000, and to reject offers in compromise, limited to penalties, regardless of the amount of the liability sought to be compromised. This authority does not pertain to offers in compromise of liabilities arising under laws relating to alcohol, tobacco and firearms taxes. This authority may be redelegated, but not lower than to Division Chief.

6. This Order supersedes Delegation Order No. 11 (Rev 10) issued January 29, 1979.

William E. Williams,

Acting Commissioner.

[FR Doc. 79-26491 Filed 8-24-79; 8:45 am]

BILLING CODE 4830-01-M

[Delegation Order No. 75 (Rev. 8)]

Delegation of Authority

AGENCY: Internal Revenue Service, Treasury.

ACTION: Revocation of Delegation of Authority.

SUMMARY: Delegation Order No. 75 (Rev. 8), issued October 1, 1978, granted authority to each Regional Director of Appeals and each Chief and Associate Chief, Appeals Office, to determine the disposition of offers on liabilities less than $100,000 and to recommend acceptance of offers on liabilities in excess of $100,000. These authorities have been incorporated in to Delegation Order No. 11 (Rev. 11). Accordingly, Delegation Order No. 75 (Rev. 8) issued October 1, 1978, is revoked.

EFFECTIVE DATE: November 1, 1979.

FOR FURTHER INFORMATION CONTACT: Bruce J. Conyne CP:AP:PP, 1111 Constitution Avenue, NW., Room 2324, Washington, D.C. 20224; Telephone (202) 566-6131.

Bruce J. Conyne,

Chief, Programs & Procedures Branch, National Office Appeals Division.

Issued: August 23, 1979.

Authority of Regional Director of Appeals in Offers in Compromise

1. Delegation Order No. 75 (Rev. 8), issued October 1, 1978, granted authority to each Regional Director of Appeals and each Chief and Associate Chief, Appeals Office, to determine the disposition of offers on liabilities less than $100,000 and to recommend acceptance of offers on liabilities in excess of $100,000.

2. These authorities have been incorporated into Delegation Order No. 11 (Rev. 11).

3. Accordingly, Delegation Order No. 75 (Rev. 8) issued October 1, 1978, is revoked.

William E. Williams,

Acting Commissioner.

[FR Doc. 79-26492 Filed 8-24-79; 8:45 am]

BILLING CODE 4830-01-M

Proposal to Designate Depository for Annual Reports of Private Foundations; Requests for Comments

AGENCY: Internal Revenue Service, Department of the Treasury.

ACTION: Notice of request for comments on a proposal to designate The Foundation Center as a depository to which private foundations must furnish copies of their annual reports required by section 6056 of the Internal Revenue Code.

SUMMARY: The Commissioner of the Internal Revenue Service invites public comment on a proposal to designate The Foundation Center, 888 Seventh Avenue, New York, New York 10019, as a depository to which all private foundations with assets having a fair market value of $1,000,000 or more or that makes grants of $100,000 or more per year must furnish copies of their Annual Reports required by section 6056 of the Internal Revenue Code. The designation would be made under the authority contained in section 6056(d)(3) of the Code and section 1.6056-1(b) of the Income Tax Regulations. After considering all comments the Commissioner will decide whether to make the proposed designation.

DATE: Written comments should be mailed or delivered by October 26, 1979.

ADDRESS: Written comments should be mailed or delivered to Internal Revenue Service, Attention E:EO:T, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Edmond J. Butler of the Exempt Organizations Technical Branch, Office of the Assistant Commissioner Employee Plans and Exempt Organizations; 202-566-4050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 6056(a) of the Internal Revenue Code requires every private foundation having at least $5,000 of assets at any time during a taxable year to file an annual report. Form 990-AR, Annual Report of Private Foundation, may be used for this purpose.

Section 6056(d)(3) of the Code provides that foundation managers are required to furnish to State officials and other persons at such times and under such conditions as the Secretary may by regulations prescribe copies of the annual report required under section 6056. Section 1.6056-1(b)(2) of the Income Tax Regulations provides that the Commissioner may designate one or more appropriate libraries or depositories to which foundation managers will be required to send copies of their annual reports.

The Foundation Center is a non-profit organization that currently purchases copies of the annual reports of private foundations from the Internal Revenue Service and makes them available to the public in libraries throughout the country. It also publishes data extracted from the reports in *The Foundation Directory* and other publications. The Center has proposed that the Commissioner exercise his authority under section 6056(d)(3) by designating it as a depository to which foundation managers of foundations with assets having a fair market value of $1,000,000 or more or that make grants of $100,000 or more per year must furnish copies of the annual report. The Center anticipates that by having foundations furnish it copies of their annual reports directly, its publications could include more current data, at a reduced cost to it, and the public would have earlier access to the information contained in the annual reports.

Proposed Implementation

Under this proposal, the Foundation Center would be designated by the Commissioner as a depository for annual reports under section 6056(d)(3) of the Code. Foundation managers of foundations with assets having a fair market value of $1,000,000 or more or that make grants of $100,000 or more per year would be required to furnish a copy of the annual report to the Center at the same time it is sent to the Internal Revenue Service. A failure to supply a copy to the Center could result in assertion of penalties under section 6652(d)(3) of the Code.

Appropriate changes would be made to Form 990-PF, Return of Private Foundation Exempt from Income Tax, and Form 990-AR, Annual Report of Private Foundation. Additionally, instructions for these forms would be expanded to include an explanation of the requirement.

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 Wednesday, November 8, 1978.

Jerome Kurtz,
Commissioner.
August 20, 1979.

[FR Doc. 79-26490 Filed 8-24-79; 8:45 am]
BILLING CODE 4830-01-M

Office of the Secretary

Steel Bars, Reinforcing Bars, and Shapes From Australia; Antidumping; Tentative Determination To Modify or Revoke Dumping Finding

AGENCY: U.S. Treasury Department.

ACTION: Tentative revocation of finding of dumping.

SUMMARY: This notice is to advise the public that it appears that steel bars, reinforcing bars, and shapes from Australia are no longer being sold to the United States at less than fair value within the meaning of the Antidumping Act, 1921, as amended. Sales at less than fair value generally occur when the price of merchandise sold for exportation to the United States is less than the price of such or similar merchandise sold in the home market or to third countries. If this action is made final, imports of this merchandise from Australia on or after the effective date of this notice will no longer be liable for special dumping duties under the Antidumping Act, 1921. Interested persons are invited to comment on this action.

EFFECTIVE DATE: August 27, 1979.

FOR FURTHER INFORMATION CONTACT: Steve Garment, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5492).

SUPPLEMENTARY INFORMATION: A finding of dumping with respect to steel bars, reinforcing bars, and shapes from Australia was published as Treasury Decision 70-81 in the Federal Register of April 7, 1970 (35 FR 5610).

After due investigation, it has been determined tentatively that steel bars, reinforcing bars, and shapes from Australia are no longer being, nor are likely to be, sold to the United States at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 *et seq.*).

Statement of Reasons on Which This Tentative Determination Is Based

There have been no shipments of steel bars, reinforcing bars, or shapes from Australia since February 1975, and no imports of such products into the U.S. since March 1975. Furthermore, there are no unliquidated entries of such products.

Accordingly, notice is hereby given that the Department of the Treasury intends to revoke the finding of dumping on steel bars, reinforcing bars, and shapes from Australia. This revocation will not have the effect of removing entries from Australia, if any, from the category of steel products currently monitored under the trigger price mechanism.

In accordance with § 153.40 Customs Regulations (19 CFR 153.40), interested persons may present written views or arguments, or request in writing that the Secretary of the Treasury afford an opportunity to present oral views. A copy of all submissions should be delivered to any counsel who has

heretofore represented a party in these proceedings.

Any requests that the Secretary of the Treasury afford an opportunity to present oral views should be addressed to the Commissioner of Customs, 1301 Constitution Avenue, N.W., Washington, D.C. 20229, in time to be received by his office not later than September 11, 1979. Requests must be accompanied by a statement outlining the issues wished to be discussed.

Any written views or arguments should likewise be addressed to the Commissioner of Customs in time to be received by his office not later than September 26, 1979.

This notice is published pursuant to § 153.44(c) of the Customs Regulations (19 CFR 153.44(c)).

David R. Brennan,

Acting General Counsel of the Treasury,

August 16, 1979.

[FR Doc. 79-26503 Filed 8-24-79; 8:45 am]

BILLING CODE 4810-22-M

[Department Circular, Public Debt Series No. 20-79]

Treasury Notes of May 15, 1984, Series C-1984

August 22, 1979.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $2,500,000,000 of United States securities, designated Treasury Notes of May 15, 1984, Series C-1984 (CUSIP No. 912827 JX 1). The securities will be sold at auction, with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities.

2. Description of Securities

2.1. The securities will be dated September 5, 1979, and will bear interest from that date, payable on a semiannual basis on May 15, 1980, and each subsequent 6 months on November 15 and May 15, until the principal becomes payable. They will mature May 15, 1984, and will not be subject to call for redemption prior to maturity.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $1,000, $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered and book-entry securities, and the transfer of registered securities will be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Daylight Saving time, Tuesday, August 28, 1979. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, August 27, 1979.

3.2. Each tender must state the face amount of securities bid for. The minimum bid is $1,000 and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.11%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender and the amount may not exceed $1,000,000.

3.3. All bidders must certify that they have not made and will not make any agreements for the sale or purchase of any securities of this issue prior to the deadline established in Section 3.1. for receipt of tenders. Those authorized to submit tenders for the account of customers will be required to certify that such tenders are submitted under the same conditions, agreements, and certifications as tenders submitted directly by bidders for their own account.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3.5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by a deposit of 5% of the face amount of securities applied for (in the form of cash, maturing Treasury securities or readily collectible checks), or by a guarantee of such deposit by a commercial bank or a primary dealer.

3.6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.000. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the

Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made or completed on or before Wednesday, September 5, 1979, at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received at such institution no later than:

(a) Friday, August 31, 1979, if the check is drawn on a bank in the Federal Reserve District of the institution to which the check is submitted (the Fifth Federal Reserve District in case of the Bureau of the Public Debt), or

(b) Friday, August 31, 1979, if the check is drawn on a bank in another Federal Reserve District.

Checks received after the dates set forth in the preceding sentence will not be accepted unless they are payable at the applicable Federal Reserve Bank. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment is not completed on time, the deposit submitted with the tender, up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered as deposits and in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested form of registration was been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Paul H. Taylor,

Fiscal Assistant Secretary.

Supplementary Statement

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

Paul H. Taylor,

Fiscal Assistant Secretary.

[FR Doc. 79-26536 Filed 8-24-79; 3:00 pm]

BILLING CODE 4810-40-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 311]

Expedited Procedures for Recovery of Fuel Costs

Decided: August 21, 1979.

In our decisions of August 7 and August 14, 1979, an 8.5 percent surcharge was authorized on all owner-operator traffic, and on all truckload traffic whether or not owner-operators were employed. We ordered that all owner-operators were to receive compensation at this level.

The weekly figures set forth in the appendix for transportation performed by owner-operators and for truckload traffic, whether or not owner-operators are employed, is 9 percent. Accordingly, we are authorizing a 9-percent surcharge for this category of traffic.

Also, for the reasons stated in the July 31, decision, no change will be made in the existing authorization of a 2.7 percent surcharge on less-than-truckload (LTL) traffic performed by carriers not utilizing owner-operators.

We have received additional information from the general commodity carriers on their percentage of fuel expense to total revenue for truckload trafffic. We are presently evaluating this data and hope to release our findings in next week's decision. Possible adjustments could also be made on the

2.7 percent surcharge on LTL traffic. In either situation, we will structure revised surcharge figures so that there will be no adverse impact on owner-operators.

In addition, we have been studying the rate structure in general, and have noted that certain non-labor cost-based general increases have affected the revenue derived from the surcharge. We are reviewing this matter to determine whether further adjustments are necessary.

Notice of this decision shall be given to the general public by mailing a copy of this decision to the Governor of each State and to the Public Utilities Commissions or Boards of each State having jurisdiction over transportation, by depositing a copy in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., for public inspection, and by delivering a copy to the Director, Office of the Federal Register, for publication therein.

It is ordered:

This decision shall become effective Friday at 12:01 a.m., August 24, 1979.

By the Commission. Chairman O'Neal, Vice Chairman Stafford, Commissioners Gresham, Clapp, Christian, Trantum and Gaskins. Commissioner Trantum dissenting. Commissioner Gaskins absent and not participating.

Agatha L. Mergenovich,
Secretary.

Commissioner Trantum, *dissenting:*

The Commission should be made fully aware of the apparent "excess" revenue that is currently being received by the general freight motor carriers who do not rely heavily on owner-operators. Without a great deal of homework, I estimate that average fuel costs (including state and Federal taxes) as a percent of revenue ranged from 5.5% to 7.0% by year-end 1978. Thus far in 1979, the ICC has determined that fuel costs have climbed 53.07% which implies that general freight carriers need anywhere from a 3.0% to a 3.7% price increase to fully offset the fuel escalation. The current surcharge proposal will allow a general freight carrier to raise LTL revenues 2.7% and TL revenues 9.0%. Since many carriers have 40% of revenues accounted as truckload, the weighted average increase taken will frequently be 1.5% greater than is necessary to offset the increase. If allowed to continue, this 1.5% differential is not inconsequential. For example, my preliminary calculations indicate that Yellow Freight System would generate an additional $2.8 million pretax income per quarter if no adjustments are made to the surcharge methodology. Similarly, McLean Trucking would accrue $1.7 million per quarter additional income, with Roadway and Consolidated Freightways at $2.7 million and $1.4 million respectively. These estimates assume that carriers have been applying the truckload surcharge on all shipments weighing over 10,000 pounds. To the extent that the TL surcharge has been applied only to *truckload-rated* traffic, then the revenue excess would be somewhat less than shown.

Carrier	Fuel as percent of revenue	X	Fuel cost increase (percent)	=	Revenue increase needed to offset (percent)	Percent TL revenue to total (percent)	Weighted average revenue increase permitted (percent)	Excess percent increase (percent)	Dollar gain per quarter in millions
Yellow	6.9		53.07		3.66	40	5.22	1.50	2.0
McLean	6.4		53.07		3.38	35	4.91	1.48	1.7
Roadway	5.8		53.07		3.06	25	4.28	1.17	2.7
Consolidated Freightways	6.8		53.07		3.63	26	4.34	0.69	1.4
Total									8.6

I recommend that the Office of Proceedings be given full Commission support to thoroughly and swiftly investigate my revenue/cost assumptions and, if accurate, propose more equitable surcharge mathematics be applied in future weeks. Moreover, the Commission must make it clear that the truckload surcharge applies only to truckload-*rated* (emphasis added) traffic and determine if carrier have unlawfully liberalized the surcharge to include all shipments in excess of 10,000 pounds.

August 20, 1979.

Appendix—*Fuel Surcharge*

Base Date and Price Per Gallon (Including Tax)
January 1, 1979 ..... 63.5¢

Date of Current Price Measurement and Price Per Gallon (Including Tax)
August 20, 1979 ..... 97.2¢

Average Percent: Fuel Expenses (Including Taxes) of Total Revenue

(1) From Transportation Performed by Owner Operators (Apply to All Truckload Traffic)	(2) Other (Including Less-Truckload Traffic)
16.9%	6.0%[1]
Percent Surcharge	
9.0%	3.2%

[1] The change form 7.5% to 6.0% is the result of additional input received in accordance with the Commission's Decision of June 23, 1979.

[FR Doc. 79-26519 Filed 8-24-79; 8:45 am]

BILLING CODE 7035-01-M

Fourth Section Application for Relief

August 22, 1979.

This application for long-and-short-haul relief has been filed with the I.C.C. Expedited handling of the application has been granted.

FSA 43739, Southern Freight Association No. A6353, reduced rates on furniture from origins in Southern Freight Association territory on the Southern Railway System to destinations in Illinois Rate Committee territory published in Supplement 55 to Tariff ICC SFA 4972 to be effective September 22, 1979, and to expire with September 30, 1979. Grounds for relief: motor competition and improved car utilization. Authority has been requested to advance the effective date to an earlier date. Protests against grant of relief are due at the offices of the Commission, Suspension and Fourth Section Board, in Washington, D.C., not later than noon, August 30, 1979. Telegraphic filing with indication of notarization is acceptable.

By the Commission.
Agatha L. Mergenovich,
Secretary.

[FR Doc. 79-26521 Filed 8-24-79; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 29082]

Green Bay & Western Railroad Co.—Control—Ahnapee & Western Railway Co.—Exemption

AGENCY: Interstate Commerce Commission.

SUMMARY: Green Bay and Western Railroad Company (Green Bay), a subsidiary of Itel Corporation (Itel), intends to acquire the stock of the Ahnapee and Western Railway Company (Ahnapee), from the McCloud River Railroad Company (McCloud), Ahnapee's parent Company. McCloud is also a subsidiary of Itel. A petition was filed on June 1, 1979 for exemption, from 49 U.S.C. 11343–11347, which requires prior consideration and approval of the transaction by the Interstate Commerce Commission. Green Bay, Ahnapee and McCloud are seeking exemption from these sections under 49 U.S.C. 10505, on the basis that prior review of the transaction is necessary.

DATES: Comments must be received on or before: September 24, 1979.

ADDRESS: Send comments to: Interstate Commerce Commission, 12th St. and Constitution Ave., NW., Washington, DC 20423. All written statements will be available for public inspection during regular business hours at the same address. Comments should make reference to the docket number (F.D. 29082).

FOR FURTHER INFORMATION CONTACT: Michael Erenberg, 202–275–7245.

SUPPLEMENTARY INFORMATION: By letter-petition filed June 1, 1979, Green Bay requests exemption pursuant to 49 U.S.C. 10505 from the provisions of 49 U.S.C. 11343 with respect to the acquisition of stock of the Ahnapee from McCloud, Ahnapee's parent company.

The Ahnapee is a Wisconsin corporation, and constitutes a small 13.75 mile line of railroad which has been operated as a division of McCloud. Control of McCloud is, in turn, exercised by Itel, pursuant to authority granted by the Commission in Finance Docket No. 28371, *SSI Rail Corporation and Itel Corporation—Control—McCloud River Railroad Company,* (not printed, decided April 1, 1977). McCloud and its division, the Ahnapee, were acquired from U.S. Plywood, Champion Papers, Inc., which in turn, had acquired the Ahnapee a number of years ago pursuant to authorization of the Commission in Finance Docket No. 26329, *U.S. Plywood, Champion Papers, Inc. and McCloud River Railroad Company—Purchase—The Ahnapee & W Ry. Company,* (not printed, decided November 2, 1970). The Ahnapee at all times has operated and has been treated by the Commission, the courts, and other railroads as a common carrier in a distinct and identifiable sense both prior to its 1978 incorporation and subsequent thereto.

By order served January 5, 1979, in Finance Docket No. 28813, *The Ahnapee and Western Railway Company Stock,* the Ahnapee, as newly incorporated in Wisconsin, was authorized by Review Board Number 5 to issue 1000 shares of common stock of $1 par value. As the stock application indicated, the McCloud owns all of the capital stock of Ahnapee except for five shares which are held by named directors. The Ahnapee is shown for purposes of rates as a separate carrier and it is regarded as such by the appropriate legal authorities. None of these factors will change as a result of the stock purchases.

By decision served October 12, 1978, in Finance Docket No. 28654 (Sub-No. 1), *Itel Corporation—Control—Green Bay and Western Railroad Company,* the Commission approved the application of Itel under 49 U.S.C. 11343 to acquire control of the Green Bay. That decision recognized the control by Itel of the McCloud, the Ahnapee, and the Hartford and Slocomb Railroad Company (which operates in Alabama).

The Exemption

The acquisition of control of a carrier by another carrier, requires the approval and authority of the Commission under 49 U.S.C. 11343. To seek Commission approval, an application must be filed in compliance with the ICC *Railroad Acquisition, Control, Merger, Consolidation, Coordination Project, Trackage Rights and Lease Procedures, 49 CFR Part 1111* (1978) (Consolidation Procedures). Ahnapee, McCloud and Green Bay have requested an exemption from 49 U.S.C. 11343 to avoid the procedural steps required by 49 U.S.C. 11345, in order to expedite consummation of the transaction. They state that the proposed transaction is the type Congress intended the Commission to exempt from detailed regulation when it enacted 49 U.S.C. 10505 in 1976.

We can exempt a matter related to a rail carrier under 49 U.S.C. 10505. This section provides:

(a) In a manner related to a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under this subchapter, the Commission shall exempt a person, class of persons, or a transaction or service because of the limited scope of the transaction or service, when the Commission finds that the application of a provision of this subtitle—

(1) is not necessary to carry out the transportation policy of section 10101 of this title;

(2) would be an unreasonable burden on a person, class of persons, or interstate and foreign commerce; and

(3) would serve little or no useful public purpose.

(b) The Commission may begin a proceeding under this section on its own initiative or on application by the Secretary of Transportation or an interested party. The Commission may specify the period of time during which the exemption is effective.

(c) The Commission may revoke an exemption, to the extent it specifies, when it finds that application of a provision of this subtitle to the person, class, or transportation is necessary—

(1) to carry out the transportation policy of section 10101 of this title;

(2) to achieve effective regulation by the Commission; and

(3) to serve a useful public purpose.

(d) The Commission may act under this section only after an opportunity for a proceeding.

The parties state that this transaction involves only a legal change in corporate structure and operation. In view of the fact that the Commission has already approved the control by Itel of all of the entities involved, the parties petition that exemption from the above statutes is required.

They point out that the legislative history of the Railroad Revitalization and Regulatory Reform Act of 1976, reflects the purpose of the provision to exempt from regulation those transactions in which regulation would serve little or no useful public purpose, and where expenditure of the Commission's scarce resources would not be necessary to promote the national transportation policy. H.R. Rep. No. 94–781, 94th Cong., 2d Sess., p. 135 (January 23, 1976). Petitioners believe no useful public purpose will be served by subjecting this proposed transaction to protracted proceedings.

Any exemption, were it granted in this proceeding, would be limited solely to this proceeding; after consummation of control, the Commission would retain full jurisdiction over the carriers involved.

Before granting an exemption, we are required to provide the opportunity for a proceeding. This request for comments on the requested exemption of the

proposed transaction is that opportunity. All comments filed in response to this notice, along with the petition of Ahnapee, McCloud and Green Bay will be used to determine whether or not the exemption under 49 U.S.C. 10505 should be granted.

Green Bay's petition for waiver of certain provisions of the Consolidation Procedures, also filed June 1, 1979, will be held in abeyance pending receipt of comments on exemption. The waiver petition will be decided concurrently with the decision on the proposed exemption.

This proceeding is instituted under the authority of 49 U.S.C. 10505 and pursuant to 5 U.S.C. 553, 559.

This proceeding is not a major Federal action significantly affecting energy consumption or the quality of the human environment.

Dated: August 15, 1979.

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

Agatha L. Mergenovich,

Secretary.

[FR Doc. 79-26520 Filed 8-24-79; 8:45 am]

BILLING CODE 7035-01-M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 167
Monday, August 27, 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).

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1

[M-239, Amdt. 5; Aug. 22, 1979]

CIVIL AERONAUTICS BOARD.

Notice of addition of item to the August 23, 1979 meeting agenda.

TIME AND DATE: 9 a.m., August 23, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

6a. Docket 31571: Northwest Alaska Service Investigation (Memo 7515-C, OGC).
6b. Northwest Alaska Bush Route Proceeding. (Memo 9065, OGC).

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: It is requested that Items 6a and 6b be placed on the calendar for August 23, 1979 in order to provide the United States Postal Service with sufficient formal notice of the new, changed circumstances in Northwest Alaska to permit them to make certain changes in their procedures which are anticipated are necessary. Due to pressures to meet the deadline for the calendar of August 20, the staff was unable to sumbit these items earlier. Accordingly, the following Members have voted that agency business requires that Items 6a and 6b be placed on the August 23 agenda and that no earlier announcement of these additions was possible:

Chairman, Marvin S. Cohen
Member, Elizabeth E. Bailey
Member, Gloria Schaffer.

[S-1679-79 Filed 8-23-79; 3:18 pm]

BILLING CODE 6320-01-M

2

[M-239, Amdt. 6; Aug. 22, 1979]

CIVIL AERONAUTICS BOARD.

Notice of addition of item to the August 23, 1979 meeting agenda.

TIME AND DATE: 9 a.m., August 23, 1979.

PLACE: Room 1027, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUBJECT:

21a. Docket 36418: Alaska Airlines, Alaska Northwest Properties, Inc., Ronald F. Cosgrave, Bruce Kennedy, and Keith J. Kennedy, investigation concerning acquisition of control of Wien Air Alaska, Inc. (OGC)

STATUS: Open.

PERSON TO CONTACT: Phyllis T. Kaylor, the Secretary, (202) 673-5068.

SUPPLEMENTARY INFORMATION: Certain of the respondents in this investigation have requested additional time to respond to Order 79-8-100, issued on August 20, which requires them to show cause by Friday, August 24 why specified relief should not be entered. The parties' request was filed on August 22, so that earlier notification of this matter was not possible. Since this request will be effectively denied unless acted on by the Board by August 24, the following Members have voted that agency business requires the addition of Item 21a to the August 23, 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.

[S-1680-79 Filed 8-23-79; 3:18 pm]

BILLING CODE 6320-01-M

3

FEDERAL ENERGY REGULATORY COMMISSION.

August 22, 1979.

TIME AND DATE: 10 a.m., August 29, 1979.

PLACE: 825 North Capitol Street, NE., Washington, D.C. 20426, room 9306.

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—336th Meeting, August 29, 1979, Regular Meeting (10 a.m.)

CAP-1. Docket No. ER79-506, Iowa Southern Utilities Co.
CAP-2. Docket No. ES79-51, Pacific Power and Light Co.
CAP-3. Docket Nos. ID-1841, ID-1847, ID-1849, ID-1850, ID-1851, and ID-1852, Niagara Mohawk Power Corp.

Miscellaneous Agenda—336th Meeting, August 29, 1979, Regular Meeting

CAM-1. 404 Referral—Proposed amendment to the ERA mandatory petroleum price regulations to increase the markup on wholesale and retail sales of propane. Docket No. ERA-R-79-33
CAM-2. Docket No. RA79-15, Little America Refining Co.

Gas Agenda—336th Meeting, August 29, 1979, Regular Meeting

CAG-1. Docket Nos. RP73-35 (PAG No. 79-3) and RP78-11 (AP No. 79-2), Trunkline Gas Co.
CAG-2. Docket No. RP72-157 (PGA No. 79-5) (R. & O. 79-1), Consolidated Gas Supply Corp.
CAG-3. Docket No. RP75-73 (AP No. 79-4), Texas Eastern Transmission Corp.
CAG-4. Docket No. RP72-149 (PGA No. 79-5 and 79-5A), Mississippi River Transmission Corp.
CAG-5. Docket No. RP73-3 (PGA No. 79-2 and DCA No. 79-3), Transcontinental Gas Pipe Line Corp.
CAG-6. Docket Nos. RP73-36 (PGA No. 79-3A) (DCA No. 79-2A) (AP No. 79-1A) and RP78-62, Panhandle Eastern Pipe Line Co.
CAG-7. Docket Nos. RP72-154, et al., Northwest Pipeline Corp.
CAG-8. Docket Nos. RP74-14 and RP74-34 (PGA No. 79-2A), Mountain Fuel Resources, Inc.
CAG-9. Docket No. RP71-125 (PGA Nos. 79-1 and 79-1A), Natural Gas Pipeline Co. of America
CAG-10. Docket No. RP79-79, Michigan-Wisconsin Pipe Line Co.
CAG-11. Docket Nos. RP76-136 and RP77-26, Transcontinental Gas Pipe Line Corp.
CAG-12. Docket Nos. G-6036, et al., MAPCO Production Co. (Successor to MAPCO, Inc.) et al.
CAG-13. Docket Nos. G-7241, et al., Southland Royalty Co., et al.
CAG-14. Columbia Gas Transmission.
CAG-15. Docket No. CP79-329, Mountain Fuel Supply Co.
CAG-16. Docket No. CP79-190, Consolidated Gas Supply Corp.
CAG-17. Docket No. CP79-284, Colorado Interstate Gas Co.

CAG–18. Docket No. CP79–197, Cities Service Gas Co.
CAG–19. Docket No. CP79–231, United Gas Pipe Line Co.
CAG–20. Docket No. CP78–137, Panhandle Eastern Pipe Line Co.
CAG–21. Docket No. CP71–195, Mid-Louisiana Gas Co.
CAG–22. Docket No. CP79–294, Northwest Pipeline Corp.
Docket No. CP79–270, Colorado Interstate Gas Co.

Power Agenda—336th Meeting, August 29, 1979, Regular Meeting

I. Licensed Project Matters

P–1. Project Nos. 2863 and 2877, city of Holyoke, Mass.
P–2. Project No. 382, Southern California Edison Co.
P–3. Project No. 178, Pacific Gas & Electric Co.
P–4. Project No. 1930, Southern California Edison Co.

II. Electric Rate Matters

ER–1. Docket No. ER79–166, Kansas City Power & Light Co.
ER–2. Docket Nos. E–9329 (limited issue), ER76–792, and ER76–716, Indiana & Michigan Electric Co.
ER–3. Docket Nos. E–9002 and ER76–122, Commonwealth Edison Co.
ER–4. Docket Nos. E–8187, E–8700, ER76–203, ER76–238 and ER78–516, Boston Edison Co.

Miscellaneous agenda—336th Meeting, August 29, 1979, Regular Meeting

M–1. Reserved.
M–2. Reserved.
M–3. Docket No. RM77–22, rate of interest on amounts subject to refund.
M–4. Docket No. RM79–40, determination of alternative fuels for essential agricultural users.
M–5. Docket No. GP79–33, George R. Schurman Norris SUA; Baker No. 2 Louisiana NGPA 79–858 FERC JD No. 79–3446.
M–6. Docket No. GP79–69, Grace Petroleum Corp. State Docket Nos. 4–6–7928 PD and 3–2–7912 PD FERC JD Nos. 79–9658 and 79–9659.
M–7. Well category determinations.
M–8. Docket No. RM78–12, determination of incentive rate of return, tariff and related issues for the Alaska Natural Gas Transportation System.

Gas Agenda—336th Meeting, August 29, 1979, Regular Meeting

I. Pipeline Rate Matters

RP–1. Docket No. RP73–65 (PGA 79–2), Columbia Gas Transmission Corp.
RP–2. Docket No. RP75–105, Columbia Gulf Transmission Co. Docket No. RP75–106 (Consolidated taxes), Columbia Gas Transmission Corp.
RP–3. Docket No. RP71–107 (Phase II), Northern Natural Gas Co.

II. Producer Certificate Matters

CI–1. Docket No. RI77–53, CRA, Inc.
CI–2. Docket No. CI79–415, Continental Oil Co. Docket No. CI79–532, Exxon Corp.

Kenneth F. Plumb,
Secretary.

[S–1677–79 Filed 8–23–79; 2:07 pm]
BILLING CODE 6450–01–M

4

INTER-AMERICAN FOUNDATION.

TIME AND DATE: 2:30 p.m., September 11, 1979.

PLACE: Board Room, Inter-American Foundation 1515 Wilson Blvd., Arlington, VA 22209.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Chairman's Report.
2. President's Report.
3. Financial Report.
4. Project Analysis.

CONTACT PERSON FOR MORE INFORMATION: Lawrence E. Bruce, Jr., (703) 841–3812.

[S–1678–79 Filed 8–23–79; 2:46 pm]
BILLING CODE 7025–01–M

5

POSTAL RATE COMMISSION.

TIME AND DATE: 1 p.m., Monday, August 27, 1979.

PLACE: Conference Room, Room 500, 2000 L Street NW., Washington, D.C.

STATUS: Open/closed.

MATTERS TO BE CONSIDERED:

Open

1. Budget FY80.

Closed

2. Status of Docket No. MC78–3,
3. Status of Docket No. MC78–1.

[Closed pursuant to 39 USC § 552b(c)(10).]

CONTACT PERSON FOR MORE INFORMATION: Ned Callan, Information Officer, Postal Rate Commission, Room 500, 2000 L Street NW., Washington, D.C. 20268, Telephone (202) 254–5614.

[S–1676–79 Filed 8–23–79; 10:54 am]
BILLING CODE 7715–01–M

6

TENNESSEE VALLEY AUTHORITY

Meeting No. 1225

TIME AND DATE: 9:30 a.m., Thursday, August 30, 1979.

PLACE: Conference Room B–32, West Tower, 400 Commerce Avenue, Knoxville, Tenn.

STATUS: Open.

MATTERS FOR ACTION:

Old Business

1. Final rate review.
2. Req. No. 823766—Cooling towers for heat rejection system for Yellow Creek Nuclear Plant.
3. Policy statement relating to contract demand reductions for commercial and industrial customers to encourage adoption of conservation and load management techniques.
4. Policy statement on TVA experimental cogeneration program.

New Business

Personnel Actions

[1] 1. Appointment of Marilyn E. F. Taylor as Director of Personnel, Office of Management Services, Knoxville Tennnessee.
[1] 2. Change of status for Conley L. Ballinger from Acting Director of Personnel to Acting Assistant Director of Personnel, Office of Management Services, Knoxville, Tennessee.

Consulting and Personal Services Contracts

1. Personal service contract with C–E Power Systems, Windsor, Connecticut, for assistance in connection with design of an atmospheric fluidized bed combustion steam generator, requested by the Office of Engineering Design and Construction.
2. Personal service contract with The Babcock & Wilcox Company, Alliance, Ohio for assistance in connection with design of an atmospheric fluidized bed combustion steam generator, requested by the Office of Engineering Design and Construction.
3. Personal service contract with Babcock Contractors, Inc. Pittsburgh, Pennsylvania, for assistance in connection with design of an atmospheric fluidized bed combustion steam generator, requested by the Office of Engineering Design and Construction.
4. Renewal of personal service contract with Teledyne Engineering Services, Waltham, Massachusetts, for piping analyses and related services for TVA nuclear plants, requested by the Office of Engineering Design and Construction.
5. Consulting contract with Dr. Marvin Goldman, Davis, California, for advice and assistance in connection with radiological hygiene issues, requested by the Division of Occupational Health and Safety.
6. Consulting contract with Dr. Uri Marinov, Jerusalem, Israel, for technical advice and counseling concerning various aspects of TVA's environmental programs, requested by the Office of Natural Resources Services.

Purchase Awards

1. Rejection of bids received in response to Invitation No. 823770 for nuclear control valves for Hartsville and Phipps Bend Nuclear Plants.
2. Rejection of bids received in response to Invitation No. 824853 for 600-volt control cable-insulated conductor for Hartsville and Phipps Bend Nuclear Plants.
3. Rejection of bids received in response to Invitation No. 825899 for insulated conductors tefzel insulated thermocouple cable for Bellefonte Nuclear Plant.
4. Req. No. 159768—Furnace wall tube panels for Widows Creek Steam Plant, Unit 7.

[1] These items were approved by individual Board members. This would give formal ratification to the Board's action.

5. Req. No. 572867—Indefinite quantity term contract for carbon steel (general purpose), warehouse quantities, for any TVA project or warehouse.

6. Req. No. 822158—Nonseismic pipe hangers for Yellow Creek Nuclear Plant.

7. Req. No. 824481—Spent fuel storage racks for Bellefonte Nuclear Plant.

8. Amendment to Contract No. 77K53-820732 with ITT Grinnell Corporation, Providence, Rhode Island, for seismic support for Bellefonte Nuclar Plant.

Project Authorizations

1. No. 3363.2—Additional minor modifications to the Watts Bar Nuclear Plant necessary to permit utilization of waste heat.

2. No. 3462—Installation of additional truck coal sampling and receiving facilities at Kingston Steam Plant.

3. No. 3474—Load management residential thermal storage field test to determine ability of offpeak thermal storage systems to provide space heating requirements of residences.

4. No. 3460—Demonstration in manpower training for energy conservation (in collaboration with Tennessee Community Services administration and Tennessee Community Action Agencies).

5. No. 3220.3—Amendment to Home Insulation Program for the TVA area.

Power Items

1. Lease and Amendatory Agreement with the city of Lewisburg, Tennessee, covering lease of certain facilities at TVA's Lewisburg District Substation and section of TVA's Lewisburg District-Belfast 46-kV Line.

2. Standard-Form Agreement covering arrangements for distributors' participation with TVA in wood heater financing plan.

Real Property Transactions

1. Filing of condemnation suits.

2. Abandonment of unused portion of the Athens-Pulaski Transmission Line right of way in Limestone County, Alabama—Tracts AP-1, AP-2, AP-3, AP-5, AP-6, AP-7, and a portion of AP-8.

Unclassified

[1]1. Letter Agreement among the appalachian Regional Commission, U.S. Department of Agriculture and TVA covering arrangements for participation in selected program areas.

2. Interagency Agreement between TVA and U.S. Department of Energy for TVA's technical support and assistance in processing and analyzing aquatic biological samples.

3. Agreement with Chilhowie Redevelopment and Housing Authority for implementation of the Chilhowie, Virginia, Floodplain Relocation Project.

4. Letter Agreement with U.S. Army Corps of Engineers, Mobile District, covering arrangements for engineering and environmental study of DDT contamination in the Huntsville Spring Branch-Indian Creek area of Wheeler Reservoir in north Alabama.

5. TVA policy code relating to small coal operator assistance.

6. Adoption of supplemental resolution authorizing 1979 Series C Bonds.

7. Resolution authorizing the Chairman and other Executive Officers to take further action relating to issuance and sale of 1979 Series C Bonds.

CONTACT PERSON FOR MORE INFORMATION: James L. Bentley, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: August 23, 1979.

[S-1681-79 Filed 8-23-79; 3:52 pm]

BILLING CODE 8120-01-M

Federal Register

Monday
August 27, 1979

Part II

Department of Transportation

Office of the Secretary

Semi-Annual Regulations Agenda and Review List

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[49 CFR Chapters I-VI]

[OST Docket No. 58; Notice 79-17]

Department Regulations Agenda and Review List; Semi-annual Summary

AGENCY: Department of Transportation.

ACTION: Department Regulations Agenda and Review List.

SUMMARY: The Regulations Agenda is a semi-annual summary of each proposed and each final regulation that the Department of Transportation expects to publish in the Federal Register during the succeeding 12 months or such longer projected period as may be anticipated. The Regulations Review List is a semi-annual summary of the existing regulations that the Department of Transportation has selected for review and possible revocation or revision. The Agenda and the Review List provide the public with information about the Department of Transportation's regulatory activity. It is expected that this information will enable the public to be more aware of, and allow it to more effectively participate in, the Department's regulatory activity.

ADDRESSES: The mailing addresses for the initiating offices of the Department which appear in the Agenda and the Review List are 400 Seventh Street, SW., Washington, D.C. 20590, except for the Federal Aviation Administration and St. Lawrence Seaway Development Corporation, which are located at 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

General

For further information on the Agenda or the Review List, in general, contact: Neil R. Eisner, Assistant General Counsel, Office of Regulation and Enforcement, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590, 202-426-4723.

Specific

For further information about any particular item on the Agenda or the Review List, contact the individual listed in the column headed "Contact" for that item.

SUPPLEMENTARY INFORMATION:

Background

Improvement of Government regulations has been a prime goal of the Carter Administration. There should be no more regulations than necessary, and those that are issued should be simpler, more comprehensible, and less burdensome. Regulations should not be issued without appropriate involvement of the public; once issued, they should be periodically reviewed and revised, as needed, to assure that they continue to meet the needs for which they originally were designed.

To help the Department of Transportation ("Department") achieve these goals, and in accordance with Executive Order 12044 ("Improving Government Regulations"; 43 FR 12661; March 24, 1978), the Secretary of Transportation issued the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). These Policies and Procedures include a requirement that the Department prepare a semi-annual Department Regulations Agenda for publication in the Federal Register. The Agenda summarizes each proposed and each final regulation that the Department expects to publish in the Federal Register during the succeeding 12 months or such longer projected period as may be anticipated. The regulatory policies and procedures also include a requirement that the Department prepare a semi-annual list of existing regulations it has selected for review and possible revocation or revision for publication in the Federal Register.

The Agendas and Review Lists are based on reports submitted by the initiating offices by the last working days of June and December of each year. After these reports are consolidated for, and reviewed by, the Department Regulations Council, the Department's Regulations Agenda and Review List is prepared and published in the Federal Register. The Department's last Regulations Agenda and Review List was published in the Federal Register on March 1, 1979 (44 FR 11674). The next one is scheduled for publication in the Federal Register on February 25, 1980.

Definitions

The Agenda and the Review List cover all rules and regulations of the Department, including those that establish conditions for financial assistance. The following definitions are provided for ease in understanding the information in this document.

(1) *Initiating office* means an operating administration or other organizational element within the Department, the head of which is authorized by law or delegation to issue regulations or to formulate regulations for issuance by the Secretary.

(2) *Significant regulation* means a regulation that is not an emergency regulation and that in the judgment of the head of the initiating office or the Secretary or the Deputy Secretary—

(a) Requires a Regulatory Analysis or is otherwise costly;

(b) Concerns a matter on which there is substantial public interest or controversy;

(c) Has a significant impact on another operating administration or other parts of the Department or other Federal Agency; or

(d) Otherwise involves important Department policy.

(3) *Emergency regulation* means a regulation that, in the judgment of the head of the initiating office, circumstances require to be issued without notice and opportunity for public comment or made effective in less than 30 days after publication in the Federal Register.

(4) *Non-significant regulation* means a regulation that, in the judgment of the head of the initiating office, is neither a significant nor an emergency regulation.

A Regulatory Analysis is required for each proposed regulation that—

(1) Could produce a major effect on the general economy in terms of cost, consumer prices, or production;

(2) Could produce a major increase in costs or prices for individual industries, levels of government, geographic regions, or specific elements of the population; or

(3) The Secretary or head of the initiating office determines deserves such an analysis.

Explanation of Information on the Regulations Agenda

The Regulations Agenda is divided by initiating offices. For each initiating office there is a subdivision for: (1) significant regulations, (2) non-significant regulations, and (3) routine and frequent non-significant regulations. For each proposed and final regulation expected to be published, the Agenda provides the following information: (1) a short descriptive title; (2) a summary; (3) the earliest expected date for a decision on whether to issue the proposed or final regulation; (4) a contact office or official who can provide additional information, including advice on how to obtain documents referenced in the Agenda; and (5) the related regulatory citation in the Code of Federal Regulations. If final action has been taken on an item included on the previous semi-annual Agenda, that item is still contained in this Agenda and the final action is indicated under the "Summary" column for that item.

For a significant regulation, the summary includes: (1) a description of the proposed or final regulation; (2) a brief statement as to why it is

considered significant; (3) a statement as to whether a Regulatory Analysis will be required; (4) a brief statement of why the regulation is needed; (5) the legal basis for the action being taken; (6) the past and anticipated chronology of the development of the regulation, including any final action taken since the last semi-annual Agenda and (7) the related regulatory citation in the Code of Federal Regulations. It should be noted that, even though a Regulatory Analysis is not required for some items on the Agenda, either because the criteria are not met or because the regulatory project is covered by earlier regulatory requirements, the Department requires an economic evaluation for all of its regulations.

For non-significant regulations issued routinely and frequently as part of an established body of technical requirements (such as the Federal Aviation Administration's Airspace Rules) to keep those requirements operationally current, only the general category of the regulations, the identity of a contact office or official, and an indication of the expected number of regulations are included; individual regulations are not listed.

If a regulatory docket number has already been established, it is contained in parentheses immediately following the short descriptive title of the regulation. If a member of the public desires further information regarding a particular proposal or regulation, reference should be made to this docket number. The Federal Highway Administration also provides an FHPM number at this point for easier reference by those who use the Federal-aid Highway Program Manual (FHPM). The numbers following the FHPM represent, respectively, the volume, chapter, section and subsection at which the material is located in the FHPM.

In the "Decision Date" column, abbreviations are used to indicate the particular documents being considered for issuance by that date. ANPRM stands for Advance Notice of Proposed Rulemaking, NPRM for Notice of Proposed Rulemaking, and FR for Final Rule. Listing a date in this column is not an indication that a proposal or a final rule will be issued on that date; it is the date on which a final decision is expected to be made on whether to issue the document listed. If any document is issued, publication in the Federal Register would follow within a few days. These dates are based on current schedules. Subsequently received information could result in a decision not to take regulatory action or in changes to proposed publication dates. For example, the need for further evaluation could result in a later publication date; evidence of a greater need for the regulation could result in an earlier publication date.

It should be noted that some of the items on the Agenda result from programs that were established to review existing regulations and revoke or revise those regulations that the initiating office determined were not achieving their intended purpose. Projects under regulatory development that resulted from a review of existing regulations to determine whether they should be revoked or revised are preceded by the word "Review" in the "Title" column. Because some reviews can be large-scale undertakings, and because there are already a number of these in the regulatory development process, the Department thought it would provide the public with valuable information if it indicated not only which regulatory reviews are under consideration but also which reviews have not reached the stage where proposed revisions are being, or have been, prepared. The number of regulatory projects that an initiating office can handle is limited by available resources. Therefore, the number of projects in the regulatory development stage limits the number of reviews that can be added.

Explanation of Information on the Regulations Review List

The Regulations Review List is divided by initiating offices. For each office, it provides the following information: (1) a short description of the existing regulations involved, including the related citation to the Code of Federal Regulations; (2) a brief description of the reasons for each selection; (3) a contact office or official who can provide additional information; and (4) the target date for completing the review and determining the corrective course of action to be taken. The action taken can be a revocation or revision of the regulation, or it can be a determination that no regulatory action is necessary because the regulation is found to be achieving its goals and the goals and objectives of Executive Order 12044 and the Department Regulatory Policies and Procedures. If final action has been taken on an item included on the previous semi-annual Review List, that item is still contained in this Review List and the final action is indicated under the "Reasons for Selection" column for that item.

General

To allow for easier use of the Agenda and for quick comparison with earlier Agendas, the Department has instituted the following additional procedures in the Agenda: (1) Items listed on the Agenda or Review List retain the same order in each semi-annual publication. (2) New items are added at the end of the appropriate portion of the Agenda or Review List and are identified by an asterisk on the left side of the "Title" when first added. (3) New substantive information added to items that were on an earlier Agenda or Review List is printed in italics.

Mailing Lists for Regulatory Documents

To assist the public in obtaining regulatory documents issued within the Department of Transportation, an appendix has been included in this document. The appendix contains instructions on how to be placed on mailing lists for copies of regulatory documents, including the Department's Semi-Annual Regulations Agenda, issued by the operating administrations of the Department and the Office of the Secretary. There is no charge for this service; however, because of the costs involved, the number of copies of a document forwarded to an individual requestor may be limited. Persons already on mailing lists for particular documents within the Department will remain on those lists and should not reapply.

By following the instructions specified in the appendix, a person can be placed on a mailing list for future copies of the Department's Regulations Agenda, which will be updated and published in the Federal Register every year during August and February. By using the Agenda, individuals can determine which Notice or Advance Notice of Proposed Rulemaking, to be issued by elements of the Department, is of interest to them. Then, using the instructions in the appendix, such persons also can be placed on a mailing list to ensure that after the document of interest is issued a copy will be mailed to them for their review and comment. In this way, individuals will be relieved of the burden of having to review the Federal Register, perhaps on a daily basis. The Department expects that this process will ensure that those peopole placed on mailing lists will receive early notice so that their views on the document can be adequately prepared and presented within the established comment period.

Purpose

The Department is publishing this Regulations Agenda and Review List in the Federal Register to share with interested members of the public the Department's preliminary expectations

regarding its future regulatory actions. This should enable the public to be more aware of the Department's regulatory activity. Knowledge of the nature and scope of this activity, as well as the specific proposals and reviews being considered, should result in more effective public participation in the Department's regulatory activity. For example, awareness of the dates when notices may be issued seeking public comment, should allow appropriate planning and more efficient use of the comment period. By providing the expected date for a decision on whether to issue a final rule, the Department expects that more appropriate planning by those concerned with the regulation will also be possible.

This publication in the Federal Register does not impose any binding obligation on the Department, or any of the offices within the Department, with regard to any specific item on the Agenda or the Review List. Regulatory action in addition to the items listed is not precluded.

If further information is desired on any of the items listed in the Agenda or the Review List, the public is encouraged to contact the individual listed for the particular item. Additional information concerning the Agenda or the Review List, in general, or the Department's Regulatory Policies and Procedures may be obtained from Neil Eisner, whose address and telephone number appear above.

Issued in Washington, D.C. on August 20, 1979.

Linda Heller Kamm,

Acting Deputy Secretary of Transportation.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

OST AGENDA

Office of the Secretary

Significant Regulations

Title	Summary	Contact	Decision date
Nondiscrimination on the Basis of Handicap in DOT-Funded Programs and Activities. (Docket No. 56).	**A. Description:** The proposed regulation implications sec. 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), prohibiting discrimination against handicapped persons in federally funded programs. The regulation establishes requirements for recipients of DOT financial assistance in order to meet the mandate of sec. 504. **B. Why Significant:** The proposed regulation would have a major impact on DOT programs, particularly those administered by FAA, FRA, UMTA. *It will have a more limited but definite impact on FHWA and NHTSA programs.* All recipients of DOT aid must take positive action to make their Federally funded programs accessible to the handicapped. **C. Regulatory Analysis:** Required **D. Need:** These regulations implement 29 U.S.C. 794 and guidelines issued by the Department of Health, Education and Welfare (HEW). They are needed to ensure that recipients of financial assistance from DOT make the programs operated in existing facilities accessible to handicapped persons, and to ensure that new facilities are constructed so as to be readily accessible to handicapped persons. **E. Legal Basis:** 29 U.S.C. 794 **F. Chronology:** HEW issued guidelines on Jan. 13, 1978, requiring Federal agencies to intergrate the requirements of sec. 504 into their respective programs and activities. (43 FR 2132). An NPRM was published on June 8, 1978 (43 FR 25016). By Supplemental Notice, the comment period was extended to October 20, 1978 (43 FR 30585). Public hearings were held in New York City, September 11; Denver, September 13; San Francisco, September 15; and Washington, D.C., September 19 (43 FR 34176). The Regulatory Analysis Review Group selected this regulation to review for its economic impact, and filed its report in the public docket on October 20, 1978. *The Final regulation requiring that the nation's transportation system be made accessible to handicapped persons was published on Thursday, May 31, 1979 (44 FR 25016). The effective date of the regulation is July 2, 1979..* **G. Citation:** 49 CFR pt. 27	Robert C. Ashby, (202)426–4723.	*Action Complete.*
Title VI Civil Rights Regulations	**A. Description:** The proposed regulations would assemble in one package all DOT procedures and requirements concerning all recipients of financial assistance under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–4). **B. Why Significant:** Substantial public interest is anticipated and it will affect all of the DOT elements and the administration of all grant programs. **C. Regulatory Analysis:** Not required **D. Need:** The Department has an existing Title VI regulation dating from 1970, and a Title VI order promulgated by Secretary Coleman on Jan. 19, 1977, and reaffirmed by Secretary Adams in March of that year. A new regulatory package is being developed to replace the previous layering of regulations. **E. Legal Basis:** 42 U.S.C. 2000d–4	Robert J. Coates, (202)426–4754.	NPRM *October 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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OST — Office of the Secretary

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	F. Chronology: The proposal is currently under review. When the review is completed, it will be submitted to the Department of Justice for approval. **G. Citation:** 49 CFR pt. 21		
Minority Business Enterprise Program.	**A. Description:** This regulation would implement the requirements of DOT Order 4000.7A for DOT operating elements to take affirmative action to assure that minority business enterprises participate in Departmental procurement and financial assistance programs. **B. Why Significant:** Substantial public interest is anticipated given the proposed action's potential impact on DOT's procurement and assistance programs. **C. Regulatory Analysis:** Not required **D. Need:** To implement the provisions of the DOT Order 4000.7A by providing detailed instructions for carrying out the affirmative action requirements of the Order. *To implement the 1978 amendments to the Small Business Act.* **E. Legal Basis:** Executive Order 11625; 49 U.S.C. 1730; 45 U.S.C. 803; *Pub. L. 95-599; Pub. L. 95-507; 4 U.S.C. 471 et seq.; Title 23 of the U.S.C.; 23 U.S.C. 401 et seq.* **F. Chronology:** *NPRM was published on May 17, 1979 (44 FR 28928). The comment period closed on July 16, 1979.* **G. Citation:** No CFR citation as yet	*Terry Dowd,* (202)*426-4723.*	FR *November 1979.*
Financial Assistance to Participants in Rulemaking Proceedings (Docket No. 48).	**A. Description:** This proposal would permit, but not require, each agency of the Department to fund eligible members of the public for the reasonable and actual costs of preparing and presenting their views at selected agency rulemaking proceedings. **B. Why Significant:** This issue concerns a matter on which there is substantial public interest and controversy and would have a significant impact on the operating administrations and the Office of the Secretary. **C. Regulatory Analysis:** Not required **D. Need:** This rule would substantially increase the number of active, informed, and independent participants at many rulemaking proceedings within the Department, thereby increasing the diversity and balance of views presented to the Department, and enhancing the Department's knowledge of the interests likely to be affected by its proposed rules. **E. Legal Authority:** The Department's rulemaking authority under the Department of Transportation Act, 49 U.S.C. 1651 *et seq.,* and related statutes.	*Sam Podberesky,* (202)*426-4723.*	NPRM *September 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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OST — Office of the Secretary

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	F. Chronology: On Jan. 13, 1977, the Department published regulations for a one-year demonstration program to provide financial assistance to certain participants in rulemaking proceedings of NHTSA. (42 FR 2863). At the same time, the Department issued an ANPRM, inviting public comments on the feasibility, wisdom, and scope of a permanent Department-wide program of financial assistance. Upon conclusion of the demonstration program, NHTSA evaluated the program and recommended that the Department establish an amended version of the program throughout the Department. On March 16, 1978, the demonstration program in NHTSA was extended until the Secretary decided whether to issue final, permanent Departmental regulations (43 FR 10918). *On January 23, 1979, the regulation governing the NHTSA financial assistance demonstration program was revised to improve its administration.*		
	G. Citations: *49 CFR pt. 5*		
Public Availability of Information	A. Description: This involves a revision of DOT's Freedom of Information Act Regulations. Specific areas to be revised may include the fee schedule and the policy on waivers of fees for public interest groups and the press.	*Rebecca Lima Dailey,* (202)426-4542.	NPRM *December 1979.*
	B. Why Significant: Substantial public interest		
	C. Regulatory Analysis: Not required		
	D. Need: Freedom of Information Regulations need periodic revision to keep current with changes in case law, policy, and implementation costs.		
	E. Legal Basis: 5 U.S.C. 552 (Freedom of Information Act)		
	F. Chronology: The regulations were last revised in 1975. (40 FR 7915) A new revision is currently under internal development.		
	G. Citation: 49 CFR pt. 7		

OST — Office of the Secretary

Non-significant Regulations

Title	Summary	Contact	Decision date
Consolidation of Transportation Grants to U.S. Territories.	The regulation would comply with Title V of Pub. L. 95-134 which permits departments and agencies to consolidate grant programs, reduce reporting requirements, and waive local matching fund requirements. NPRM was published on 1/8/79 (44 FR 1765) (49 CFR pt. 29).	*Greg Dahlberg,* (202)426-9605.	FR *August 1979.*
Maintenance of and Access to Records Pertaining to Individuals.	Revision of the Department's Privacy Act regulations. *Notice of incorporation by reference published on 8/28/78. NPRM published 12/4/78 (43 FR 56682).* (49 CFR pt. 10).	John Windsor, (202)426-1887.	FR *August 1979.*
Official Seal	Revision of regulations governing description and use of the Department's seal. (49 CFR pt. 3).	Sam Podberesky, (202)426-4723.	FR *September 1979.*
Rulemaking procedures	Amendments to the Office of the Secretary regulations on notice-and-comment rulemaking. (49 CFR pt. 5).	Sam Podberesky, (202)426-4723.	NPRM *September 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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OST — Office of the Secretary

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
*Proposed Relocation of Standard Time Zone Boundary in the State of Alaska.	This regulation would move Juneau, Alaska and part of the surrounding area from the Pacific Time Zone to the Yukon Time Zone. NPRM was published on May 16, 1979 (44 FR 28696) (49 CFR 71.11).	Jack Lusk, (202)426–5723.	FR August *1979.*
*Nondiscrimination on the Basis of Age in DOT Financial Assistance Programs.	This regulation would prohibit age discrimination by recipients of DOT financial assistance programs.	Leslie Baldwin, (202)426–4388.	NPRM September *1979.*

USCG — U.S. Coast Guard

Significant Regulations

Title	Summary	Contact	Decision date
Review: Qualifications of the Person in Charge of Oil Transfer Operations, Tankerman Requirements (Docket No. CGD 74–44, 74–44a).	**A. Description:** Would redefine and establish qualifying criteria for certifying individuals engaged in the carriage and transfer of the various categories of dangerous cargoes in bulk. **B. Why Significant:** Considered significant because this is the result of a Presidential initiative. **C. Regulatory Analysis:** Not required..... **D. Need:** Most pollution incidents are the result of personnel error; consequently the minimum qualifications of persons involved in handling pollution substances should be specified. **E. Legal Basis:** 86 Stat. 427, as amended (46 U.S.C. 391a); Sec. 6(b)(1), 80 Stat. 937 (49 U.S.C. 1655(b)(1)); 49 CFR 1.46(n)(4). **F. Chronology:** Environmental Analysis and Inflationary Impact Statement completed 2/77. NPRM published April 25, 1977 (42 FR 21190). Public hearing 6/77. Extensive comments on first NPRM warrant the issuance of another NPRM. **G. Citation:** 33 CFR pt. 155; 46 CFR pts. 10, 12, 30, 31, 35, 70, 90, 98, 105, 151, and 157.	CDR Hess, (202)426–2251.	NPRM *August 1979.*
Review: Revision of Electrical Regulations (Docket No. CGD 74–125).	**A. Description:** General revision and updating to conform with latest technology and to include steering requirements for vessels other than tank vessels. **B. Why Significant:** Considered significant since it incorporates the steering requirements set forth in the Presidential initiatives of March 17, 1977. **C. Regulatory Analysis:** Not Required..... **D. Need:** The industrial standards for electrical engineering have changed in the past few years and the regulations must be brought up-to-date to reflect the latest industry practice. **E. Legal Basis:** 46 U.S.C. 170, 367, 369, 375, 390(b), 391(a), 392, 408, 416, 445, 389, 526(p); 49 U.S.C. 1655(b).	LCDR Mowery, (202)426–2205.	NPRM *August 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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USCG **U.S. Coast Guard**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	F. Chronology: NPRM published June 27, 1977 (42 FR 327000). A supplemental NPRM will be issued because of extensive changes that were necessary as a result of comments received on the first NPRM. G. Citation: 46 CFR pts. 110–113		
Standard for New Self-Propelled Vessel Carrying Bulk Liquefied Gases (Docket No. CGD 74–289).	A. Description: These regulations would adopt the Intergovernmental Maritime Consultative Organization (IMCO) Resolution, the Code for Construction and Equipment of Ships Carrying Liquefied Gases in Bulk. B. Why Significant: This is a significant rulemaking involving matters of substantial public interest. C. Regulatory Analysis: Not required D. Need: The increased use of liquefied gases for energy sources has produced a dramatic increase in the manufacture and use of vessels designed for that cargo. Due to the unusual and unique hazards associated with liquefied gases, these vessels must be addressed in regulations specially tailored to their unique situation. E. Legal Basis: R.S. 4472 as amended (46 U.S.C. 170); Sec. 201 (86 Stat. 42), as amended (46 U.S.C. 391); Sec. 6(b)(1), 80 Stat. 937 (49 U.S.C. 1655(b)(1)). F. Chronology: Economic and Environmental Impact Assessments and Negative Declarations were prepared before the NPRM was published October 4, 1976 (41 FR 43822). Public hearing held 11/76. *Final rule published on May 3, 1979 (44 FR 25985).* G. Citation: 46 CFR pts. 31, 34, 40, 54, 56, 98, 154, and 154a.	Mr. A. Rowek, (202)426–*1217.*	*Action Complete.*
Whitewater Rafts Inspection (Docket No. CGD 75–020).	A. Description: These proposed regulations would set forth safety requirements for whitewater rafts that would recognize the unique construction, arrangement, equipment, and general operation of these vessels. B. Why Significant: This project is considered significant because of substantial Congressional interest and the potential cost to a minor industry largely comprised of small businesses. C. Regulatory Analysis: Not required D. Need: Increased popularity of whitewater rafting as a commercial recreational activity has increased the potential for casualties to paying passengers. Since these rafts are engaged in interstate commerce, by law, they are subject to inspection to ensure that they meet minimum levels of safety. E. Legal Basis: 46 U.S.C. 390 F. Chronology: This project commenced in 1974. *Public response to this project indicated that it should be withdrawn at this time and reevaluated.* G. Citation: 46 CFR pts. 175–187	LCDR Anderson, (202)426–2183.	*Withdrawn.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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USCG **U.S. Coast Guard**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
Review: *Proposed Design Standards for Tank Barges* (Docket No. CGD 75–083). Upgrade Existing Tank Barge Construction (Docket No. CGD 75–083a).	**A. Description:** This action is comprised of two regulatory projects centered on tank barge construction standards which resulted from Presidential initiatives of March 17, 1977, directing study of the tank barge pollution problem. One project will address new barge construction while the other will pertain to existing barges. Regulatory documents for both will be published at the same time and joint public hearings will be held. **B. Why Significant:** Considered significant due to substantial Congressional and public interest. **C. Regulatory Analysis:** Required..... **D. Need:** Increased public awareness of the oil pollution problem, as well as international and domestic interest in this area have made increased design standards necessary as a means of reducing the possibility of pollution. **E. Legal Basis:** Sec. 201, 86 Stat. 427, as amended (46 U.S.C. 391a). **F. Chronology:** The upgrade of tank barge construction standards was published as a NPRM in the ***Federal Register*** of December 24, 1971 (36 FR 24960). As a result of the 63 written comments received, it was decided that the standards needed to be studied further, especially as they would apply to existing barges. In 1974, the Coast Guard and the Maritime Administration performed a joint study of the tank barge pollution problem which found that certain construction techniques might provide a significant advantage for eliminating oil pollution from tank barges. However, the study had several weaknesses and regulatory action was not taken. In July 1977, the Coast Guard began a reexamination of the tank barge construction standards. It was determined that new construction should be treated separately from existing barges. *An ANPRM concerning impacts related to existing barges was published on June 14, 1979 (44 FR 34440). An NPRM on the standards for new construction was published on June 14, 1979 (44 FR 34440).* **G. Citation:** 46 CFR pts. 32–40.....	LCDR Johnson, (202)426–4431. LCDR Sampson, (202)426–2183.	*FR April 1980.* *NPRM April 1980.*
Review: Pollution Prevention, Vessels and Oil Transfer Facilities (Docket No. CGD 75–124a).	**A. Description:** Would reduce accidental or intentional discharge of oil or oily wastes during vessel operations. **B. Why Significant:** This regulation is the significant part of Docket No. CGD 75–124. Substantive changes to the NPRM are proposed so that a supplemental NPRM is needed. It is considered significant due to opposition from the owners/operators of offshore marine service vessels and inland waterways vessels to the oil-water separator requirements of 33 CFR 155.330. Also, considerable expense may be incurred by the towing service to install separators and monitors or alarms, if alternative measures are not used. Without these sections, the remainder of CGD 75–124 is non-significant and moved to that listing. **C. Regulatory Analysis:** Not required.....	LCDR J. Busavage, (202)426–9578.	NPRM *August 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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USCG **U.S. Coast Guard**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	D. Need: (1) Necessary to reduce the number of oil spills. (2) Clarification of existing rules. (3) Additional requirement for oil-water separators under the 1973 International Convention for the Prevention of Pollution from Ships. E. Legal Basis: Section 311(j)(1) (C) and (D) of the Federal Water Pollution Control Act as amended; 33 U.S.C. 1321(j)(1) (C) and (D). F. Chronology: NPRM published June 27, 1977 (42 FR 32670). Supplemental NPRM published October 27, 1977 (42 FR 56625). Public Hearings held: New Orleans, La. 11/22/77, St. Louis, Mo. 11/30/77, Wash., D.C., 11/28/77. G. Citation: 33 CFR 155.330 thru 155.410		
Offshore Oil Spill Pollution Fund (Docket No. CGD 77-055).	A. Description: Would establish procedural rules concerning administration and operation of fund, including liability limits for certain facilities, financial responsibility factors, damage claim settlement procedures, et al. B. Why Significant: Involves matters of substantial public interest and important DOT policy. C. Regulatory Analysis: Required D. Need: To implement administration of the fund by creating procedures for prompt settlement of claims arising from damage caused by oil pollution. E. Legal Basis: Outer Continental Shelf Lands Act of 1978. P.L. 95-372, 92 Stat. 629 (43 U.S.C. 1811). F. Chronology: NPRM published December 4, 1978. (43 FR 56840). Public hearings were held in New Orleans, La., January 8, 1979, and Washington, D.C., January 8, 1979. *Final Rule published March 19, 1979 (44 FR 16860).* G. Citation: 33 CFR *135 and 136*	F. Martin, (202)426-2606.	*Action Complete.*
Inert Gas System (Docket No. CGD 77-057).	A. Description: Would require certain oil tankers of 20,000 deadweight tons and over to be fitted with inert gas system. B. Why Significant: This is a result of a Presidential Initiative and meets major cost impact criteria. C. Regulatory Analysis: Required D. Need: As part of the President's initiatives to reduce marine pollution, this regulation will reduce the possibility of in-tank explosions which have been the cause of some pollution incidents. E. Legal Basis: R.S. 4417(a) as amended by section 5, P.L. 95-474, (46 U.S.C. 391a); 49 CFR 1.46(n)(4). F. Chronology: Inflationary Impact Statement completed 5/77. NPRM published May 16, 1977 (42 FR 24874). Public hearings held in Washington, D.C., and San Diego 6/77. Port and Tanker Safety Act (PTSA) of 1978, enacted October 1978. *NPRM published February 12, 1979 (44 FR 8984). Hearings were held on March 21, 1979 in Washington, D.C., and March 2, 1979, in San Francisco.* G. Citation: 46 CFR 32.53	Mr. D. Sheehan, (202)426-2205.	FR *September 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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USCG **U.S. Coast Guard**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
Segregated Ballast for Oil Tankers (Docket No. CGD 77-058).	**A. Description:** On March 17, 1977 President Carter directed the Secretary of Transportation to issue new rules for oil tanker standards which were to include segregated ballast on all tankers and double bottoms on all new tankers which call at American ports. The provisions of these proposed regulations have been changed by the February 1978 Inter-governmental Maritime Consultative Organization (IMCO) Conference to include Crude Oil Washing (COW) and Clean Ballast Tanks (CBT). **B. Why Significant:** This rulemaking is considered significant because of substantial Congressional and public interest. **C. Regulatory Analysis:** Required..... **D. Need:** As part of the President's initiatives to reduce pollution, this regulation is needed to help reduce *pollution resulting from normal operations aboard ships.* **E. Legal Basis:** R.S. 4417(a) as amended by section 5, P.L. 95-474, (46 U.S.C. 391a). **F. Chronology:** NPRM was published May 16, 1977 (42 FR 24868). As a result of the IMCO 2/78 Tanker and Pollution Prevention Conference a new NPRM will be issued. This rulemaking was also mandated by the Port Tanker and Safety Act of 1978. *NPRM published February 12, 1979 (44 FR 8984). Hearings were held on March 21, 1979 in Washington, D.C., and March 28, 1979 in San Francisco.* **G. Citation:** 33 CFR pt. 157.....	CDR Ireland, (202)426-4431.	FR *September 1979.*
Steering Gear Design Standards to Provide Redundancy (Docket No. CGD 77-063).	**A. Description:** On March 17, 1977 President Carter directed the Secretary of Transportation to issue new rules to provide for back-up steering systems for all tankers calling at U.S. Ports. **B. Why Significant:** This rulemaking is considered significant because of Congressional and public interest. **C. Regulatory Analysis:** Not required..... **D. Need:** As part of the President's initiatives to reduce pollution, this regulation is needed to help reduce the possibility of a marine collision due to a loss of steering. **E. Legal Basis:** R.S. 4417(a) as amended by section 5, P.L. 95-474 (46 U.S.C. 391a). **F. Chronology:** NPRM published May 16, 1977 (42 FR 24869). As a result of the IMCO 2/78 Tanker Safety and Pollution Prevention Conference a new NPRM will be issued. *NPRM published February 12, 1979 (44 FR 8984). Hearings were held on March 21, 1979 in Washington, D.C., and March 28, 1979 in San Francisco.* **G. Citation:** 46 CFR pt. 58.....	CDR Williams, (202)426-2160.	FR *September 1979.*
Review: Construction and Equipment Existing Self-Propelled Vessels Carrying Bulk Liquefied Gases (Docket No. 77-069).	**A. Description:** Would amend regulations for existing self-propelled vessels that carry bulk liquefied gases by including the substantive requirements for the "Code for Existing Ships Carrying Liquefied Gases in Bulk" adopted by Intergovernmental Maritime Consultative Organization (IMCO) which would increase safety levels of existing ships carrying gas.	LCDR Pluta, (202)426-2160.	NPRM *November 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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USCG **U.S. Coast Guard**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	B. Why Significant: This is significant because it involves a large number of existing U.S. and foreign flag ships which carry liquefied gas and is the subject of substantial public interest. **C. Regulatory Analysis:** Required **D. Need:** Increased use of liquefied gases has intensified the problems associated with this product. Since this product has unique properties and dangers, a dedicated set of regulations is needed to address them. **E. Legal Basis:** R.S. 4417(a) as amended by section 5, P.L. 95-474, (46 U.S.C. 391a); See 6(b)(1), 80 Stat 937 (49 U.S.C. 1655 (b)(1)). **F. Chronology:** An Advance Notice of Proposed Rulemaking was published June 30, 1977 (42 FR 33353). Regulatory Analysis was completed 2/79. An Environmental Impact Assessment *was* completed 2/79. This action is also mandated by the Port and Tanker Safety Act of 1978. **G. Citation:** 46 CFR pts. 31, 34, 38, 40, 54, 98, 154		
Review: Licensing of Pilots (Docket No. CGD 77-084).	**A. Description:** This proposal would require recency of service for each route upon which a pilot is authorized to serve; licenses would be issued with tonnage limitations commensurate with pilot experience; and consideration of shiphandling simulator training for pilots of very large vessels including Very Large Crude Carriers (VLCC). **B. Why Significant:** Considered significant because there is substantial interest among marine personnel on this matter with opposition expected from Federal pilots. **C. Regulatory Analysis:** Not required **D. Need:** Increased ship size has led to unusual handling characteristics with which some pilots may not be familiar. This rule will allow use of simulator training for these kinds of vessels. **E. Legal Basis:** *46 U.S.C. 214, 224, 230, 233, 237; 49 U.S.C. 1655(b)(1).* **F. Chronology:** A Regulatory Analysis and Work Plan were completed 10/78. A public hearing will probably be held shortly after the publication of the NPRM. **G. Citation:** 46 CFR pt. 10	LCDR Norman, (202)426-2240.	NPRM *August 1979.*
Tank Vessel Operations Regulations, Puget Sound (Docket No. CGD 78-041).	**A. Description:** This regulation would govern the operation of tank vessels in the Puget Sound area to protect against environmental harm resulting from vessel or structure damage, destruction, or loss. **B. Why Significant:** This is considered a significant rulemaking due to Congressional and public interest. In addition it may generate controversy among the public, environmentalists, and the oil industry. **C. Regulatory Analysis:** Not required **D. Need:** To reduce the possibility of environmental harm resulting from oil spills in Puget Sound by governing the operation of tankers to reduce the risk of collision or grounding.	CAPT R. Janecek, (202)426-1935.	FR *January 1980.*

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USCG **U.S. Coast Guard**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	E. Legal Basis: Port and Waterways Safety Act (33 U.S.C. 1221). **F. Chronology:** Secretary Adams signed 180 day Interim Rule on March 14, 1978 prohibiting entry of oil tankers in excess of 125,000 Deadweight Tons in Puget Sound March 23, 1978 (43 FR 12257). ANPRM published March 27, 1978 (43 FR 12840) with public hearing held April 20-21, 1978. *NPRM published April 12, 1979 (44 FR 21974). Public hearings were held in Washington State on June 13 and 14, 1979. The interim navigation rule will remain in effect until cancelled (44 FR 36174).* **G. Citation:** 33 CFR pts. 160, 161		
Personnel Job Safety Requirements for Industrial Vessels *(No Docket Number).*	**A. Description:** This regulation would develop health and safety requirements for personnel employed on artificial islands, fixed installations and vessels engaged in oil field exploration and development. **B. Why Significant:** This action concerns a matter that is of significant public interest and which will impact on other Federal agencies. Action mandated by pending Outer Continental Shelf legislation. **C. Regulatory Analysis:** Not required **D. Need:** Exploration and development of the offshore resources requires a growing fleet of vessels which perform a variety of industrial functions. The regulations will provide more comprehensive protection for personnel employed on these vessels. **E. Legal Basis:** 43 U.S.C. 1333(e) **F. Chronology:** Work plan prepared 11/78 **G. Citation:** 46 CFR Subchapters I and IA	*LT Whipple,* (202)472-5160.	NPRM *October 1979.*
Personnel Job Safety Requirements for Fixed Installations on the Outer Continental Shelf *(Docket CGD 79-077).*	**A Description:** This regulation would develop personnel safety and health requirements for artificial islands, fixed installations and other devices on the Outer Continental Shelf (OCS). **B. Why Significant:** This action concerns a matter that is of significant public interest and which will impact on other Federal agencies. Action mandated by Outer Continental Shelf legislation. **C. Regulatory Analysis:** Not required **D. Need:** More comprehensive requirements will improve personnel working conditions and the level of safety on fixed installations on the OCS. The regulations will also help fulfill the mandates for safety and health in the impending legislation on the OCS Land Act Amendments of 1978. **E. Legal Basis:** 43 U.S.C. 1333(e) **F. Chronology:** Work plan prepared 11/78 **G. Citation:** 33 CFR Subchapter N; 46 CFR Subchapters IA and V.	R. Barrett, (202)472-5160.	ANPRM *October 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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USCG **U.S. Coast Guard**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
Revision of 46 CFR 157.20-5 Division into Three Watch Regulation (Docket No. CGD 78-037).	**A. Description:** This revision would require an adjustment in vessel manning requirements, to bring them into line with current legislation. It would change the requirements which identify personnel who must be used on the three watches and personnel who may be employed in a day working status. **B. Why Significant:** Involves a matter that is of significant interest to the public. Also, opposition is anticipated from the maritime labor unions. **C. Regulatory Analysis:** Not required. **D. Need:** The regulations in this section no longer reflect present CG policy and need updating. **E. Legal Basis:** R. S. 4463, as amended (46 U.S.C. 222); Section 2 of the Seamen's Act of 1915, as amended (49 Stat. 1933; 46 U.S.C. 673). **F. Chronology:** Prepared Work Plan 5/78 **G. Citation:** 46 CFR 157.20-5	CDR McCowen, (202)426-2240.	NPRM *August 1979.*
Drawbridge Operation Regulations—Newark Bay and Passaic and Hackensack Rivers, New Jersey (Docket No. CGD 78-173).	**A. Description:** Would amend the regulations to provide more equitable balance between the needs of land and marine modes of transportation in scheduling drawbridge openings and generally update the regulations. **B. Why significant:** Involves coordination with other agencies within DOT and is a matter of significant public interest. **C. Regulatory Analysis:** Not required **D. Need:** Increased use of rail, road, and water transportation in this heavily industrialized and heavily populated area, mariners' complaints of long delays before bridge openings, and a general need to update existing regulations. **E. Legas Basis:** Sec. 5, 28 Stat. 362, 33 U.S.C. 499; 80 Stat. 937, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5). **F. Chronology:** A fact-finding public hearing was held November 17, 1977 to provide the basis for formulating the proposed rule. **G. Citation:** 33 CFR 117.200	Mr. F. Teuton, (202)426-0942.	NPRM *October 1979.*
Review: Eight-Hour Day, Voluntary Overtime (Docket No. CGD 78-146).	**A. Description:** Under 46 CFR 157.20-10, no licensed officer or seaman should be required to be on duty more than eight hours in any one day except in extraordinary conditions. The regulations do not address overtime and do not consider any possible "fatigue factor". **B. Why Significant:** Involves a matter that is of public interest. In addition, opposition may be forthcoming from maritime labor unions, or management, or both. **C. Regulatory Analysis:** Not required. **D. Need:** In recent years Coast Guard studies have shown that a "fatigue factor" must be recognized as having a profound effect on one's reaction time, judgment, and well being.	CDR McCowen, (202)426-2240.	ANPRM *October 1979.*

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Significant Regulations—Continued

Title	Summary	Contact	Decision date
	E. Legal Basis: Section 2 of Seaman Act of 1915, as amended. (49 Stat. 1933; 46 U.S.C. 673). **F. Chronology:** Prepared Work Plan 1/79. Submitted to OST May 1979. **G. Citation:** 46 CFR 157.20-10		

USCG **U.S. Coast Guard**

Non-significant Regulations

Title	Summary	Contact	Decision date
Vessel Traffic Service (VTS), Berwick Bay, LA, (Docket 73-186).	Would codify certain operating procedures now being done under local order. (33 CFR pt. 161).	LTJG Molessa, (202)426-4958.	NPRM *November 1979.*
Review: Lights on Pipelines (Docket No. CGD 73-216).	Would require warning lights on unattended dredge pipelines. NPRM published February 13, 1978 (43 FR 6200). *FR published February 26, 1979 (44 FR 11052); (33 CFR pts. 80, 90, 95).*	LTJG Molessa, (202)426-4958.	*Action Complete.*
Review: Cargo Location Signs and Cargo Information Cards on Barges (Docket No. CGD 73-243).	Would require notification of the vessel's crew of the hazards and locations of dangerous cargoes carried on barges. *NPRM published March 29, 1979 (44 FR 18709)* (46 CFR pt. 35).	Mr. R. Query, (202)426-1217.	*FR January 1980.*
VTS San Francisco, CA. (Docket No. CGD 73-274).	Would make mandatory a now voluntary vessel traffic service. (33 CFR pt. 161).	Mr. F. Schwer, (202)426-4958.	NPRM *October 1979.*
VTS Houston-Galveston, Texas (Docket No. CGD 74-029).	Would make mandatory a now voluntary vessel traffic service. (33 CFR pt. 161).	LTJG Molessa, (202)426-4958.	NPRM *December 1979.*
Powered Pilot Hoists and Ladders (Docket No. CGD 74-140).	Would establish new regulations for pilot hoists and revise regulations for pilot ladders and chain ladders. (46 CFR pts. 160, 163). *NPRM published July 23, 1979 (44 FR 43016).*	Mr. R. Markle, (202)426-1445.	FR November 1979.
Review: Measurement of Size of Accesses to Exemptible Water Ballast Spaces (Docket No. CGD 74-211).	Would establish measurement of vessel size of access to exemptible water ballast space. (46 CFR pt. 69).	Mr. Stitt, (202)426-2192.	*Withdrawn.*
Review: Fixed Fire Extinguishing Systems on Uninspected Vessels (Docket No. CGD 74-284).	Would establish standards for the construction and installation of Halon 1301 and other fixed fire extinguishing systems. (46 CFR 162.029).	Mr. K. Wahle, (202)426-1444.	NPRM *August 1979.*
Elevators and Dumbwaiters (Docket No. CGD 75-001).	Would adopt the American National Standards Institute (ANSI) code with certain modifications for vessel construction. NPRM published April 5, 1976 (41 FR 14386). (46 CFR pt. 58).	Mr. B. Jackson, (202)426-2206.	FR *December 1979.*
Review: Compatibility of Bulk Liquid Cargoes (Docket No. CGD 75-059).	Would establish cargo loading standards to prevent the intermingling of cargo likely to create dangerous conditions. (46 CFR pt. 150).	Mr. R. Query, (202)426-1217.	NPRM August 1979.
Benzene Carriage Requirements, Vapor Exposure Limitations (Docket No. CGD 75-075).	Proposed requirements to prevent exposure of crew to hazardous vapors. NPRM published August 21, 1978 (43 FR 37149). (46 CFR pts. 151, 153).	*LTJG Murray,* (202)426-2192.	FR August 1979.
Review: Ocean Operator (Docket No. CGD 75-178).	Proposed licensing requirements for rank of ocean operator. NPRM published March 14, 1977 (42 FR 13844). (46 CFR pts. 157 and 186). *An alternate approach is under consideration; this may be withdrawn.*	CDR McCowen, (202)426-2240.	FR *August 1979.*

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Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Review: Launching Devices for Liferafts (Docket No. CGD 75-217).	Proposed specification for approval of devices used for launching inflatable liferafts. (46 CFR Pts. 160 and 163).	Mr. M. Daniels, (202)426-1445.	NPRM *December 1979.*
Review: Helicopter Operations with Tank Vessels (Docket No. 75-221).	Would establish guidelines for helicopter operations on tank vessels and Liquefied Natural Gas (LNG) Vessels. (46 CFR pts. 32, 34, and 25).	LTJG Sedlak, (202)*426-2197.*	NPRM August 1979.
Review: Advance Notice of Arrival (Docket No. CGD 75-238).	Would require advance notice to Captain of the Port (COTP) of vessel arrivals, departures and hazardous conditions. NPRM published June 15, 1978 (43 FR 25958). *Public hearing held October 12, 1978 in Washington, D.C., and October 20, 1978 in Houston Texas* (33 CFR pt. 161).	*LT Dickman,* (202)426-1927.	FR *August* 1979.
Review: Stability Standards for Tug Boats (Docket No. CGD 76-018).	Would establish impact stability standards for vessels normally engaged in towing operations to increase their resistance to capsizing. ANPRM published April 12, 1976 (41 FR 15349). (46 CFR pt. 42).	F. Perrini, (202)426-2187.	NPRM *January 1980.*
Review: Tug Assistance in Confined Waters (Docket No. CGD 76-025).	Would require tug assistance for large vessels operating in confined waters. ANPRM published May 6, 1976 (41 FR 18770). (33 CFR pt. 164).	Mr. F. Schwer, (202)426-4958.	NPRM November 1979.
Review: Lights and Retro-Reflective Material for Life Preservers and Other Lifesaving Equipment (Docket No. CGD 76-028).	Would require lights and retro-reflective material on life preservers in order to aid rescue efforts. NPRM published May 23, 1977 (42 FR 26229). *Final Rule published July 2, 1979 (44 FR 38778).* (46 CFR pts. 25, 33, 75, 94, 161, 167, 180, 192).	LCDR Anderson, (202)426-2183.	*Action Complete.*
Review: Lifesaving systems for Great Lakes Vessels (Docket No. CGD 76-033).	Would amend lifesaving equipment regulations to improve chances of personnel survival following abandonment of vessel (46 CFR Subchapter D, H, I, T, and Q).	Mr. R. Markle, (202)426-1445.	NPRM *October 1979.*
Review: Exposure Suits on Great Lakes Vessels (Docket No. CGD 76-033a).	Proposed approval, specification and vessel requirements for low-temperature exposure. NPRM published June 8, 1978 (43 FR 25000). (46 CFR pts. 33, 75, 99, 160).	Mr. R. Markle, (202)426-1445.	FR *August 1979.*
Review: Factory Inspection Approval Procedures (Docket No. CGD 76-048).	Proposed procedures to allow third party inspection of specified equipment. NPRM published October 23, 1978 (43 FR 49440). (46 CFR pt. 159).	Mr. R. Markle, (202)426-1445.	FR *August 1979.*
Review: Factory Inspector, Distress Signal (Docket No. CGD 76-048a).	Proposed procedures to allow third party inspection of distress signals. NPRM published October 23, 1978 (43 FR 49445). (46 CFR pt. 160).	Mr. R. Markle, (202)426-1445.	FR *August 1979.*
Minimum Net Bottom Clearance (Docket No. CGD 76-051).	Would require vessels to maintain a minimum net bottom clearance while transiting certain navigable waters of the United States. ANPRM published May 6, 1976 (41 FR 18770). (33 CFR p. 168).	Mr. F. Schwer, (202)426-4958.	*Withdrawn.*
Review: Subdivision of Passenger Vessels (Docket No. CGD 76-053).	Proposes more flexible regulations by allowing alternate compliance with Intergovernmental Maritime Consultative Organization as an alternative to existing requirements. (46 CFR pts. 73, 74).	Mr J. Howell, (202)426-2187.	NPRM *February 1980.*
Review: Stability Standards for Hopper Dredges (Docket No. CGD 76-080).	Would improve capability of a dredge to withstand flooding caused by damage to hull or interior piping. (46 CFR pt. 93).	Mr. D. Ewing, (202)426-2187.	NPRM*October 1979.*
Requirements for Boat Ventilation (Docket No. CGD 76-082).	Would establish requirements for ventilation of fuel and engine compartments on boats. NPRM published July 27, 1978 (43 FR 32606). (33 CFR pt. 183).	Mr. L. Granholm, (202)426-4027.	FR *August 1979.*
Review: Combination Fire Hose Nozzles (Docket No. CGD 76-086).	Proposed requirement for an approved combination nozzle on most vessels. NPRM published June 16, 1977 (42 FR 30649). *Final Rule published January 11, 1979. (44 FR 2390).* (46 CFR pts. 34, 76, 95, 162, 193).	Mr. F. Thompson, (202)426-2174.	*Action Complete.*

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Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Review: Cadets of the Coast Guard (Docket No. CGD 76-087).	Would revise present regulatory language to indicate desired procedures for Cadet appointments. NPRM published November 1, 1976 (41 FR 47944). *FR published May 29, 1979 (44 FR 30094)* (33 CFR pt. 40).	LTJG Marshall, (202)426-1370.	*Action Complete.*
Oil/Water Separator (Docket No. CGD 76-088a).	Would establish approval procedures and specifications for oil-water separators, cargo and bilge monitors, and bilge alarms for use on merchant vessels. NPRM published June 27, 1977 (42 FR 32686). (46 CFR pt. 162).	LT McCall, (202)426-1445.	FR *August 1979.*
Cargo Monitors on Tank Vessels (Docket No. CGD 76-088b).	Proposed requirements for installation and use of cargo monitors. NPRM published June 27, 1977 (42 FR 32684). (33 CFR pt. 157).	*LT Cool, (202)426-2168.*	FR *December 1979.*
Review: Deepwater Port Safety Zone Regulations, (Docket No. CGD 76-096).	Would establish regulations for safety zones at U.S. Deepwater Ports. (33 CFR pt. 157).	Mr. F. Martin, (202)426-2606.	NPRM *September 1979.*
Review: Lights on Barges (Docket No. CGD 76-109).	Would extend requirements for flashing yellow lights at heads of tows to all inland waters. NPRM published July 13, 1978 (43 FR 30256). *Final rule published June 14, 1979 (33 FR 34129)* (33 CFR 80.16).	LTJG Molessa, (202)426-4958.	*Action Complete.*
Review: Applicability of Western Rivers/Inland Rules (Chief Counsel's Interpretive Rules) (Docket No. CGD 76-129).	Would define where the Inland and Western Rivers rules apply on the Port Allen-Morgan City Alternate and Landside Routes. *Final rule published April 16, 1979. (44 FR 22456)* (33 CFR 80.04 and 33 CFR 95.02).	Mr. T. Foley, (202)426-4958.	*Action Complete.*
Review: Approval Procedures Whistles (Docket No. CGD 76-132).	Would prescribe approval procedures for the manufacture of whistles required by the 72 COLREGS. (33 CFR pt. 87).	LTJG Molessa, (202)426-4958.	NPRM *September 1979.*
Review: Amendments to Vessel Numbering Requirements (Docket No. CGD 76-155).	Would make minor changes to the vessel numbering and accident reporting requirements to make them more consistent and efficient. NPRM published November 10, 1977 (42 FR 58722). *Rule published January 25, 1979 (44 FR 5308).* (33 CFR pts. 173, 174).	Mr. Gauthier, (202)426-4176.	*Action Complete.*
Review: Casualty Reporting (Docket No. 76-170).	Would update the regulation by changing the monetary and other damage criteria. NPRM published October 19, 1978. *Correction published October 23, 1978 (43 FR 49316). As a result of numerous comments a revised NPRM is being published.* (43 CFR 48982). (46 CFR 4.05).	*CDR Blomquist, (202)426-1455.*	*NPRM August 1979.*
Visual Distress Signals for Boats (Docket No. CGD 76-183).	Would require visual distress signals to be carried on boats when operating on coastal waters and on the high seas. NPRM published April 10, 1978 (43 FR 15118). Comment period reopened in conjunction with CGD 76-183a October 23, 1978 (43 FR 49440) (33 CFR pt. 175).	Mr. Gauthier, (202)426-4176.	FR *August 1979.*
Visual Distress Signals for Boats (Docket No. CGD 76-183a).	Would establish approval specifications for certain new visual distress signals to be required in CGD 76-183 (above entry). NPRM published October 23, 1978 (43 FR 49451). (33 CFR pt. 175 and 46 CFR pt. 160).	Mr. Gauthier, (202)426-4176.	FR *August 1979.*
Review: Use of Dangerous Articles as Ships' Stores and Supplies on Vessels (Docket No. CGD 76-191).	Proposed storage and labeling requirements (46 CFR pt. 147).	Mr. J. McAnulty, (202)426-1577.	*Withdrawn.*
Review: Radar Observer Endorsement for Personnel (Docket No. CGD 76-193a).	Would require specialized training in use of radar equipment. This will be a supplemental notice based on a document published earlier. (46 CFR pt. 10).	CDR Hess, (202)426-2251.	NPRM *August 1979.*
Review: Reexamination Procedures for Unlicensed Ratings (Docket No. CGD 76-203).	Would eliminate confusion about reexamination procedures. NPRM published July 28, 1977 (42 FR 38394). (46 CFR pt. 12).	CDR Hess, (202)426-2251.	FR *September 1979.*

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Title	Summary	Contact	Decision date
Review: Shipboard Fumigation Standards (Docket N. CGD 76-206).	Proposed operational requirements for fumigation procedures on vessels. (46 CFR pt. 147a).	LT Norris, (202)426-1577.	NPRM *October 1979.*
Review: Exemption for Cargo Vessel in Alaska Serving Remote Villages (Docket No. CGD 76-223).	Would allow special uses for specific vessels serving in the Alaskan Trade. (46 CFR pts. 6, 30, 42, 43, 70, 90, and 151 and 33 CFR pt. 1).	*LTJG Murray,* (202)426-2190.	NPRM *November 1979.*
Requirement to Stop to Permit Boarding (Docket No. CGD 76-232).	Would require boat operators to stop when ordered to do so by the CG Boarding Officer. (33 CFR pt. 177).	ENS Strickland, (202)426-4176.	NPRM *August 1979.*
Review: Administrative Amendment to Delete Incorrect References and Add New Proper Reference (Docket No. CGD 76-014).	Would revise incorrect reference in the Code of Federal Regulations. *Final Rule published February 25, 1979. (44 FR 5316)* (46 CFR pt. 2).	*LT Rolman,* (202)426-2183.	*Action Complete.*
Review: Marine Safety Investigations (Docket No. CGD 77-018).	Would implement investigation authority under Ports and Waterways Safety Act. *NPRM published January 25, 1979 (44 FR 5368)* (33 CFR pt. 168).	*LT Dickman,* (202)426-1927.	FR *November 1979.*
Ocean Dumping Surveillance Equipment Requirements, (new Part) (Docket No. CGD 77-029).	Would establish equipment requirements to conduct surveillance to prevent unlawful dumping of material into ocean waters. (33 CFR pt. 158).	LT Voyik, (202)426-9573.	NPRM *September 1979.*
Review: Suspension & Revocation Proceedings—Consolidation of Regulations (Docket No. CDG 77-037).	*Would combine disparate regulations to clarify the appeal process. Certain substantive changes require issuance of a NPRM.* (46 CFR pts. 1, 5).	*LT McDaniel,* (202)426-9776.	*NPRM August 1979.*
Review: Semi-Portable Fire Extinguishers (Docket No. CGD 77-039).	Would amend specification to allow approval of wheeled units for use on stable platforms. NPRM published November 9, 1978. *Final Rule published June 14, 1979 (44 FR 34132)* (43 FR 52261). (46 CFR 162.039).	Mr. F. Thompson, (202)426-2174.	*Action Complete.*
Review: Manning of Uninspected Towing Vessels (Docket No. CGD 77-062).	Would clarify the applicability of the three watch system to towing vessels. NPRM published September 14, 1978 (43 FR 41178). (46 CFR pt. 157).	CDR McCowen, (202)426-2240.	*To be withdrawn.*
Review: Designation of Oceanographic Vessels (Docket No. CGD 77-081).	Would delegate means of designating an Oceanographic Research vessel to Officers in Charge, Marine Inspection (OCMI). (46 CFR pt. 188).	CDR McCowen, (202)426-2240.	NPRM *August 1979.*
Operational Specification for Radar (Docket No. CGD 77-085).	Would develop specifications for radar systems on vessels over 1600 gross tons. (33 CFR pt. 164).	Mr. F. Schwer, (202)426-4958.	NPRM *December 1979.*
Vessel Traffic Service (VTS) New York, N.Y. (Docket No. CGD 77-087).	Would establish regulations for vessel traffic service in New York Harbor. NPRM published February 16, 1978 (43 FR 6906). (33 CFR pt. 161).	Mr. F. Schwer, (202)426-4958.	FR *August 1979.*
Requirement for First Purchaser List Kept by Boat Dealers (Docket No. CGD 77-115).	Would require boat dealers to assist in creating a list of retail purchasers so manufacturers could send notices to alert of safety defects. (33 CFR pt. 179).	*Mr. Ellson,* (202)426-1757.	NPRM *October 1979.*
Review: Optional Numbering Requirements (Docket No. CGD 77-117).	Would make certain vessel numbering requirements applicable to States optional. NPRM published April 13, 1978 (43 FR 15583). (33 CFR pts. 173, 174).	Mr. Gauthier, (202)426-4176.	FR *August 1979.*
Review: Waterfront Facilities (Docket No. CGD 77-128).	Would revise waterfront facility regulations by consolidating and updating general regulations. ANPRM published April 10, 1978 (43 FR 15108). (33 CFR pt. 126-32).	*Lt Dickman,* (202)426-1927.	NPRM *September 1979.*
Review: Amendments to Alternative Compliance (Docket No. CGD 77-136).	Would provide editorial improvement and clarification of existing regulations. (33 CFR pt. 87).	Mr. T. Foley, (202)426-4958.	FR *November 1979.*

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Title	Summary	Contact	Decision date
Review: Barge Loadline Exemptions (Docket No. CGD 77-135a).	Would provide exemptions for barges operating on waters between Chicago and Burns Harbor (46 CFR pt. 42).	Mr. D. Ewing, (202)426-2160.	NPRM *August 1979.*
Review: Barge Loadline Exemptions (Docket No. CGD 77-135b).	Would provide exemption for barges operating on waters between St. Markes and Carabelle (46 CFR pt. 42).	Mr. D. Ewing, (202)426-2160.	NPRM *August 1979.*
Review: Acceptance of American Society of Mechanical Engineers (ASME) "U" or "UM" vessels (Docket No. CGD 77-147).	Would accept pressure vessels bearing the ASME "U" or "UM" stamp without U.S. Coast Guard inspection. (46 CFR pt. 54).	Mr. H. Hime, (202)426-2160.	NPRM *September 1979.*
Review: Amendments to Customs Regulations for Boats (Docket No. CGD 77-157).	Would amend the joint Coast Guard-Customs regulations for imported boats. Minor revision to improve administration of the regulations. *NPRM completed and forwarded to U.S. Customs Service* (19 CFR pt. 12).	ENS Ziegenfuss, (202)426-1757.	NPRM *October 1979.*
Damage Stability Information on Cargo Ships (Docket No. CGD 77-161).	Would require masters of vessels to have damage stability information on board. (46 CFR pt. 93).	*Mr. J. Howell,* (202)426-2187.	ANPRM *December 1979.*
Review: Appointment to Officer Status (Docket No. CGD 77-165).	Would reflect changing requirements for commissioning licensed officers of the Merchant Marine. (33 CFR pt. 33).	LCDR Zawadzki, (202)426-0935.	NPRM *August 1979.*
Electronic Navigation Equipment (Docket No. CGD 77-168).	Would require LORAN-C or Alternative System on all vessels 1600 gross tons and greater. NPRM published November 14, 1977 (42 FR 59012). *Supplemental NPRM published January 25, 1979 (44 FR 5312). Interim final rule published May 31, 1979 (44 FR 31592).* (33 CFR pt. 164).	Mr. F. Schwer, (202)426-4958.	*Action Complete.*
Review: Establishment of Second-Class Ocean Operator (Docket No. CGD 77-176).	Would establish qualification for a second operator on small passenger vessels required to have more than one Ocean Operator on Board. NPRM published March 23, 1978 (43 FR 12218). *An alternative approach is under consideration, this project may be withdrawn.* (46 CFR pts. 157, 186 and 187).	CDR McCowen, (202)426-2240.	FR *October 1979.*
Review: Amend Navigation Safety Regulations (Docket No. CGD 77-183).	Would relax some navigation requirements for Great Lakes and provide editorial corrections. (33 CFR pt. 164).	Mr. T. Foley, (202)426-4958.	NPRM *August 1979.*
Designation of Confined or Congested Waters (Docket No. CGD 77-196).	Would establish list of waters to be designated as "Confined or Congested"—in accordance with Navigation Safety Regulations. *NPRM published April 16, 1979 (44 FR 22686)* (33 CFR pt. 164).	Mr. C. Llana, (202)426-4958.	*FR November 1979.*
Review: Second Class Operator for Towing Vessels (Docket No. CGD 77-204).	Would allow for able seaman service on ocean going vessels to be credited toward second class towboat license. NPRM published May 25, 1978 (43 FR 22653). (46 CFR pt. 10).	LCDR Norman, (202)426-2240.	FR *August 1979.*
Review: Inland Waterways Navigation Regulations (Docket No. CGD 77-217).	Would provide editorial changes to certain regulations previously issued by the Corps of Engineers and transferred to the Coast Guard under the Ports and Waterways Safety Act of 1972. *Final Rule published December 28, 1978. (43 FR 60458).* (33 CFR pt. 162).	LTJG Molessa, (202)426-4958.	*Action Complete.*
Review: Halon 1301 Fire Extinguishing Systems for Merchant Vessels (Docket No. CGD 77-232).	Would allow Halon 1301 for specific types of installations. (46 CFR 164.035).	Mr. R. Eberly, (202)426-2197.	NPRM *August 1979.*

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Title	Summary	Contact	Decision date
Navigation Lights for Small Vessels (Docket No. CGD 77-233).	Would specify approval procedures and installation requirements for International Rules navigation lights for small vessels. NPRM published September 7, 1978 (43 FR 39946). (33 CFR pt. 89).	*Mr. L. Gray, (202)426-4027.*	FR *January 1980.*
Review: Administrative Update of COTP Areas (Docket No. CGD 77-241).	Would make editorial changes to listing of certain Captain of the Port Areas. *Final Rule published February 26, 1979 (44 FR 10982).* (33 CFR pt. 3).	LTJG Molessa, (202)426-4958.	*Action Complete.*
Great Lakes Winter Navigation (Docket No. CGD 77-246).	Would establish three regulated navigation areas for Great Lakes. NPRM published August 17, 1978 (43 FR 36486). *Final Rule published January 25, 1979 (44 FR 5118).* (33 CFR pt. 128).	Mr. D. Ziegfeld, (202)426-1934.	*Action Complete.*
Review: Safety Orientation for Passenger Vessels (Docket No. CGD 78-009).	Would alert passengers to locations and use of safety devices. NPRM published June 29, 1978 (43 FR 28426.) (46 CFR pts. 185 and 26).	LCDR Rock, (202)426-2183.	FR *September 1979.*
Review: Handling of Explosives and Other Dangerous Cargoes Within or Contiguous to Waterfront Facilites (Docket No. CGD 78-023).	Would eliminate errors and outdated cross references in existing waterfront facilities regulations. *Final Rule published January 22, 1979 (44 FR 4642).* (33 CFR pt. 126).	LT Dickman, (202)426-1927.	*Action Complete.*
Requests for Temporary Documents (Docket No. CGD 78-024).	Would change procedure of merchant seaman appeal for temporary document in suspension/revocation cases so appeal can be made directly to the Commandant. Rule published January 25, 1979 (44 FR 5293).	LCDR King, (202)426-2215.	*Action Complete.*
Hazardous Substances, Pollution Prevention for Vessels and Marine Transfer Facilities (Docket No. CGD 78-032).	Would establish regulations for pollution prevention for hazardous substances for vessels and marine transfer facilities. (33 CFR pts. 154, and 156).	LCDR Busavage, (202)426-9578.	ANPRM *September 1997.*
Review: Amendment to Boat Capacity Labels (Docket No. CGD 78-034).	Would make information in safe loading capacity labels clearer and easier to use. NPRM published September 21, 1978 (44 FR 43006). *Correction to NPRM published November 16, 1978; (43 FR 53471).* (33 CFR pt. 183).	Mr. L. Granholm, (202)426-4027.	FR *August 1979.*
Liquefied Natural Gas Regulations (Docket No. CGD 78-038).	Would establish LNG Waterfront Facility Safety Regulations in accordance with Memorandum of Understanding between USCG and Materials Transportation Bureau (a bureau within RSAA) ANPRM published August 3, 1978 (43 FR 34362). *Will merge with CGD 77-128. Supplemental ANPRM published March 8, 1979 (44 FR 12693).* (33 CFR pt. 126).	*LT Dickman,* (202)426-1927.	NPRM November *1979.*
Tows Navigating the Pass Manchac Bridge, LA (Docket No. CGD 78-050).	Would provide for regulation of tows navigating the waters in the vicinity of the Pass Manchac Bridge, LA. NPRM published December 21, 1978 (43 FR 59524). *Correction published January 29, 1979 (44 FR 5680).* (33 CFR pt. 162).	LTJG Molessa, (202)426-4958.	FR *October 1979.*
Review: International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) Demarcation Line (Docket No. CGD 78-052).	Would change 72 COLREGS demarcation line in Florida. (33 CFR pt. 82).	LTJG Molessa, (202)426-4958.	NPRM *September 1979.*
Review: Appointment of the Permanent Commissioned Teaching Staff (Docket No. CGD 78-077).	Would delete regulatory language to conform to the appointment process desired by the Superintendent, U.S. Coast Guard Academy. (33 CFR pts. 33, 40). *Regulation published May 24, 1979. (44 FR 30094).*	LT Lee, (202)426-9866.	*Action Complete.*
Crane Operator Qualifications and *Standards for Offshore Crane Design, Inspection, Testing and Operation (Docket No. CGD 79-59).*	Would develop required qualifications for crane operators employed on the Outer Continental Shelf. (33 CFR pt. 146 and 46 CFR pt. 92).	*ENS Silka,* (202)472-5160.	ANPRM *September 1979.*

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Title	Summary	Contact	Decision date
Deepwater Port Liability Fund Requirements.	Would implement provisions of the Deepwater Port Act of 1974 to establish and administer liability limits and compensation relative to accidental oil spills at deepwater port sites. (33 CFR pt. 150).	Mr. F. Martin, (202)426-2606.	*NPRM* September 1979.
Liquefied Natural Gas Waterfront Facilities, Delegation to Commandant (DOT Docket 1, Amend 1-137).	Would delegate authority to the Commandant to regulate Liquefied Natural Gas (LNG) Waterfront Facilities under the Natural Gas Pipeline Safety Act. *Final Rule published January 26, 1979. (44 CFR 5436) (49 CFR pt. 1).*	*Lt Dickman,* (202)426-1927.	*Action Complete.*
Review: Pollution Prevention, Vessels and Oil Transfer Facilities (Docket No. CGD 75-124).	Would revise pollution prevention regulations for vessels and oil transfer facilities. NPRM published June 27, 1977 (42 FR 32670). Supplemental NPRM published October 27, 1977 (42 FR 56625). (33 CFR pts. 154, 155, and 156).	LCDR Busavage, (202)426-9578.	FR *August 1979.*
Review: Inspection and Approval Procedures, Distress Signals (Docket No. CGD 76-048b).	Would introduce revised inspection procedures for Distress Signals. NPRM published October 23, 1978 (43 FR 49447). (46 CFR pt. 160).	Mr. R. Markle, (202)426-1445.	FR *September 1979.*
Damage Stability, Subchapter "O" Barges (Docket No. CGD 77-027).	*Would apply damage stability requirements for chemical vessels to ocean chemical barges.* (46 CFR 151.10-10).	Mr. F. Perrini, (202)426-2187.	NPRM *September 1979.*
Review: Miscellaneous Changes to Subchapter "F" (Docket No. CGD 77-140).	Would update Title 46, Subchapter F—Marine Engineering. (46 CFR pts. 50-63).	*LCDR Jenkins,* (202)426-2160.	NPRM *September 1979.*
Oxygen/Explosive Meter Requirements (Docket No. CGD 78-021).	Would require Oxygen/Explosive Meters in place of flame safety lamps (46 CFR pts. 35, 96, and 160).	LTJG Murray, (202)426-2183.	NPRM *October 1979.*
Amendment to clarify (Docket No. CGD 78-027).	This amendment would clarify 46 CFR 157.30-10 regarding the number of deck officers and engineers to be on board uninspected vessels. (46 CFR 157.30).	CDR McCowen, (202)426-2240.	NPRM *December 1979.*
Review: St. Mary's River, Vessel Traffic Service (Docket No. CGD 78-079).	Would revise and restate existing anchorage and navigation regulations for St. Mary's River, re-promulgating them under the authority of the Ports and Waterways Safety Act. (33 CFR pt. 161).	Mr. T. Foley, (202)426-4958.	NPRM *October 1979.*
Vessel Traffic Service, New Orleans Amendments (Docket No. 78-080).	Would update existing regulations comprising VTS New Orleans to reflect present river practices. *NPRM published January 1, 1979 (44 FR 2401).* (33 CFR pt. 161).	LTJG Molessa, (202)426-4958.	FR *August 1979.*
Amendment to Electrical Standard for Overcurrent Protection (Docket No. CGD 78-090).	Would make provisions of the standard concerning overcurrent protection more reasonable by allowing use of a jumper conductor under certain conditions. NPRM published December 28, 1978 (43 FR 60850). (33 CFR pt. 183).	Mr. L. Granholm, (202)426-4027.	FR *August 1979.*
Notification of Marine Casualties (Docket No. CGD 78-098).	Would require vessels within a certain distance of United States' coasts to notify the Coast Guard of certain casualties. *ANPRM published April 16, 1979 (44 FR 22476)* (33 CFR pt. 124 transferred to 161).	*Lt Dickman,* (202)426-1927.	*Study Pending.*
Marine Investigation Regulations (Docket No. CGD 78-105).	Would clarify the Coast Guard's subpoena power in marine investigation proceedings (46 CFR pt. 4).	LT Harden, (202)426-1455.	*FR August 1979.*
Review: Bulk Chemical Tanker Update (Docket No. CGD 78-128).	Would update and revise standards for self-propelled vessels carrying hazardous liquid. (46 CFR pt. 153).	LT Trainer, (202)426-1217.	NPRM *October 1979.*
Review: Accessibility of Fire Extinguishers on Boats (Docket No. CGD 78-137).	Would require boat operators to keep portable fire extinguishers in a readily accessible location. (46 CFR pt. 25).	ENS Strickland, (202)426-4176.	NPRM *January 1980.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

USCG **U.S. Coast Guard**

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Unregulated Hazardous Working Conditions on the Outer Continental Shelf (OCS). *(Docket No. CGD 79-073).*	Would identify any presently unregulated hazardous working conditions on the OCS and if necessary regulate such conditions. (33 CFR Subchapter N).	LCDR Barrett, (202)472-5160.	ANPRM *August 1979.*
VTS New Orleans (Docket No. 75-112).	Would make voluntary system mandatory. (33 CFR pt. 161)...	LTJG Molessa, (202)426-4958.	NPRM *December 1980.*
Pilotage Requirements (Docket No. CGD 76-060).	Would clearly delineate when and in what areas pilots are required. (46 CFR 157.20-40).	CDR McCowen, (202)426-2240.	NPRM September *1979.*
Aluminum Hatch Covers Aboard Tank Vessels (Docket No. CGD 78-121).	Would prohibit aluminum hatch covers on tank vessels. (46 CFR 32.60-1).	Mr. R. Eberly, (202)426-2197.	NPRM *August 1979.*
Review: Private Electronic Aids to Navigation (Docket No. CGD 78-145).	Would delete the prohibition of Private Aids to Navigation to provide uniform regulatory treatment. (33 CFR pt. 66).	LT Johnson, (202)426-1974.	NPRM *September 1979.*
Review: Tables of Vessels Examined or Inspected under Various Coast Guard Regulations (Docket No. CGD 78-152).	Would update tables in various parts of Title 46 to reflect the new requirements implemented by the recently published Mobile Offshore Drilling Unit Regulations.	LTJG M. Rolman, (202)426-2190.	FR *August 1979.*
Review: Survey Period for Oil Lubricated Tailshafts with Mechanical Seals (Docket No. CGD 78-153).	Would extend the drawing interval for oil lubricated tailshafts with Mechanical Seals. (46 CFR pt. 61).	LTJG M. Rolman, (202)426-2190.	NPRM *October 1979.*
Review: Footnote Reference to Flexible Loops on Fixed Semi-Portable CO_2 Systems (Docket No. CGD 78-154).	Would update footnotes in various parts of Title 46 to provide an accurate cross-reference to inspection requirements. *Final Rule published March 12, 1979 (44 FR 13491).* (46 CFR pts. 31, 71, 91, 176, and 189).	LT D. Zedan, (202)426-2190.	*Action Complete.*
Review: Mandatory Marking of Obstructions (Docket No. CGD 78-156).	Would clarify and consolidate the requirements for marking of obstructions. (33 CFR pt. 64).	LT Johnson, (202)426-1974.	*NPRM October 1979.*
Review: Private Aids to Navigation and State Aids to Navigation (Docket No. CGD 78-157).	Would codify and clarify the Aids to Navigation regulations concerning State and Private Aids to Navigation (33 FR pt. 66).	LT Johnson, (202)426-1974.	*NPRM January 1980.*
Review: Mandatory Markings for Artificial Islands *Installations, and Other Devices* (Docket No. CGD 78-158).	Would revise the marking regulations to bring them into agreement with the latest procedures. (33 CFR pt. 67).	LT Johnson, (202)426-1974.	*NPRM March 1980.*
Review: Aids to Navigation—General Interference with, Damages to and Charges for Aids to Navigation (Docket No. CGD 78-159).	Would codify, revise and clarify the existing regulations. (33 CFR pts. *60, 62, 66, 70, 74, and 76*).	LT Johnson, (202)426-1974.	*NPRM January 1980.*
Review: General Revision to Subchapter N (Docket No. CGD 78-160).	Proposed general revisions to Subchapter N, Artificial Islands and Fixed Structures on the Outer Continental Shelf. Revisions to include changes made necessary by new legislation and the Coast Guard Commercial Diving Rules. (33 CFR pt. 140).	*LCDR Barrett,* (202)372-5160.	NPRM *August 1979.*
Review: Update of Marine Inspection Office Table (Docket No. CGD 78-161).	Would bring the regulations into agreement with the present description of Marine Inspection Offices. *Final Rule published March 12, 1979 (44 FR 13492).* (46 CFR pt. 50).	LTJG Heyl, (202)426-2299.	*Action Complete.*
Review: Requirement of Shipping Papers for Unslaked Lime (Docket No. CGD 78-165).	Would make clear the Coast Guard's requirements for the carriage of shipping papers for bulk shipments of unslaked lime.	Mr. J. McAnulty, (202)426-1578.	NPRM *June 1980.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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USCG **U.S. Coast Guard**

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Approval of Inflatable Personal Flotation Devices (PFDs) (Docket No. CGD 78-174).	Would establish performance standards for inflatable PFDs and procedures for granting pound approval to these devices. *ANPRM published March 15, 1979.* (46 CFR pt. 160).	LT Gasch, (202)426-1444.	*NPRM November 1979.*
Offshore Oil Lightering (Docket No. CGD 78-180).	Would establish requirements for vessel to vessel transfers of oil or hazardous materials if the cargo is bound for a U.S. port. *NPRM published May 31, 1979 (44 FR 31486).* (33 CFR pt. 156).	LCDR Busavage, (202)426-9578.	*FR March 1980.*
*Review: Amendment to Hull Identification Requirements (Docket No. CGD 79-013).	Would further delineate responsibility for marking boats with a hull identification number. Would require a second number inside the boat to aid in identification of stolen boats. (33 CFR pt. 181).	LCDR Pettit, (202)426-1757.	NPRM October 1979.
*Port and Tanker Safety Act Delegations (Docket No. CGD 79-024).	Would delegate authority under the Port and Tanker Safety Act of 1978 to Coast Guard District Commanders and Captains of the Port. (33 CFR pt. 160).	LT Dickman, (202)426-1927.	FR August 1979.
*Port and Tanker Safety Act Delegations Under Section 9, Ports and Waterways Safety Act (Docket No. CGD 79-026).	Would delegate to Captains of the Port authority and responsibility to prohibit vessel operations and cargo transfers which may be unsafe. (33 CFR pt. 160).	LT Dickman, (202)426-1927.	NPRM August 1979.
*Limited Access Areas (Docket No. CGD 79-34).	Would realign limited access area regulations in 33 CFR. (33 CFR pts. 125, 127, 128, and 165).	LT Dickman, (202)426-1927.	FR January 1980.
*Inland Waters Navigation Regulations—Waters Connecting Lake Huron and Lake Erie (Docket No. CGD 78-151).	Would update existing regulations. (33 CFR pt. 162)	Mr. LaRue, (202)426-4958.	NPRM January 1980.
*Opening signals for Drawbridges (Docket No. CGD 75-237).	Would establish uniform signals for opening draw bridges. (33 CFR pt. 117).	Mr. Teuton, (202)426-1380.	NPRM August 1979.
*Substitute Licenses/Merchant Marine Documents in Suspension Cases (Docket No. CGD 78-033).	Would allow the issuance of a substitute license/Merchant Marine Document pending the outcome of a hearing. (46 CFR 5.05-25).	LT McDaniel, (202)426-9776.	FR August 1979.
*Review: Termination of Windsurfer Exemption (Docket No. CGD 78-163).	Determine whether to continue an exemption that allows operators of Windsurfer boats to not carry Personal Flotation Devices. ANPRM published March 29, 1979. (49 CFR 1.46).	Mr. Gauthier, (202)426-4176.	NPRM January 1980.

USCG **U.S. Coast Guard**

Routine and Frequent Non-significant Regulations

Title	Total	Contact	Decision date
Safety/Security Zone Regulations	10	*LCDR McDonald,* (202)426-1927.	*July 1979-July 1980.*
Anchorage Area Regulations	16	LCDR Snow, (202)426-1940.	*July 1979-July 1980.*
Drawbridge Regulations	90	Mr. F. Teuton, (202)426-1380.	*July 1979-July 1980.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FAA **Federal Aviation Administration**

Significant Regulations

Title	Summary	Contact	Decision date
Section 30 Regulations—Civil Rights (Docket No. 16419). (Cont.).	**A. Description:** Develop regulations to implement Section 30 of the Airport and Airway Development Act of 1970, as amended by the Airport and Airway Development Act Amendments of 1976 (Act). The regulations would assure that no person is excluded on the grounds of race, creed, color, national origin, or sex from participating in any project for airport development, airport master planning, or airport system planning conducted with or benefiting from funds received from a grant made under the Act. **B. Why Significant:** The proposed regulations implementing Section 30 are considered significant inasmuch as there is substantial public interest and they involve important Department policy. **C. Regulatory Analysis:** Required. **D. Need:** To assure that minorities and minority businesses are afforded full and equal opportunity with respect to employment contracting, and leasing of concessions on airports operated by sponsors receiving grants from airport development projects. **E. Legal Basis:** Section 30 of the Airport and Airways Development Act of 1970 (49 U.S.C. 1730) and § 1.47(f)(1) of the Regulations of the Office of the Secretary of Transportation (49 CFR § 1.47(f)(1)) Paul Galiks, (202) 246-3050 FR October 1979. **F. Chronology:** The proposed regulations were set forth in a Notice of Proposed Rule Making (Notice No. 77-1) on January 13, 1977 (42 FR 2850). The regulations are proposed to be included in existing Part 152 as new Subpart E—Nondiscrimination in Airport Aid Program. The public was invited to comment on the proposed rule by March 14, 1977, which date was twice extended to May 20, 1977, upon numerous requests from the public. *Following consideration of the comments, a proposed Final Rule was submitted to the Secretary on February 4, 1979. The Secretary concurred on February 15, 1979, and transmitted a copy to the Equal Employment Opportunity Commission pursuant to Executive Order 12067, for its review. After submittal to EEOC, several discussions were held among representatives of the Office of the Secretary, FAA, and EEOC. Based upon these discussions, additional information has been submitted to EEOC concerning: (1) Reporting requirements; (2) Applicability of requirements to small organizations on airports; (3) The complaints and investigations procedure; and (4) Monitoring responsibilities. The information is being reviewed by EEOC staff members and will be presented to the Commissioner. After completion of EEOC review certain reporting forms must be submitted by the FAA to OMB for clearance.*		

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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FAA — **Federal Aviation Administration**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	G. Citation: 14 CFR Pt. 152		
Flammability Standard for Crewmember Uniforms (Docket No. 14451).	**A. Description:** Proposed revision to establish flammability specifications for crewmember uniforms that will provide protection against heat and flame.	William J. Sullivan, (202)755-8716.	NPRM *September 1979.*
	B. Why Significant: This proposal is considered a significant rulemaking project due to substantial public interest and potential cost to airlines.		
	C. Regulatory Analysis: Required		
	D. Need: To establish basic flammability specifications for crewmember uniforms, since clothing now used is made of conventional fabrics which may be ignited under many of the emergency conditions that may result.		
	E. Legal Basis: Secs. 313(a), 601, and 604, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421(a), 1422), Sec. 6(c) DOT Act (49 U.S.C. § 1655(c)).		
	F. Chronology: Prior to April 1974, a number of informal conferences were held with members of the public including the Association of Flight Attendants (AFA), regarding flammability of flight attendant uniforms. A project was established to examine AFA claims regarding uniform flammability. National Bureau of Standards (NBS) Center for Fire Research was selected as research contractor. ANPRM No. 75-13 was issued March 16, 1975 (40 FR 11737), to solicit public information and comments. A follow-up contract was established with the NBS to evaluate comments and conduct further testing. *The contract has been extended through August 1979.*		
	G. Citation: 14 CFR Pt. 121		
Parts Manufacturer Approvals (Docket No. 17147).	**A. Description:** Proposes to revise the Parts Manufacturer Approval application and reporting requirements and provisions related to showing identicalness of parts.	William J. Sullivan, (202)755-8716.	FR *October 1979.*
	B. Why Significant: The proposed revision is considered to be significant because it is controversial.		
	C. Regulatory Analysis: Not required		
	D. Need: Differences of opinion exist with respect to the methods available for showing identicalness of parts. Also the Parts Manufacturer Approval application and reporting requirements may be unnecessarily burdensome.		
	E. Legal Basis: Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958. (49 U.S.C. 1354(a), 1421, and 1423).		
	F. Chronology: Project No. 76-257-R was initiated December 23, 1975. NPRM No. 77-19 published in the Federal Register (42 FR 43985). Comment period later reopened until January 4, 1978 (NPRM No. 77-19A, 42 FR 61048) and again reopened until May 15, 1978 (NPRM No. 77-19B, 43 FR 15432). Portions of NPRM dealing with other subjects to be handled separately.		
	G. Citation: 14 CFR Pt. 21		
Lithium Sulfur Dioxide Batteries	**A. Description:** Proposed airworthiness directive (AD) requiring removal of Lithium Sulfur Dioxide ($LiSO_2$) batteries from all aircraft including those installed in Emergency Locater Transmitters (ELT's), and companion Technical Standard Order (TSO) prescribing standards for acceptable batteries.	William J. Sullivan, (202)755-8716.	NPRM *August 1979.*
	Subsequent to completing the processing of this proposal, increased service difficulties with the $LiSO_2$ batteries necessitated the issuance of an "Emergency" adopted airworthiness directive (AD) on February 21, 1979 to remove the batteries from the aircraft.		

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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FAA **Federal Aviation Administration**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	The original proposal included a "Significant" airworthiness directive to remove $LiSO_2$ batteries and a new "non-significant" technical standard order (TSO) for $LiSO_2$ batteries. In view of this, the remaining non-significant TSO portion of this action is now shown in the non-significant portion of the agenda.		
Review: Part 91 Upgrade.....	A. Description: To upgrade the general aviation standards applicable to the operation of certain large aircraft, when not operated as an air carrier and to revise certain regulations applicable to commercial operators and air travel clubs. B. Why Significant: This is considered significant due to substantial public interest in the constraints to be proposed for safer operations of large aircraft under the regulations. C. Regulatory Analysis: Not required..... D. Need: Experience indicates that these proposed regulations are necessary to replace the current regulations with clearer regulations that are based upon safety, rather than economic criteria. E. Legal Basis: Secs. 313(a) and 601-610 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a) and 1421-1430) and Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c). F. Chronology: Project approved in March 1978..... G. Citation: 14 CFR Pt. 91	William J. Sullivan, (202)755-8716.	NPRM *August 1979.*
Aircraft Cabin Ozone Contamination (Docket No. 16854).	A. Description: Proposed revision to limit the concentration of high altitude ozone allowed in an aircraft cabin. B. Why Significant: The proposal is considered a significant project because it involves an area of substantial public interest and will be controversial. C. Regulatory Analysis: Not required..... D. Need: To alleviate physical discomfort to crewmembers and passengers, due to ozone gas, on high altitude flights. E. Legal Basis: Secs. 313, 601, 603, and 604, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354, 1421, 1423, and 1424); and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)). F. Chronology: In the winter of 1976, the FAA became aware of crew and passenger complaints of discomfort on high altitude flights and in March 1977 ozone gas was believed to be the probable cause. An Advisory Circular, No. 00-52, Ozone Irritation During High Altitude Flight, was published July 21, 1977, defining ozone, its causes, and its symptoms. On May 26, 1977, FAA initiated a project to study the short and long term health effects of exposure to high altitude ozone. An ANPRM was issued on October 6, 1977 (42 FR 54427), seeking information from all interested persons. A NPRM was issued on September 27, 1978 proposing specific airplane cabin ozone concentration standards and was published in the Federal Register on October 5, 1978 (43 FR 46034). The closing date for comments was Jan. 5, 1979. G. Citation: 14 CFR Pts. 25 and 121.....	William J. Sullivan, (202)755-8716.	FR *October* 1979.
Review: Operations Review Notice No. 7 (Docket No. 17669).	A. Description: Proposes to revise the flight and duty time limitations and rest requirements for flight crewmembers used by domestic, flag, and supplemental air carriers, commercial operators of large aircraft, and air travel clubs.	William J. Sullivan (202)755-8716.	FR *September* 1979.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FAA **Federal Aviation Administration**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	B. Why Significant: This proposal is considered a significant regulation because of the controversy associated with the complexity and enforcement problems of the current rules. **C. Regulatory Analysis:** Not required..... **D. Need:** This proposal is needed to eliminate the complexity of the current regulations and to assure that flight and duty time limitations are based upon today's operating environment. **E. Legal Basis:** Secs. 313(a), 601, and 604 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 and 1424) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c). **F. Chronology:** The proposals contained in this notice are based on related proposals discussed at the December 1975 Operations Review Conference. The notice was published in the Federal Register on February 27, 1978 (43 FR 8070), with a closing date of May 30, 1978, for public comments. The initial comment period was extended by supplemental notice on May 25, 1978 (43 FR 22540), to July 14, 1978, with reply comments allowed on or before August 18, 1978. **G. Citation:** 14 CFR Pts. 121 and 123.....		
Review: Operations Review Notice No. *14.*	**A. Description:** Proposes to establish regulations for flight and duty time limitations and rest requirements for flight attendants used by domestic, flag, and supplemental air carriers, commercial operators of large aircraft and air travel clubs. **B. Significant:** This proposal is considered a significant regulation because there is substantial public interest in it. **C. Regulatory Analysis:** Not required..... **D. Need:** Because flight attendants perform important duties relating to the safety of flight, flight and duty time limitations and rest requirements are necessary to prevent excessive fatigue from adversely affecting the performance of those duties. **E. Legal Basis:** Secs. 313(a), 601, and 604 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 and 1424) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c). **F. Chronology:** The proposals contained in this notice are based on related proposals discussed at the December 1975, Operations Review Conference. **G. Citation:** 14 CFR Pts. 121 and 123.....	William J. Sullivan (202)755-8716.	NPRM *November* 1979.
Review: Airworthiness Review Amendments No. 8 Miscellaneous *Cabin Safety* Amendments (Docket No. 14779).	**A. Description:** Proposed amendments to improve and update the airworthiness standards contained in the regulations *that apply to crewmember seat restraints, flight attendant seat locations, and the use of fire resistant materials.* **B. Why Significant:** This group of amendments is considered significantly because it includes a number of costly and controversial amendments (dealing generally with cabin safety) that require modification of aircraft in service. **C. Regulatory Analysis:** Not required..... **D. Need:** The need to update and improve the Federal Aviation Regulations as covered in this group of amendment, was emphasized at public conferences held in conjunction with the Airworthiness Review Program.	William J. Sullivan (202)755-8716.	FR *October* 1979.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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FAA

Federal Aviation Administration

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	E. Legal Basis: Secs. 307, 313(a), 502, 601, 603, 604, and 605 of the Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1402, 1421, 1423, 1424, and 1425). **F. Chronology:** Notice 75-31 (40 FR 29140) appeared in the Federal Register on July 11, 1975. The final amendment is being prepared. **G. Citation:** 14 CFR Parts *23, 25, 29, 91, and 121*		
Review: Airport Aid Program	**Description:** Proposed amendment to simplify and clarify requirements for receipt of aid and to implement certain provisions of the Airport and Airway Development Act Amendments of 1976. *This proposal has been reclassified as a non-significant regulation. It is now listed in the non-significant portion of this Agenda.*	Paul Galis, (202)426-3451.	NPRM *July 1979.*
Administrative User Charges. *(Docket No. 19110).*	**A. Description:** This notice proposes to revise existing FAA fees for aircraft registration and for recording conveyances affecting title to, or any interest in, aircraft. In addition, it proposes to establish fees for FAA certification of pilots, instructors, and other airmen, including medical certification. It is intended that this proposed rule will provide for the recovery of expenses that the FAA incurs in these activities. The proposed action would be in accordance with the sense of the Congress. **B. Why Significant:** This proposal is considered a significant project because it involves an area of substantial public interest and controversy. **C. Regulatory Analysis:** Not required **D. Need:** This proposal will provide for the recovery of expenses that the FAA incurs in these activities and is in accordance with the sense of Congress. **E. Legal Basis:** Secs. 313, 503, 505, 601, 602, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354, 1401, 1403, 1421, and 1422); Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c), Title V); Independent Offices Appropriation Act of 1952 (31 U.S.C. 483(a)). **F. Chronology:** NPRM published on April 20 (43 FR 16924). The closing date for comments was July 19, 1978. **G. Citation:** 14 CFR Pts. 47, 49, 61, 63, 65, 67, 143, and 187.	John M. Rodgers, (202)426-3420.	FR *October* 1979.
Wind Shear	**A. Description:** Proposed revision to require all large passenger-carrying aircraft be equipped with a device that will display wind shear information to the pilots. **B. Why Significant:** This action is considered a significant project because it will generate substantial public interest and will be controversial. **C. Regulatory Analysis:** *Not required* **D. Need:** As a result of several accidents involving wind shear, the FAA believes it is necessary to identify equipment that will enable pilots to identify low level wind shear conditions. **E. Legal Basis:** Secs. 313(a), 601 and 604 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 and 1424) and Sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).	William J. Sullivan, (202)755-8716.	*NPRM March 1980.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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FAA — **Federal Aviation Administration**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	F. Chronology: In 1975, the FAA began a two year effort to develop a wind shear program. As part of the program, FAA began work to develop wind shear warning and pilot aiding devices which has achieved encouraging results. *Following the initial announcement of this proposal it was determined that a regulatory analysis would not be required; however, an evaluation will be made and docketed. The ANPRM was published on 5/3/79 with the comment period closing 8/3/79* (44 FR 25807). **G. Citation:** 14 CFR Pt. 121		
*Controlled Visual Flight. (Docket No. 78605).	**A. Description:** Proposed air traffic control of VFR (visual flight rules) aircraft between 10,000 feet (or 12,500 feet) and 18,000 feet, with following actions to add 44 new TCAs (terminal control areas) and raise the tops of 21 existing TCAs. **B. Why Significant:** The proposed revision is considered to be significant because there is substantial public interest. **C. Regulatory Analysis:** Not required **D. Need:** To respond to near midair collision data showing that a high percentage of incidents involving air carriers also involve aircraft that are unknown to air traffic control and that, therefore, cannot be positively separated by air traffic control. **E. Legal Basis:** Secs. 305, 306, 307, 313(a), 601, and 1110 of the Federal Aviation Act of 1958. (49 U.S.C. 1346, 1347, 1348, 1354(a), 1421, and 1522). **F. Chronology:** The proposed regulation was set forth in a NPRM published on Jan. 4, 1979 (44 FR 1322). Comment period extended until April 4, 1979. **G. Citation:** 14 CFR Pt. 91	William Broadwater, (202)426-3731.	FR September 1979.

FAA NON-SIGNIFICANT REGULATIONS

Third Attitude Gyro	Proposed amendment to add flight instrument requirement for all multiengine turbojet powered airplanes not already required to have a third gyroscopic attitude instrument independently powered in case of total aircraft electrical failure. (914 CFR pts. 23, 25, 91 and 121).	William J. Sullivan, (202)755-8716.	NPRM *August* 1979.
Export Airworthiness Approvals (Docket No. 17147).	*This* amendment (1) *provides* for the issuance of export certificates of airworthiness for unassembled normal category rotorcraft, and (2) *provides* for the issuance of export airworthiness approvals for aeronautical products that do not meet certain requirements if the importing country agrees to accept the products in such condition. The NPRMs were published on 9/1/77 (42 FR 43985) and 12/1/77 (42 FR 61048). *The amendment was published on 3/15/79 (44 FR 15648).* (14 CFR Pt. 21).	William J. Sullivan, (202)755-8716.	*Action Complete.*
Review: Aircraft Engine Regulatory Notice (Docket No. 16919).	Proposed amendment to resolve a number of regulatory issues raised by engine manufacturers and to update those standards. (14 CFR Pts. 23, 25, 27, 29 and 33).	William J. Sullivan, (202)755-8716.	NPRM *November* 1979.
Instrument Approach Procedures.	Proposed rule to clarify prescribed conditions for approach and landing under specified weather conditions. (14 CFR Pts. 91 and 121).	William J. Sullivan, (202)755-8716.	NPRM *August* 1979.
Triennial Aircraft Registration Report *(Docket No. 18958).*	Proposed rule to establish a requirement that holders of Certificate of Aircraft Registration file a report with the FAA Aircraft Registry on the current eligibility of the aircraft for registration, whenever three years have elapsed since the Registry has received information indicating registration eligibility. *The NPRM was published 4/26/79 (44 FR 24573.)* (14 CFR Pt. 47).	Virginia Swimmer, (405)686-2284.	*FR November* 1979.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FAA

Federal Aviation Administration

Non-Significant Regulations—Continued

Title	Summary	Contact	Decision date
Controlled Visual Flight *(Docket No. 18605).*	Proposed revision to provide a means of improving air traffic control separation of aircraft above 12,500 feet. *The NPRM was published on Jan. 4, 1979 (44 FR 1381)* (14 CFR Pt. 91). *(This regulation has been reclassified as a significant regulation. It is now listed in the significant portion of this Agenda).*	Maurice Taylor, (202)426-3128.	*FR September* 1979.
Airport Noise Regulations (Docket No. 16279).	Environmental Protection Agency's proposed revision to require airport noise certification as a condition for Airport and Airway Development Act funding. The NPRM was published on 11/22/76 (41 FR 51522). (14 CFR Pt. 91).	Jim Densmore, (202)755-9468.	FR *September* 1979.
Review: Operations Review Notice No. 11.	Proposed revision to update and improve the rules applicable to mechanic certification, repair stations and aircraft equipment. (14 CFR Pts. 121, 145, and 183).	William J. Sullivan, (202)755-8716.	NPRM *July* 1979.
Review: Operations Review Notice No. 12.	Proposed extensive revisions to update and improve regulations applicable to aircraft maintenance, preventive maintenance, rebuilding and alteration of aircraft. (14 CFR Pts. 43 and 91).	William J. Sullivan, (202)755-8716.	NPRM *September* 1979.
Review: Operations Review Notice No. *13.*	Proposed miscellaneous revisions and other editorial and clarifying changes to 14 CFR Pts. 43, 63, 65, 91, 105, 121, 123, 127, 143, 145, and 147.	William J. Sullivan, (202)755-8716.	NPRM *November* 1979.
Review: Operations Review Amendment No. 8 (Docket No. 17897).	Proposed amendment to update and improve airmen and crewmembers rules, training programs, flight operations, dispatching, records and reports of air carriers and commercial operators and scheduled air carriers with helicopters. NPRM published on 5/11/78 with comment period closing on 9/25/78 (43 FR 35518, 8/10/78) (14 CFR Pts. 121 and 127).	William J. Sullivan, (202)755-8716.	FR *August* 1979.
Review: Operations Review Notice No. 9 (Docket No. 18241)..	Proposed revision to update and improve equipment, maintenance, and operating rules of aircraft, airmen certification, certificated operators and agencies, flight attendants and training requirements. The NPRM was published on 8/17/78 (43 FR 36464). (14 CFR Pts. 63, 65, and 121).	William J. Sullivan, (202)755-8716.	FR November 1979.
Review: Operations Review Notice No. 10 (Docket No. 18247).	Proposes revision to update and improve the equipment and operating rules of aircraft operated by scheduled air carriers of large aircraft and agricultural aircraft operators. The NPRM was published on 8/24/78 (43 FR 37958). (14 CFR Pts. 25, 123, 127, and 137).	William J. Sullivan, (202)755-8716.	FR November 1979.
Review: Operations Review Program (Docket No. 16220).	*This amendment covers actions* on certain proposals presented during the 1975-76 Operations Review Program. The NPRM was published on 10/26/76 (41 FR 46875). *The amendment was published 3/15/79 (44 FR 15654).* (14 CFR Pt. 91).	William Broadwater, (202)426-3731.	*Action Complete.*
Review: Part 91 Notice (Docket No. 16431).	The agency conducted a Regulatory Review Conference of 14 CFR Part 91, Subpart B, in September 1977, in order to update that part. This action will cover all proposals covered by the review except for lost communications. (14 CFR Pt. 77).	William Broadwater, (202)426-3731..	NPRM *January 1980.*
Review: Part 91 Review Lost Communications (Docket No. 16431).	The FAA conducted a Regulatory Review Conference of 14 CFR Pt. 91 Subpart B, in September 1977, in order to update that Part. This action will cover the special proposal on lost communications.	William Broadwater, (202)426-3731..	NPRM *February* 1980.
Pearson Airpark. (Docket No. 18311).	Proposal to exclude persons from the requirement of communicating with Portland Tower while operating in the Pearson Airpark Traffic Pattern. The NPRM was published on Sept. 28, 1978 (43 FR 44549). (14 CFR Pt. 93). *Note: Further action suspended pending decision on Portland Terminal control area.*	William Broadwater, (202)426-3731..	FR *June 1980.*
Review: Objects Affecting Navigable Airspace (Docket No. 16920).	Proposal to amend regulations including areas such as notice requirements, obstruction standards, aeronautical studies, determinations, antenna farm areas and discretionary review/petition procedures. Notice of Review was published on 6/19/78 (43 FR 26322). (14 CFR Pt. 77).	O. E. Falsetti, (202)426-8777..	NPRM *October* 1979.

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FAA **Federal Aviation Administration**

Non-Significant Regulations—Continued

Title	Summary	Contact	Decision date
Reimbursement of Security Screening Costs (Docket No. 17326).	Proposes a procedure for compensating air carriers for certain security screening costs in foreign air transportation. The NPRM was published on 10/31/77 (42 FR 56957). (14 CFR Pt. 121).	R. P. Jones, (202)426-8409.	FR *August* 1979.
Registration of Aircraft by Resident Aliens (Docket No. 18604).	Proposed revision to comply with Section 14 of P.L. 95-163 enacted by Congress effective November 9, 1977, amended March 8, 1978, which provides for United States registration of aircraft by resident aliens and by corporations which do not qualify for registration as citizens. *The NPRM was published on January 2, 1979. (44 FR 63) (14 CFR Pt. 47).*	Florine G. Crockett, (405)686-2284.	FR *August* 1979.
Civil Helicopter Noise Certification (Docket No. *13410).*	This project would establish noise certification levels and procedures for civil helicopters. *An ANPRM was published 12/28/73, (38 FR 35487). (14 CFR Pt. 36).*	James Densmore, (202)755-9468.	*NPRM July* 1979.
Designated Manufacturing Inspection Representatives (Docket No. 16622).	Proposed rule to permit designated manufacturing inspection representatives (DMIR's) to conduct evaluation inspections and to perform all of their authorized functions outside the manufacturing plant at which they are employed. The NPRM was published on 4/7/77 (42 FR 18407). (14 CFR Pt. 183).	William J. Sullivan, (202)755-8716.	FR *July* 1979.
Identification (ID) Plates (Docket No. 15977).	Proposed rule to prohibit the removal, change, or placement of information on identification plates required by the regulation and the removal and installation of ID plates on aircraft, aircraft engines, propellers, and propeller blades and hubs, without the approval of the Administrator. The NPRM was published on 8/12/76 (41 FR 34076). (14 CFR Pt. 45).	William J. Sullivan, (202)755-8716.	FR *July* 1979.
Implementation of OMB Circular A-95 (Docket No. 17337).	Final procedures and regulations implementing OMB Circular A-95 (coordination of Federal assistance programs with State, areawide, and local planning agencies), based on public comment on interim procedures in Special Federal Aviation Regulation 35 (42 FR 59476, 11/17/77). (14 CFR Pt. 152).	Edward F. Rancourt, (202)426-8090.	FR *September* 1979.
Implementation of Energy Policy (Docket No. 16617).	Implementation of the Energy Policy and Conservation Act. The NPRM was published on 3/31/77 (42 FR 17135). (14 CFR Pt. 11).	Cynthia Zook, (202)426-3420.	FR *September* 1979.
Review: Update of Part 139.....	Revision of 14 CFR Part 139 to update and clarify the part including fire-fighting and rescue requirements. (14 CFR Pt. 139).	Harry Hink, (202)426-3087.	NPRM *December* 1979.
Experimental Certificates (Docket No. 18739).	Proposed revision to 14 CFR Part 21 to allow special airworthiness certificates for air racing, exhibition and amateur built aircraft to be issued for periods in excess of one year. (14 CFR Pt. 21). *The NPRM was published on 3/5/79 (43 FR 12042).*	William J. Sullivan, (202)755-8716.	*FR October* 1979.
Foreign Airman Certificate (Docket No. 19300).	Proposed revisions to provide for the issuance of special purpose airman certificates to foreign pilots and other flight crew members to permit those persons to operate U.S. registered civil aircraft leased by foreign operators for carriage of persons and property for compensation or hire. (14 CFR Pts. 61 and 63).	William J. Sullivan, (202)755-8716.	NPRM *July* 1979.
Determination of Aircraft Approach Categories (Docket No. 17538).	*This amendment eliminates the* use of maximum certificated landing weight as a criterion for grouping aircraft in approach categories in order to facilitate aircraft categorization and simplify determination of landing minimums. The NPRM was published on 1/12/78 (43 FR 1803). *Amendment published on 3/15/79 (44 FR 15659).* (14 CFR Pt. 97).	William J. Sullivan, (202)755-8716.	*Action Complete.*
Delayed Landing Flap Procedure for Turbojet-Powered Airplanes (Docket No. 15020).	Proposed regulation would require that landing flap setting for turbojet-powered airplanes be delayed until at or below 1,000 feet above airport elevation for purpose of noise abatement on approach and landing. The NPRM was published on 11/29/76 (41 FR 52396). (14 CFR Pt. 91).	William J. Sullivan, (202)755-8716.	FR *October 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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Federal Aviation Administration

Non-Significant Regulations—Continued

Title	Summary	Contact	Decision date
Publication of Petitions for Rule Making and Exemptions (Docket No. 18142).	*This Amendment established* procedures for the publication in the Federal Register of summaries of certain petitions for rule making and exemptions. *The Amendment* also provides for publication of summaries of denials of petitions for rule making and summaries of grants and denials of petitions for exemptions. The NPRM was published on July 24, 1978 (43 FR 31936). *The Amendment was published on Feb. 5, 1979 (44 FR 6897).* (14 CFR Pt. 11).	Edward P. Faberman, (202)426-3073.	*Action Complete.*
Protective Breathing Equipment	Proposed rule to establish minimum performance standards and operating rules for protective breathing equipment. (14 CFR Pts. 25, 29, 37, 91 and 121).	William J. Sullivan, (202)755-8716.	NPRM *January 1980.*
Supplemental Oxygen	Proposed rule to permit certain widebody turbojet airplanes to operate up to flight level of 45,000 feet above sea level without requirements for the pilot to use supplemental oxygen. (14 CFR Pts. 25, 29, 37, 91, and 121).	William J. Sullivan, (202)755-8716.	NPRM *November 1979.*
Type Certification Standards (Docket No. 17914).	Proposed revision of Special Federal Aviation Regulation 13 as applicable to DC-3 airplanes to provide a basis for approval of the installation of three turbo-propeller engines in place of two reciprocating engines. The NPRM was published on 5/22/78 (43 FR 21900) (14 CFR Pt. 25; SFAR 13).	William J. Sullivan, (202)755-8716.	FR *September 1979.*
Aircraft Wheels and Wheel-Brake Assemblies *(Docket No. 18564).*	Proposal to upgrade the requirements for wheels and brakes for small and transport airplanes. The NPRM was published on 12/7/78 *(43 FR 57261). (14 CFR Pts. 23, 25 and 37).*	William J. Sullivan, (202)755-8716.	FR November 1979.
Aircraft Tires (Docket No. 18887)	Proposal to determine if aircraft tire standards in the regulations should be upgraded, and, if so, the details of the upgrading. *The NPRM was published on 3/19/79 (44 FR 16430).* (14 CFR Pt. 37).	William J. Sullivan, (202)755-8716.	*FR August 1979.*
Review: Part 135 Regulatory Review Program: Additional Airworthiness Requirements for 10 or More Passenger Small Airplanes Over 12,500 Pounds *(Docket No. 18315).*	Proposed amendment to the airworthiness standards for certain turbopropeller powered multiengine small airplanes to allow their certification and operation at weights above 12,500 pounds. The NPRM was issued on September 26, 1978 (43 FR 46734, October 10, 1978). (14 CFR Pt. 135).	William J. Sullivan, (202)755-8716.	FR *September* 1979.
Review: Metropolitan Washington Airports Regulations.	Proposed revision to reflect changed operational conditions and policies and to simplify, clarify and consolidate the regulations pertaining to the National Capital Airports. (14 CFR Pt. 159).	Charles Anderson, (703)557-1433.	NPRM *September 1979.*
Takeoff Limitations	Proposed amendment to establish compensating factors for use in determining runway lengths and accelerate stop distances required for takeoff from wet runways. *(This proposed regulatory action has been cancelled.)* (14 CFR Pts. 25, 121).	William J. Sullivan, (202)755-8716.	*Withdrawn.*
Miscellaneous Minor Amendments.	Proposed nonsubstantive amendments that are routine, editorial and clarifying in nature. (14 CFR pts. 23, 25, 37, 45, 61, 63, 65, 91, and 121).	William J. Sullivan, (202)755-8716.	NPRM *November* 1979.
Aircraft Owners and Pilots Association (AOPA) Petition to Revise Part 91 (Docket No. 18334).	Proposed amendment based upon AOPA petition to revise regulations in a format and language more understandable by pilots. The petition states that the proposed changes are not intended to significantly change the substance of the present regulations. *An ANPRM was published on Jan. 22, 1979. (44 FR 4571).* (14 CFR Pt. 91).	William J. Sullivan, (202)755-8716.	NPRM *January 1980.*
Foreign Airman Certification	Proposed amendments to establish priorities for processing applications by foreign airmen for U.S. Airman Certificates. (14 CFR Pts. 61, 63, 65, and 67).	William J. Sullivan, (202)755-8716.	NPRM *October* 1979.
Review: Airworthiness Review Amendment No. 9 Minimum Equipment Lists (Docket No. 14607).	Proposed amendment to specify the conditions under which multiengine aircraft may be operated under Pt. 91 with certain instruments and equipment inoperable. The NPRM was published on May 20, 1975 (40 FR 22110). *(14 CFR Part 91).*	William J. Sullivan, (202)755-8716.	FR *July 1979.*

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Non-Significant Regulations—Continued

Title	Summary	Contact	Decision date
Procedures for Filing Complaints and Formal Fact Finding Investigations *(Docket No. 18884).*	Proposed rules and procedures for the filing of formal complaints for orders of compliance and for conducting formal fact-finding investigations under the Federal Aviation Act of 1958, the Airport and Airways Development Act of 1970 and the Hazardous Materials Transportation Act. *The NPRM was published 3/19/79 (44 FR 16424).* (14 CFR Pt. 13).	Jonathan Howe, (202)426-3775.	*FR September* 1979.
*Extension of Time for Radiation Surveys of Airport X-Ray Inspection Cabinets.	Proposed amendment to extend the time required for surveys of baggage X-Ray Inspection Cabinets from every six months to every twelve months. The proposal is based on a Air Transport Association of America (ATA) petition for rulemaking. (14 CFR Part 121).	Theo Tsacoumis, (202)755-8715.	NPRM August 1979.
*Aircraft Loan Guarantee Program (Docket No. 18694).	Proposed regulation to comply with Public Law 95-504 which amended the Act relating to the FAA's Aircraft Loan Guarantee Program. The NPRM was published on January 25, 1979 (44 FR 5153) (14 CFR Part 199).	Richard Smith, (202)426-3480.	FR August 1979.
*Noise Standards for Propeller Driven Agricultural and Firefighting airplanes (Docket No. 16382).	Proposed regulation to restrict the operation of agricultural and firefighting airplanes which do not comply with the noise limits of Appendix F of 14 CFR Part 36. The NPRM was published on December 23, 1976 (41 FR 56065). (14 CFR Parts 21, 36, and 91).	James Densmore, (202)755-9468.	FR July 1979.
*Miscellaneous Amendments (Docket No. 16097).	Proposed minor amendments that are clarifying or corrective in nature. The Amendment was published 5/7/79 (44 FR 6757) (14 CFR Parts 121 and 135).	William J. Sullivan, (202)755-8716.	Action Complete.
*Recording of Aircraft Titles and Security Documents—Notice of Lien (Docket No. 14236).	Proposed amendment to prescribe specific procedures for filing Notice of Lien with the Aircraft Registry. This proposal would also require release of the Notice filed upon satisfaction of the lien. The NPRM was published January 13, 1975. (40 FR 2445) (14 CFR Part 49).	Virginia Swimmer, (405)686-2284.	FR November 1979
*Lithium Sulfur Dioxide Batteries Technical Standard Order (Docket No. 18889).	This proposed Technical Standard Order (TSO) is intended to provide such tests and mandatory design standards that will preclude the hazards associated with $LiSO_2$ batteries with respect to leaking, burning, and exploding. The NPRM was published 3/26/79 (44 FR 24778). (14 CFR Parts 37 and 39).	William J. Sullivan, (202)755-8716.	FR August 1979.
*Cessna Finance Petition	Petition for rulemaking to amend Part 47 to provide all persons who hold a security interest in aircraft the same protection now afforded the seller of an aircraft under a conditional sales contract. (14 CFR Pt. 47).	Virginia Swimmer, (405)688-7284.	FR November 1979.
*Review: Airport Aid Program	Revision of 14 CFR Part 152 to update airport aid requirements in accordance with Airport and Airway Development Act Amendments of 1976. (14 CFR Pt. 152).	Paul Galis, (202)426-3050.	NPRM July 1979.
*Indirect Cost as an Allowable ADAP Project Cost.	Proposed revision to Section 152.47(c)(6) of FAR Part 152 and Appendix J thereto to make indirect cost an allowable project cost under the ADAP. (14 CFR Pt. 152).	Jack Cole, (202)426-3057.	FR July 1979.
*Security Requirements Applicable to U.S. Commuter Air Carriers Certificate Holders.	Proposed rule to implement safety standards mandated by the Airline Deregulation Act of 1978, and insure that commuter air carrier passengers enjoy the same level of security as persons traveling on air carriers holding Certificates of Public Convenience and Necessity from the CAB. (14 CFR Pt. 121)..	R. P. Jones, (202)426-8409.	NPRM August 1979.
*Heater Air Ducts	Proposed rule to require that ventilating and combustion air ducts be made of fireproof materials whenever such ducts are located near combustion heaters. (14 CFR Pt. 23)..	William J. Sullivan, (202)426-8716.	NPRM December 1979.
*Blood Alcohol Level Tests	Proposed rule would subject Certificated Flight Crewmembers suspected of being under the influence of alcohol to blood-alcohol tests and establish a specific blood-alcohol content level at which a pilot is considered to be intoxicated. (14 CFR Pts. 61 and 91).	William J. Sullivan, (202)426-8716.	NPRM November 1979.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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FAA — Federal Aviation Administration

Non-Significant Regulations—Continued

Title	Summary	Contact	Decision date
*1980 Winter Olympics Temporary Flight Restriction.	Proposed Special Federal Aviation Regulation (SFAR) relative to the 1980 Olympic Games covering radio communications requirements and temporary flight restriction in the Clinton County/Plattsburgh area. (14 CFR Pts. 91 and 93).	William Broadwater, (202)426-3731.	NPRM July 1979.
*Review: Airworthiness Review Amendment No. 8 Miscellaneous and Procedural Amendments (Docket No. 14779).	Proposed amendments to improve and update the airworthiness standards contained in the regulations that apply to the type certification of aircraft, engines, propellers, related operating and maintenance rules, and procedural requirements. The NPRM was published July 11, 1975. (40 FR 29140) 14 CFR Pts. 1, 21, 26, 27, 31, 33, 35, 43, and 45.).	William J. Sullivan, (202)755-8716.	FR December 1979.
*Microwave Landing System (MLS).	Proposed rule to recognize the MLS selected by ICAO and to prescribe measuring standards and procedures for the approval, installation, operation, and maintenance of such systems on non-Federal navigation facilities. (14 CFR Pt. 171).	Edward Hanlon, (202)426-8634.	NPRM September 1979.

FAA — Federal Aviation Administration

Routine and Frequent Non-significant Regulations

Title	Summary: Approximate number	Contact	Decision date
Other items:			
Part 95 Instrument Flight Rules Altitudes.	2,500	William J. Sullivan, (202)755-8716.	July 1, *1979*–June 30, *1980.*
Airworthiness Directives	300	William J. Sullivan, (202)755-8716.	July 1, *1979*–June 30, *1980.*
Standard Instrument Approach Procedures.	2,800	William J. Sullivan, (202)755-8716.	July 1, *1979*–June 30, *1980.*
Airspace Actions	525	William Broadwater, (202)426-3731.	July 1, *1979*–June 30, *1980.*

FHWA — Federal Highway Administration

Significant Regulations

Title	Summary	Contact	Decision date
Review: Outdoor Advertising Control and Acquisition.	A. Description: This regulation would provide a definition of "effective control" of outdoor advertising per 23 U.S.C. 131. It would also set further requirements for signs exempt from control under the statute and establish the basic framework for State development of police power regulations and procedures. The regulation would also outline the requirements for Federal participation in the acquisition of compensable nonconforming outdoor advertising devices. B. Why Significant: This proposal may involve substantial public interest and is controversial and involves important Department policy. C. Regulatory Analysis: Not Required	Richard Moeller, (202)245-0021.	NPRM December 1979 FR April 1980.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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FHWA — **Federal Highway Administration**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	D. Need: This regulation is necessary for the maintenance of national uniformity in the outdoor advertising control program. Since 23 U.S.C. 131 is regulatory in nature, it is necessary to establish and maintain minimum Federal program requirements.		
	E. Legal Basis: 23 U.S.C. 131, 148, and 315; 49 CFR 1.48....		
	F. Chronology: The proposal involves the consolidation of two existing regulations, 23 CFR pt. 750, subpts. D and G, and one interim regulation 23 CFR pt. 750, subpt. E. The regulations have been in effect since September 16, 1975 and July 29, 1974, respectively. The interim regulations have been in effect since October 18, 1976. The proposed consolidation will be issued as an NPRM. *An ANPRM published April 30, 1979 (44 FR 25387) and a Notice published May 17, 1979 (44 FR 28946) announced public hearings as part of an overall review of the Highway Beautification Program. These currently proposed regulations may be modified as a result of this review.*		
	Citation: 23 CFR pt. 750, subpt. C. (FHPM 7-6-2).....		
Review: Air Quality Guidelines.....	**A. Description:** The regulation would establish administrative procedures on: (1) funding sanctions, (2) conformity of highway plans, programs, and projects with air quality implementation plans, and (3) priority to highway improvements with air quality benefits during an interim period. This regulation will be in addition to exisitng FHPM 7-7-9, Air Quality Guidelines.	Harter M. Rupert, (202)426-4836.	NPRM *9/79.*
	B. Why Significant: This regulation is considered significant because it affects another Federal agency and may be controversial.		
	C. Regulatory Analysis: Not Required.....		
	D. Need: Currently, administrative procedures on funding sanctions, priority of highway improvements with air quality benefits, and conformity of highway plans, programs, and projects with air quality implementation plans are lacking. These regulations are a result of the Clear Air Act Amendments of 1977 which became law in August 1977.		
	E. Legal Basis: Clear Air Act Amendments of 1977. (42 U.S.C. 7401).		
	F. Chronology: *A joint EPA/FHWA Notice on Sec. 176(a) of the Clear Air Act Amendments, which covers only project approval sanctions, was published June 11, 1979 (44 FR 33473). An NPRM proposed for September 1979 would provide regulations on Sections 176(c) conformity with air quality implementation plans, and 176(d) priority to improvements with air quality benefits.*		
	G. Citation: 23 CFR pt. 770. (FHPM 7-7-9-1).....		
Employee Safety and Health Standards (Docket No. MC-64).	**A. Description:** This regulation would provide safety and health standards to govern employees engaged in the operation, maintenance, and loading and unloading of motor vehicles, designed to eliminate uncertainty with regard to the jurisdictional authority of the Occupational Safety and Health Administration (OSHA).	Gerald J. Davis, (202)426-9767.	FR *October 1979.*
	B. Why Significant: This proposal may have a significant impact on OSHA.		

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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FHWA — **Federal Highway Administration**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	C. Regulatory Analysis: Not Required. D. Need: These standards are designed to eliminate uncertainty with regard to the jurisdictional authority of the OSHA and to improve safety and health standards for employees of motor carriers. E. Legal Basis: 49 U.S.C. 304 and 1655. F. Chronology: An NPRM was issued March 2, 1978 (43 FR 8566) and the closing date for the comment period was May 31, 1978. A Notice on June 9, 1978 (43 FR 25145) extended the comment period to June 30, 1978. G. Citation: 49 CFR pt. 399		
Minimum Cab Space Dimensions (Docket No. MC–79).	A. Description: This regulation would specify minimum size for the cab portion of the regulated commercial vehicles manufactured after a certain date. B. Why Significant: This proposal has the potential of being costly if extensive changes to cab configuration become necessary. C. Regulatory Analysis: Required. D. Need: Changes in truck technology and maximum limitation on size by States have led to the development of reduced cab space in favor of increased cargo space to remain within State length limitations. The impact on safe operations and driver work place may be negatively affected. E. Legal Basis: 49 U.S.C. 304 and 1655. F. Chronology: An ANPRM was issued on February 14, 1978 (43 FR 6273). Comment period closed on July 14, 1978. G. Citation: 49 CFR pt. 393	D. W. Morrison, (202)426–1700.	NPRM *September 1979.*
Review: State Highway Agency Equal Employment Opportunity Programs.	A. Description: This regulation would set forth Federal Highway Administration (FHWA) Federal-aid policy and FHWA and State responsibilities relative to a State highway agency's internal equal employment opportunity program and to assuring compliance with the equal employment opportunity requirements of Federally assisted highway construction contracts. B. Why Significant: There is substantial public interest relative to this regulation. C. Regulatory Analysis: Not Required. D. Need: To set forth responsibilities for State highway agencies' equal employment opportunity programs and to ensure compliance with the equal opportunity requirements of Federal assisted highway construction contracts. E. Legal Basis: 23 U.S.C. 140(a); Executive Order 11246 as amended. F. Chronology: *The Department Office of Civil Rights is developing a directive consolidating similar EEO requirements for States by DOT Administrations.* G. Citation: 23 CFR pt. 230, subpt. C. (FHPM 2-2-2)	Ted. B. Sennett, (202)426–0693.	*Withdrawn.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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FHWA — **Federal Highway Administration**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
Review: Construction Contract Equal Opportunity Compliance Procedures.	**A. Description:** This regulation would prescribe policies and procedures to standardize the implementation of the equal opportunity contract compliance program, including compliance reviews, consolidated compliance reviews, and the administration of areawide plans. **B. Why Significant:** There is substantial public interest relative to this regulation. **C. Regulatory Analysis:** Not Required..... **D. Need:** To standardize the implementation of the equal opportunity contract compliance program. **E. Legal Basis:** Executive Order 11246, as amended, 23 U.S.C. 112(b) and 140(a). **F. Chronology:** *The DOT/FHWA are in the process of negotiating a Memorandum of Understanding with the Department of Labor/Office of Federal Contract Compliance Programs relative to each agency's Executive Order 11246 and Title 23 responsibilities.* **G. Citation:** 23 CFR pt. 230, subpt. D. (FHPM 2-2-3).....	*Edward W. Morris, Jr., (202)245-0357.*	NPRM *December 1979.*
Geometric Design Criteria for Resurfacing, Restoration, and Rehabilitation (R-R-R) of Streets and Highways Other Than Freeways (Docket No. 78-10).	**A. Description:** This regulation would contain criteria intended to provide additional flexibility in some of the basic geometric features of design, primarily those in which modification would result in appreciable savings in costs and other impacts while improving safety. **B. Why Significant:** This regulation is considered significant because the adoption of new design criteria specifically for R-R-R projects has proven to be controversial. **C. Regulatory Analysis:** Required..... **D. Need:** To implement the 1976 amendment to 23 U.S.C. 101 redefining "construction" to include resurfacing, restoration, and rehabilitation. Geometric design criteria are needed to effectively administer a R-R-R program for preservation work on the Federal-aid highway systems. **E. Legal Basis:** 23 U.S.C. *101,* 109, 315, and 402; 49 CFR 1.48(b). **F. Chronology:** An ANPRM published in the ***Federal Register*** on August 25, 1977, (42 FR 42876) offered three alternatives. A Notice published in the ***Federal Register*** on October 28, 1977 (42 FR 56751) extended the comment period for the ANPRM to November 22, 1977. A notice of withdrawal of the ANPRM was published in the ***Federal Register*** on January 9, 1978 (43 FR 2734). Because of the adverse comments, all alternatives were rejected and FHWA decided to develop a new set of criteria for Resurfacing, Restoration, and Rehabilitation (R-R-R) projects. An NPRM was published on August 23, 1978 (43 FR 37556). *A correction to the NPRM was published September 12, 1978 (43 FR 40539).* A Notice published on October 19, 1978 (43 FR 48658) extended the comment period for the NPRM to January 4, 1979. *On May 23, 1979 (44 FR 29921) FHWA published as a Notice a status report on the creation of an internal task force appointed to evaluate comments received on the NPRM and make recommendations to the Administrator.* **G. Citation:** 23 CFR pt. 625	Alvin R. Cowan or Seppo Sillan, (202)426-0312.	*Decision to be made as a result of further evaluation.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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FHWA **Federal Highway Administration**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
Certification of Motor Vehicle Size and Weight Enforcement (Docket No. 77-21).	**A. Description:** This is a proposed revision of existing regulations dealing with annual certifications by the States that all size and weight laws are being enforced. Anticipated is a requirement for an annual enforcement program against which the States' efforts could be measured at the end of the year. **B. Why Significant:** The regulation is significant because failure on the part of the State is cause for the withholding of Federal-aid highway project approval. **C. Regulatory Analysis:** Required **D. Need:** This regulation is needed to implement 23 U.S.C. 141, Enforcement of Requirements, as amended by the Surface Transportation Assistance Act of 1978. **E. Legal Basis:** 23 U.S.C. 141 **F. Chronology:** ANPRM was issued January 16, 1978, (43 FR 2683) with comments due April 15, 1978. Thirty comments were received. *An NPRM was published March 14, 1979 (44 FR 15639), with comments due by June 12, 1979..* **G. Citation:** 23 CFR 658.9 (FHPM 6-8-5)	Wm. F. Bauch, (202)426-1993.	*FR September 1979.*
Withdrawal of Interstate Segments and Substitution of Alternative Projects. (Docket No 77-9).	**A. Description:** This regulation would implement Sections 103(e)(2) and 103(e)(4) of Title 23 U.S.C., as amended by the Federal-Aid Highway Act of 1976 and the Surface Transportation Assistance Act of 1978 (STAA). Section 103(e)(2) provided for the withdrawal of nonessential Interstate routes and the substitution of alternative Interstate routes, *however, the STAA amended this Section to prohibit the designation of any Interstate routes or portions thereof under the authority of this paragraph after the date of enactment of STAA.* Section 103(e)(4) provides for the withdrawal of nonessential Interstate routes and the substitution of other transportation projects, both highway and nonhighway by dates specified in the Surface Transportation Assistance Act of 1978. NPRM *August 1979.* **B. Why Significant:** There is substantial public interest and controversy concerning this proposal. **C. Regulatory Analysis:** Required **D. Need:** This regulation is needed to implement the provisions of 23 U.S.C. 103 enacted in the 1976 Federal-Aid Highway Act, as amended by the Surface Transportation Assistance Act of 1978. **E. Legal Basis:** 23 U.S.C. 103(e)(2) and 103(e)(4)	FHWA L. A. Staron, (202)426-0404 or F. Calhoun, (202)426-0762. UMTA Richard White, (202)472-6991.	

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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FHWA — Federal Highway Administration

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	F. Chronology: The current substitution regulations were issued on June 12, 1974. The Federal-Aid Highway Act Amendments of 1974 and the Federal-Aid Highway Act of 1976 amended the original statutory provisions enacted by the Federal-Aid Highway Act of 1973. Provisions of the Surface Transportation Assistance Act of 1978 will be incorporated prior to issuing the NPRM. **G. Citation:** 23 CFR pt. 476 subpt. D and pt. 450.		
Hours of Service of Drivers (Docket No. MC–70–1).	**A. Description:** The Federal Highway Administration (FHWA) is proposing a revision of the regulations pertaining to hours of service limitations for commercial vehicle drivers engaged in interstate or foreign commerce. **B. Why Significant:** This proposal may be controversial and could have a major cost impact on the motor carrier industry. **C. Regulatory Analysis:** Required. **D. Need:** This action is being taken in response to numerous petitions and requests from public interest groups, labor organizations, and individual drivers for the revision of these regulations. **E. Legal Basis:** 49 U.S.C. 304 and 1655. **F. Chronology:** An ANPRM which stated that FHWA was considering an extensive review of the Hours of Service of Drivers regulation was published on February 12, 1976 (Docket MC–70, Notice 76–14, 41 FR 6275). A second ANPRM was issued on May 22, 1978 (43 FR 21905) setting forth three plans for comments. *A notice of public hearings was published August 29, 1978 (43 FR 38608).* Public hearings wre held in 7 major cities. **G. Citation:** 49 CFR pt. 395.	Gerald J. Davis, (202)426–9767.	NPRM January 1980.
Commercial Motor Vehicle Inspection, Repair and Maintenance (Docket No. MC–48).	**A. Description:** FHWA has amended the regulation on Commercial Motor Vehicle Inspections, Repair and Maintenance to reduce vehicle defect related accidents caused by inadequate inspection and maintenance procedures. **B. Why Significant:** This proposal has generated substantial public interest. **C. Regulatory Analysis:** Required. **D. Need:** Roadside inspections of vehicles in operation in interstate commerce, supported by safety survey inspections at carrier facilities, indicate that carrier maintenance practices are less than satisfactory. This regulation will provide guidance for systematic vehicle inspection and maintenance by carriers and drivers in order to assure vehicle condition is satisfactory for safe operations. **E. Legal Basis:** 49 U.S.C. 304 and 1655. **F. Chronology:** This amendment was issued as an NPRM on April 5, 1977 (42 FR 18105). Based upon review of public comments and data submitted as a result of the NPRM, the FR was modified to eliminate the potential of a major cost impact on the motor carrier industry. *The Final Rule was published July 2, 1979 (44 FR 38523), to be effective August 31, 1979.* **G. Citation:** 49 CFR pt. 396.	Donnell W. Morrison, (202)426–1700.	*Action Complete.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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FHWA

Federal Highway Administration

Significant Regulations—Continued

Title	Summary	Contact	Decision date
Review: Environmental Impact and Related Statements.	**A. Description:** This regulation would implement the National Environmental Policy Act and Section 138 of the Federal-Aid Highway Act. It would specify the procedures to be used by FHWA in the preparation and processing of Environmental Impact and Section 4(f) statements. **B. Why Significant:** These regulations will involve substantial public interest and controversy and will implement important Departmental policy. **C. Regulatory Analysis:** Not Required. **D. Need:** Executive Order 11991 authorizes the Council on Environmental Quality (CEQ) to issue regulations to implement the National Environmental Policy Act. **E. Legal Basis:** These revisions are required because of regulations which were promulgated by CEQ. **F. Chronology:** The CEQ regulations were published for public comment in the **Federal Register** on June 9, 1978 (43 FR 25230). Final CEQ regulations were published November 29, 1978 (43 FR 55978). It is anticipated that these joint FHWA/UMTA regulations will be ready for publication in the *summer* of 1979. **G. Citation:** 23 CFR pt. 771. (FHPM 7-7-2).	*FHWA Dale Wilken, (202)426-4093. UMTA John Collins, (202)426-1908.*	NPRM *August 1979.*
Review: Urban Transportation Planning Process. **Review:** Transportation Improvement Program.	**A. Description:** Revisions to these regulations would implement the provisions of Section 109 of the Surface Transportation Assistance Act of 1978, accommodate simplifying recommendations made by FHWA's Regulations Reduction Task Force, and implement the transportation planning aspects of the 1977 Clean Air Act Amendments. **B. Why Significant:** These are significant regulations since they significantly impact the Urban Mass Transportation Administration (UMTA) and involve important Department policy. **C. Regulatory Analysis:** Not Required. **D. Need:** Continuing review has identified areas where added flexibility will not impair effectiveness. Air quality planning must be included in accordance with the DOT-EPA Memorandum of Understanding. **E. Legal Basis:** 23 U.S.C. 104(f)(3), 134 and 315. **F. Chronology:** The recommendations of the FHWA Regulation Reductions Task Force were adopted in October 1977. Following agreement with UMTA and EPA, insofar as air quality is concerned, proposed regulatory changes will be prepared. **G. Citation:** 23 CFR pt. 450, subpt. A and C. (FHPM 4-4-2 and 4-4-6).	FHWA V. Paparella, (202)426-2961. UMTA Bob Kirkland (202)426-4991.	NPRM *October 1979.*
Equal Employment Opportunity on Federal-aid Highway Construction Contracts.	**A. Description:** This regulation would simplify procedures relating to Equal Employment Opportunity on Federal-aid highway construction contracts. **B. Why Significant:** The regulation concerns a matter on which there is substantial public interest. **C. Regulatory Analysis:** Not Required. **D. Need:** This regulation is needed to achieve administrative effectiveness and efficiency.	K. L. Ziems, (202)426-4847.	NPRM *September 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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FHWA **Federal Highway Administration**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	E. Legal Basis: 23 U.S.C. 140 and 315. **F. Chronology:** An NPRM will be published in *September* 1979. **G. Citation:** 23 CFR pt. 230, subpt. A. (FHPM 6-4-1-2).		
Non-Urbanized Area Public Transportation (Docket No. 78-40).	**A. Description:** Proposed regulation would finalize procedures for the administration of a continuing program of non-urbanized are a public transportation including operating subsidies. **B. Why Significant:** The proposed new program involves FHWA and UMTA and impacts State and local transportation programs. **C. Regulatory Analysis:** Not Required. **D. Need:** The proposed regulation would finalize procedures for the administration of the non-urbanized area public transportation assistance program. **E. Legal Basis:** Section 18 of the Urban Mass Transportation Assistance Act of 1964, as amended. **F. Chronology:** A DOT Rural and Small Urban Working Group has summarized the policy issues for the Section 18 program. Interim operating procedures were issued as an emergency regulation December 13, 1978 (43 FR 58308), and a 90-day comment period was established. **G. Citation:** 23 CFR pt. 825.	FHWA Sheldon G. Strickland, (202)426-0150. UMTA Kay Regan, (202)472-7037.	NPRM *August 1979.*
Major Urban Transportation Investment (Docket No. 78-21).	**A. Description:** The proposed regulation requires that State and local transportation officials conduct an analysis of alternatives for all major urban transportation investments for highway or public transportation. **B. Why Significant:** The proposed rule involves important Departmental policy and major urban investments of the Urban Mass Transportation Administration and the Federal Highway Administration. **C. Regulatory Analysis:** Not Required. **D. Need:** The increased flexibility in the use of Federal-aid highway funds for mass transit-related activities has led to the need for a single investment policy for both Federal Highway Administration and Urban Mass Transportation projects to ensure that Federal funds are used effectively. **E. Legal Basis:** 23 U.S.C. 134 and 315 and 49 U.S.C. 1601 et seq. **F. Chronology:** An NPRM was published in the **Federal Register** on December 7, 1978 (43 FR 57478). **G. Citation:** 23 CFR pt. 455, subpt. A and B, and 49 CFR pt. 620.	FHWA A. F. Sevin, (202)426-0215. UMTA Joel Ettinger, (202)426-2360.	FR *August 1979.*
Certification of Speed Limit Enforcement (Docket No. 78-41).	**A. Description:** The regulation will establish standards for the States in monitoring speeds on highways with a limit of 55 miles per hour and in calculating a statewide value for the percentage of all traffic exceeding 55 miles per hour on such highways.	William F. Bauch, (202)426-1993.	NPRM *August 1979.* FR *January 1980.*

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FHWA **Federal Highway Administration**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	B. Why Significant: States failing to comply with the provisions of this regulation shall be penalized up to 10% of their Federal-aid primary, secondary and urban funds. **C. Regulatory Analysis:** Not Required. **D. Need:** This regulation is needed to implement the modified 55 mph enforcement provisions of the Surface Transportation Assistance Act of 1978. **E. Legal Basis:** 23 U.S.C. 141, 154. **F. Chronology:** Emergency regulation was published in the Federal Register December 20, 1978. (43 FR 59464). **G. Citation:** 23 CFR 658.7.		
Buy America Requirements (Docket No. 78-35).	**A. Description:** This regulation would establish provisions for the protection of domestic structural steel on construction projects with an estimated cost of $450,000 or more. **B. Why Significant:** This regulation involves a matter which may become controversial or arouse significant public interest. **C. Regulatory Analysis:** Not Required. **D. Need:** This regulation is required to implement the provisions of Section 401 of the Surface Transportation Assistance Act of 1978. **E. Legal Basis:** Section 401 of the Surface Transportation Assistance Act of 1978; P.L. 95-599. **F. Chronology:** An emergency regulation was issued on November 17, 1978 (43 FR 53717). FHWA asked for comments, and the comments period closed on January 17, 1979. **G. Citation:** 23 CFR 635.410.	K. L. Ziems, (202)426-4847.	NPRM *September 1979.*
Interstate Maintenance Guidelines (Docket No. 78-43).	**A. Description:** This regulation would establish guidelines describing criteria applicable to the Interstate system to ensure that the conditions of these routes are maintained at the level required by the purposes for which they were designed. Each state must certify each year to the FHWA that it has a maintenance program for the Interstate system to meet these guidelines once they are established. **B. Why Significant:** These guidelines may involve substantial public and State highway agency interest. **C. Regulatory Analysis:** Required. **D. Need:** This regulation is necessary to insure the preservation of the entire highway, including surface, shoulders, roadsides, structures, and such traffic control devices as are necessary for its safe and efficient utilization. Since 23 U.S.C. 116 is regulatory in nature, it is necessary to establish Federal maintenance guidelines or level of service. **E. Legal Basis:** 23 U.S.C. 109(m), 315; 49 CFR 1.48(b). **F. Chronology:** An ANPRM was published on January 2, 1979 (44 FR 69). NPRM was published August 9, 1979.. **G. Citation:** 23 CFR pt. 635.	Paul E. Cunningham, (202)426-0436.	NPRM *August 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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Non-significant Regulations

Title	Summary	Contact	Decision date
Review: New Research and Development (R&D) Studies and Work Programs *(Docket No. 79-21).*	This regulation would cover the starting of new R&D studies and the programming of R&D work funded with Federal-Aid highway funds. (23 CFR pts. 530 and 540; FHPM 5-4-1).	Harry H. Hersey, *(703)557-5257.*	NPRM *September 1979.*
Review: R&D Management—General.	This regulation would have covered the management of R&D studies using Federal-aid highway funds. It will be withdrawn because the content is covered by other regulations. (23 CFR pt. 520; FHPM 5-2-1).	Harry H. Hersey, *(703)557-5257.*	To Be Withdrawn *September 1979.*
Review: R&D Reports and Implementation Activities (Docket No. 79-21).	This regulation would cover documentation of the results of R&D studies funded with Federal-aid highway funds without State matching to finance pooled fund studies. (23 CFR pt. 544; FHPM 5-4-3).	Harry H. Hersey, *(703)557-5257.*	NPRM *September 1979.*
Review: Federal-Aid Funds Without State Matching (Docket No. 79-21).	This regulation would cover the use of Federal-aid highway funds without State matching to finance pooled fund studies. (23 CFR pt. 560; FHPM 5-6-1).	Harry H. Hersey, *(703)557-5257.*	NPRM *September 1979.*
Review: R&D Management Option *(Docket No. 79-21).*	This regulation would provide alternate administrative procedures for State highway agencies which meet specified management standards. (23 CFR Pt. 524; FHPM 5-2-4).	Harry H. Hersey, *(703)557-5257.*	NPRM *September 1979.*
Review: Administration of Negotiated Contracts (Docket No. 78-17).	The existing three regulations (23 CFR pts. 620, 420 and 170) would be combined to coordinate and minimize requirements and to bring FHWA contracting procedures in conformance with Office of Management (OMB) Circular A-102, specifically Attachment "O" which deals with procurement standards for use by grantees. NPRM was published November 7, 1978 (43 FR 51040). (23 CFR pt. 170; Proposed FHPM 1-7-3).	*R. B. Puckett* (202)426-0175.	FR *August 1979.*
Review: Program Approval and Authorization (Docket No. 78-24).	This regulation would reflect recent policy changes in management of the Highway Planning and Research Program, e.g., allowing separate projects for Metropolitan Planning Organizations, applying matching ratio to time periods rather than a fiscal year fund, etc. *NPRM was published January 11, 1979 (44 FR 2400).* (23 CFR pt 420; FHPM 4-1-2-1)..	*R. B. Puckett (202)426-0175.*	FR *August 1979.*
Review: Public Road Mileage for Apportionment of Highway Safety Funds, Safer Off-System Roads Funds and Hazard Elimination Funds.	The revised regulation would expand the existing one, which includes only Highway Safety Funds, to include the other listed programs in the revised title. (23 CFR pt. 460; FHPM 4-5-3).	D. W. Briggs, (202)426-0199.	NPRM *September 1979.*
Review: Procedures for Abatement of Highway Traffic Noise and Construction Noise (Long-Term Revisions) *(Docket No. 78-33).*	This revision would make substantial reductions in the detailed procedures and interpretive information in the existing regulation. This is being done pursuant to the FHWA Regulation Reduction Task Force recommendations. *An ANPRM was published December 6, 1978 (43 FR 57161)* (23 CFR pt. 772; FHPM 7-7-3).	H. M. Rupert, (202)426-4836.	NPRM *September 1979.*
Review: General Policy and Definitions Regarding the Acquisition of Real Property.	This regulation prescribes the general policy of FHWA regarding the acquisition of real property for highway and related purposes and defines certain terms used in FHWA right-of-way acquisition regulations. (23 CFR pt. 710; FHPM 7-1-1).	Douglas A. Wubbels, (202)426-0142.	To be withdrawn *September 1979.*
Review: State Highway Department Responsibilities *(Docket No. 76-7).*	This regulation would prescribe the general responsibility of a State highway department in the acquisition of rights-of-way for the Federal-aid highway systems. An amendment to the existing regulation was published on August 31, 1978, eliminating the requirement for State highway agencies to submit the annual Real Property Acquisition Report. (43 FR 38818) (23 CFR pt. 710; FHPM 7-1-2).	Douglas A Wubbels, (202)426-0142.	NPRM *September 1979.*
Review: Reimbursement Provisions.	This regulation would set forth provisions governing reimbursement to a State highway department for right-of-way costs incurred in connection with Federal or Federal-aid highway projects. (23 CFR pt. 710; FHPM 7-1-3).	Douglas A. Wubbels, (202)426-0142.	NPRM *September 1979.*
Review: Civil Rights.....	This regulation would prescribe the general policy of the FHWA in the area of civil rights relative to the right-of-way acquisition function. (23 CFR pt. 710; FHPM 7-1-4).	Douglas A. Wubbels, (202)426-0142.	To be withdrawn *September 1979.*
Review: The Real Property Acquisition Function—Policy.	This regulation would prescribe FHWA policy regarding the real property acquisition function. (23 CFR pt. 712; FHPM 7-2-1).	Tom Johns, (202)426-0142.	NPRM *September 1979.*
Review: The Acquisition Function—General Provisions and Project Procedures.	This regulation would prescribe FHWA project provisions and procedures regarding the acquisition of real property for highway and highway related projects. (23 CFR pt. 712; FHPM 7-2-2).	Tom Johns, (202)426-0142.	NPRM *September 1979.*

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FHWA **Federal Highway Administration**

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Review: The Acquisition Function—General Provisions and Project Procedures—Functional Replacement of Real Property in Public Ownership.	This regulation would prescribe FHWA policies on functional replacement of real property in public ownership. (23 CFR pt. 712; FHPM 7-2-2-1).	Tom Johns, (202)426-0142.	NPRM *September 1979.*
Review: The Acquisition Function—Negotiations.	This regulation will be combined with the regulation on general acquisition policy (FHPM 7-2-1). (23 CFR pt. 712; FHPM 7-2-3).	Tom Johns, (202)426-0142.	To be withdrawn *September 1979.*
Review: The Acquisition Function—Administrative Settlements, Legal Settlements, and Court Awards.	This regulation will be combined with the regulation on reimbursement provisions (FHPM 7-1-3). (23 CFR pt. 712; FHPM 7-2-4).	Tom Johns, (202)426-0142.	To be withdrawn *September 1979.*
Review: Appraisal and Appraisal Review Policy.	This regulation would establish FHWA requirements for the preparation and review of appraisal reports for the acquisition of lands necessary for Federal-aid highway projects. (23 CFR pt. 720; FHPM 7-3-1).	Douglas A. Wubbels, (202)426-0142.	NPRM *September 1979.*
Review: Property Management.....	This regulation would prescribe FHWA policies and procedures for the management of real property acquired in connection with Federal-aid highway projects. (23 CFR pt. 713; FHPM 7-4-1).	Tom Johns, (202)426-0142.	NPRM *September 1979.*
Review: Disposal of Right-of-Way..	This regulation would prescribe FHWA policies and procedures for disposal of portions of highway right-of-ways no longer needed for highway purposes. (23 CFR pt. 713; FHPM 7-4-2).	Tom Johns, (202)426-0142.	NPRM *September 1979.*
Review: Junkyard Control and Abatement.	This regulation would provide definition of "effective control" of junkyards per 23 U.S.C. 136. It would identify alternative methods for abating nonconforming junkyards and establish the basic framework for State development of police power regulations and procedures. It would also identify items which are eligible for Federal participation in the various abatement techniques such as screening, removal, and relocation. *An ANPRM published April 30, 1979 (44 FR 25387) and a Notice published May 17, 1979 (44 FR 28946) announced public hearings as part of an overall review of the Highway Beautification Program. These currently proposed regulations may be modified as a result of this review.* (23 CFR pt. 751; FHPM 7-6-4).	Richard Moeller, (202)245-0021.	NPRM December 1979.
Review: Relocation Assistance—General.	This regulation would prescribe the general provisions and procedures for the uniform implementation and conduct of the nationwide relocation assistance program to assure the fair and equitable treatment of persons displaced by highway programs. (23 CFR pt. 740; FHPM 7-5-1).	R. G. King, (202)426-0116.	*NPRM September 1979.*
Review: Relocation Assistance—Relocation Services.	This regulation would set forth the requirement for that portion of the relocation program dealing with the services and assistance to be made available to persons displaced by or adversely affected by highway and related projects. (23 CFR pt. 740; FHPM 7-5-2).	R. G. King, (202)426-0116.	*NPRM September 1979.*
Review: Relocation Assistance—Moving Payments.	This regulation would prescribe the moving payments and other benefits available to individuals, families, businesses, farm operations, nonprofit organizations, and owners of outdoor advertising devices forced to relocate due to highway activities. (23 CFR pt. 740; FHPM 7-5-3).	R. G. King, (202)426-0116.	*NPRM September 1979.*
Review: Relocation Assistance—Replacement Housing Payments.	This regulation would prescribe the payments and eligibility requirements for home owners and tenants forced to vacate their dwellings located on lands needed for highway purposes. (23 CFR pt. 740; FHPM 7-5-4).	R. G. King, (202)426-0116.	*NPRM September 1979.*
Review: Relocation Assistance—Mobile Homes.	This regulation would set forth the special provisions for payments and benefits applicable to owners and occupants of mobile homes located on lands required for highway purposes. (23 CFR pt. 740; FHPM 7-5-5).	R. G. King, (202)426-0116.	*NPRM September 1979.*

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Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Review: Relocation Assistance Replacement—Housing As Last Resort.	This regulation would implement Section 206 of Public Law 91-646 and prescribe the procedures and methods for providing replacement housing "as a last resort" when it is determined that a Federal or Federal-aid project cannot proceed to actual construction because comparable replacement housing is not available for persons to be displaced from their dwellings because of such construction. (23 CFR pt. 740; FHPM 7-5-6).	R. G. King, (202)426-0116.	*NPRM September 1979.*
Review: Land Service Facilities.....	This regulation would establish FHWA policy on participation in costs of facilities to provide or restore access to affected real property. (23 CFR pt. 712; FHPM 7-2-2-2).	Tom Johns, (202)426-0142.	NPRM *September 1979.*
Review: Right-of-Way Revolving Fund.	This regulation would prescribe FHWA policy on acquisition of right-of-way with funding pursuant to 23 U.S.C. 108(c). (23 CFR pt. 712; FHPM 7-2-7).	Tom Johns, (202)426-0142.	NPRM *September 1979.*
Review: Management of Airspace.	This regulation would prescribe FHWA policy on the use of airspace on Federal-aid highways for nonhighway purposes. (23 CFR pt. 713; FHPM 7-4-3).	Tom Johns, (202)426-0142.	NPRM *September 1979.*
Review: State Audit Expense—Contract Costs.	This regulation would establish (a) the State's responsibility for the audit of costs incurred by "third parties" pursuant to a State/claimant contract on Federal-aid and other highway projects undertaken cooperatively with the FHWA and (b) the reimbursement criteria for Federal participation in audit expense to be incurred. (23 CFR pt. 140; FHPM 1-4-2-3).	J. E. Lewis, (202)426-0562.	FR *September 1979.*
Review: State Legal Expense—Contract Claims.	This regulation would establish the basis of eligibility for reimbursement of administrative settlement costs, and other legal expenses, including attorney salaries and fees, in the defense of contract claims on Federal-aid projects, including any Federal projects performed by a State under Federal-aid procedures. (23 CFR pt. 140; FHPM 1-4-2-4).	J. E. Lewis, (202)426-0562.	FR *September 1979.*
Review: Bond Issue Projects.....	This regulation would prescribe policies and procedures for the use of Federal funds in aiding the States in the retirement of the principal of bonds, pursuant to 23 U.S.C. 122. (23 CFR pt. 140; FHPM 1-4-8).	*J. E. Lewis, (202)426-0562.*	FR *September 1979.*
Review: Advance Construction of Federal-aid Projects.	This regulation would prescribe procedures for the construction by a State of projects on any of the Federal-aid systems, in advance of apportionment of Federal-aid funds, or in lieu of apportioned funds for the Interstate System only, and for the subsequent reimbursement to the State of the Federal share of the cost of the project, prusuant to 23 U.S.C. 115 as amended. (23 CFR pt. 630; FHPM 6-3-2-7).	K. C. Kippley, (202)426-0673.	FR *October 1979.*
Review: Reimbursement for Employment of Public Employees on Federal-aid Projects.	This regulation would prescribe policies and procedures governing the extent to which Federal funds may participate in the cost of salaries and wages and related labor costs, incurred by public forces of State Highway departments, counties, cities, or other political subdivisions. (23 CFR pt. 140; FHPM 1-4-5).	J. E. Lewis, (202)426-0562.	FR *October 1979.*
Review: Tire Requirements.....	The FHWA has amended the Tire Requirements regulation (49 CFR 393.75) for the purpose of (1) exempting front tires on single unit vehicles from tire marking requirements, (2) exempting all vehicles operating in commercial zones from tire marking requirements, and (3) providing an exemption for tire overloading for vehicles operating under State permits. *ANPRM published October 10, 1978 (43 FR 46555). Final Rule published May 1, 1979 (44 FR 25455). (49 CFR 393.75).* (49 CFR pt. 393.75).	Donnell W. Morrison, (202)426-1700.	*Action Complete.*
Review: Disqualifying Offenses, Drugs.	The FHWA is considering amending the Disqualification of Drivers regulation (49 CFR 391.15) by reviewing and enlarging that group of substances and drugs, whose use by drivers, operating commercial motor vehicles, is forbidden and is considered a disqualifying offense. (49 CFR pt. 391).	Gerald S. Davis, (202)426-9767.	NPRM *September 1979.*

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Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Review: Visual Acuity	The FHWA is considering amending the Physical Qualification for Drivers regulation (49 CFR 391.41) by reviewing and determining minimum visual acuity in each eye separately as well as binocular acuity for commercial vehicle drivers. (49 CFR pt. 391).	Gerald S. Davis, (202)426-9767.	NPRM *September 1979.*
Review: Highway Safety Improvements Program (Docket No. 78-4).	When setting priorities for railroad-grade crossing improvements, present regulations require States to consider hazard rating, accident history, and the results of on site inspections. It is necessary that consideration also be given to other factors which have the potential for catastrophic accidents. The change in regulation adds two more factors to be used in determining priority for grade crossing projects: (1) The frequency with which trains carrying hazardous materials use the crossing; (2) The number of persons exposed to the crossing (passenger load of train; crossing use by school or passenger bus, pedestrians or other situations involving large numbers of people.) NPRM was published April 7, 1978 (43 FR 14683). *Final Rule published March 1, 1979 (44 FR 11543).* (23 CFR pt. 924, FHPM 8-2-3).	J. L. Rummel, (202)426-2131.	*Action Complete.*
Review: Indian Reservation Roads.	This regulation would contain procedures implementing 23 U.S.C. 208 and the FHWA-Bureau of Indian Affairs (BIA) (Department of Interior) Interagency Agreement covering FHWA overview of BIA Highway Projects. (FHPM 6-3-2-8).	George Hutzelmann, (202)426-0460.	ANPRM *September 1979*
Review: Public Lands Development Roads and Trails.	This regulation would contain procedures implementing 23 U.S.C. 214 and the FHWA-Bureau of Land Management (BLM) (Department of Interior) Interagency Agreement covering FHWA overview of BLM Highway Projects. (FHPM 6-9-4-2).	George Hutzelmann, (202)426-0460.	ANPRM *October 1979.*
Review: Forest Highways	This regulation would contain administrative procedures applicable to Forest Highway projects administered by direct Federal Offices and State highway *agencies.* (23 CFR pt, 660; FHPM 6-9-2-1).	*R. C. Coles,* (202)426-0460.	NPRM *September 1979.*
Review: *Highway* Bridge Replacement Program.	This regulation prescribes the policies and procedures for project eligibility, application filing and evaluation and project funding for the FHWA Special Bridge Replacement Program. Final regulations published on August 8, 1978 (43 FR 35031). The Surface Transportation Assistance Act of 1978 expanded the program to include all public roads and allowed rehabilitation as well as replacement. *Final Rule published March 15, 1979 (44 FR 15665).* (23 CFR pt. 650; Subpt. D; FHPM 6-7-4-1).	L. A. Herr, (202)426-0426 or Stanley Gordon, (202)472-7697.	*Action Complete.*
Review: Location and Hydraulic Design of Encroachments on Flood Plains (Docket No. 78-9).	This regulation would establish FHWA policy and procedures to assure good flood-plain management practices are followed in the Federal-aid highway programs. NPRM published on December 27, 1978 (43 FR 60298). (23 CFR pt. 650; FHPM 6-7-3-2).	Frank L. Johnson, or Philip L. Thompson, (202)472-7690.	FR *August 1979.*
Review: Erosion and Sediment Control on Highway Construction Projects.	This regulation would prescribe practices for the prevention and abatement of erosion and sediment damage on highway projects. (23 CFR pt. 650; FHPM 6-7-3-1).	Frank L. Johnson, (202)472-7690.	FR *October 1979.*
Review: Permits for Highway Work in or Adjacent to Streams.	This regulation would contain procedures dealing with permits and include memoranda of understanding with the Coast Guard and the Corps of Engineers as appendices. (23 CFR pt. 650; FHPM 6-7-1-1).	Frank L. Johnson, (202)472-7690.	FR *December 1979.*
Review: Coordination of Water Resources Development Projects.	This regulation would prescribe policy and procedures for the coordination and financing of highway—water resources development projects. (FHPM 6-1-1-4).	Edward D. Johnson, (202)426-0334 or Frank L. Johnson, (202)472-7690.	FR December 1979.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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FHWA — **Federal Highway Administration**

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Fracture Control Plan (for Bridges Containing Fracture-Critical Members).	This regulation would supersede provisions of materials and welding specifications published by the American Association of State Highway and Transportation Officials (AASHTO) and the American Welding Society (AWS), where the materials and welding are to be used in tension components of a bridge whose failure could result in the collapse of the bridge. (23 CFR pt. 650).	Mr. L. A. Herr or Mr. C. E. Hartbower, (202)426-0426.	NPRM *September 1979.*
Review: Required Contract Provisions—Federal-aid Contracts.	This regulation would update and clarify the required contract provisions for Federal-aid construction contracts. (23 CFR pt. 633; FHPM 6-4-1-1).	K. L. Ziems, (202)426-4847.	FR *September 1979.*
Review: Contract Procedures (Docket No. 78-16).	This regulation would simplify Federal-aid contract procedures. NPRM was published in the **Federal Register** on August 18, 1978 (43 FR 36685). (23 CFR pt. 633; FHPM 6-4-1-6).	K. L. Ziems, (202)426-4847.	FR *August 1979.*
Review: Contract and Force Account, Justifications Required for Force Account Work.	This regulation would simplify procedures relating to Federal-aid construction work performed by other than competitively awarded contract. (23 CFR pt. 635; FHPM 6-4-1-14).	K. L. Ziems, (202)426-4847.	NPRM *September 1979.*
Review: General Materials Requirements.	This regulation would simplify procedures relating to general material requirements for Federal-aid construction work. (23 CFR pt. 635; FHPM 6-4-1-16).	K. L. Ziems, (202)426-4847.	NPRM *August 1979.*
Review: Authorization to Proceed to Physical Construction.	This regulation would *update* procedures relating to authorization of physical construction. (23 CFR pt. 635; FHPM 6-4-2-1).	K. L. Ziems, (202)426-4847.	*FR September 1979.*
Review: Sampling and Testing of Materials and Construction (Docket No. 78-28).	This regulation revises current procedures relating to sampling and testing of materials and construction in Federal-aid highway projects except those constructed pursuant to 23 U.S.C. 117 which deals with certification acceptance and projects constructed under direct supervision of the Federal Highway Administration. Final Rule published January 11, 1979 *(44 FR 2170).* (23 CFR pt. 637; FHPM 6-4-2-7).	Ross Martinez, (202)426-0420.	*Action Complete.*
Review: Inspection of Federal-Aid Construction Projects.	This regulation was to prescribe the policies, procedures, and guides for inspection and approval of Federal-aid highway construction projects, except those constructed pursuant to 23 U.S.C. 117 which deals with certification acceptance. *A revocation of this rule was published April 19, 1979 (44 FR 23212).* (23 CFR pt. 637; FHPM 6-4-2-8).	Donald Steinke, (202)426-0436.	*Withdrawn.*
Review: Landscape and Roadside Development (Docket No. 78-2).	This regulation would prescribe policies and procedures relating to highway landscaping and plant establishment, safety rest areas and information centers and systems, and scenic strips in connection with Federal-aid Highway Projects. Interim Final Regulations published in **Federal Register** May 5, 1978 (43 FR 19390). (23 CFR pt. 752; FHPM 6-2-5-1).	Ken Rickerson, (202)426-0314.	FR *October 1980.*
Resurfacing, Restoration and Rehabilitation (R-R-R) Work.	This regulation would set forth policy and project procedures for implementing R-R-R program as it relates to pavement design practices. (FHPM 6-2-4-2).	Leon M. Noel, (202)426-0327.	FR *October 1979.*
Review: Skid Resistant Surface Design.	This regulation would set forth pavement design policy as it pertains to skid resistance on Federal-aid highway projects. (FHPM 6-2-4-3).	Leon M. Noel (202)426-0327.	NPRM *August 1979.*
Pavement Type Selection and Alternate Bids.	This regulation would set forth policy for the selection of pavement type on Federal-aid projects, and procedures to be used for bidding on more than one alternate. (FHPM 6-2-4-4).	Leon M. Noel, (202)426-0327.	NPRM November 1979.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Review: Plans, Specifications, and Estimates.	This regulation prescribes policies and procedures relating to the preparation, submission and approval of plans, specifications, and estimates and supporting documents for Federal-aid projects. *Final Rule published December 19, 1978 (43 FR 58563).* (23 CFR pt. 630; FHPM 6-3-3-1).	Alvin R. Cowan, (202)426-0312.	*Action Complete.*
Review: Traffic Control Devices on Federal-aid and Other Streets and Highways.	This regulation would prescribe the policies and procedures of FHWA relative to obtaining basic uniformity in the visible features and functioning of traffic control devices on all highways open to public travel in accordance with the Manual on Uniform Traffic Control Devices for Streets and Highways. (23 CFR pt. 655; FHPM 6-8-3-1).	Donald P. Ryan, (202)426-0411.	*NPRM August 1979.*
Review: Motorists Aid Systems	This regulation would provide policies and procedures relating to motorist-aid systems on Federal-aid highways. (23 CFR pt. 655; FHPM 6-8-3-3).	Robert Harp, (202)426-0411.	FR *January 1980.*
Review: Traffic Surveillance and Control.	This regulation would establish policies and procedures relating to the expenditure of Federal-aid funds for traffic surveillance and control measures and equipment to reduce congestion, improve traffic flow and increase safety. (23 CFR pt. 655; FHPM 6-8-3-4).	Robert Harp, (202)426-0411.	FR *January 1980.*
National Standards for Specific Information Signs, (Docket No: 77-6).	This regulation applies existing standards for specific information signs on the Interstate System and other freeways on the Primary System to other primary highways as authorized by Section 122(a), Federal-Aid-Highway Act of 1976. *Final rule was published February 2, 1979 (44 FR 6708).* (23 CFR pt. 655; FHPM 6-8-3-8).	Donald P. Ryan, (202)426-0411.	*Action Complete.*
Great River Road	This regulation outlines procedures to be followed in the funding, programming, and execution of a program for a National Scenic and Recreational Highway in the Mississippi River Valley known as the Great River Road. *Final Rule was published March 1, 1979 (44 FR 11542).* (23 CFR pt. 661; FHPM 6-9-15).	V. Ciletti, *(202)426-0450.*	*Action Complete.*
Review: Relinquishment of Highway Facilities.	This regulation would prescribe Federal Highway Administration procedures relating to relinquishment of highway facilities. (23 CFR pt. 620; FHPM 6-1-1-8).	R. J. Kreklau or C. R. Green, (202)426-0334.	NPRM *December 1979.*
Review: Reimbursement for Railroad Work.	This regulation would prescribe policies and procedures on reimbursement to the States for railroad work done on projects undertaken pursuant to the provisions of 23 CFR pt. 646 B. (23 CFR pt. 140; FHPM 1-4-3).	J. A. Carney, (202)426-0104.	*ANPRM August 1979.*
Review: Utility Relocation and Adjustment.	This regulation would prescribe the policies and procedures for the adjustment and relocation of utility facilities on Federal-aid highway projects and projects under the direct supervision of the Federal Highway Administration. *An ANPRM was published March 8, 1979 (44 FR 12209).* (23 CFR pt. 645; FHPM 1-4-4).	J. A. Carney, (202)426-0104.	*NRPM November 1979.*
Review: Accommodation of Utilities.	This regulation would prescribe policies and procedures for accommodating utility facilities on the rights-of-way of Federal and Federal-aid highway projects. (23 CFR pt. 645; FHPM 6-6-3-2).	J. A. Carney, (202)426-0104.	ANPRM *August 1979.*
Review: Railroad Highway Projects.	This regulation would prescribe policies and procedures for advancing Federal-aid projects involving railroad facilities. (23 CFR pt. 646; FHPM 6-6-2-1).	J. A. Carney, (202)426-0104.	ANPRM *August 1979.*
Review: Public Lands Highways	This regulation would outline the procedures to be followed in administering funds authorized for Public Lands Highways. *Final Rule published July 9, 1979 (44 FR 40065).* (23 CFR pt. 660; FHPM 6-9-4-1).	V. Ciletti, (202)426-0450.	*Action Complete.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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Federal Highway Administration

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Review: Project Agreements.....	This regulation would prescribe the forms and procedures for the preparation and execution of the project agreements required by 23 U.S.C. 110(a) for Federal-aid projects. (23 CFR pt. 630)..	L. Pettigrew or C. R. Green, (202)426-0334.	NPRM September 1979.
Review: Exemption from Preparing Driver's Daily Logs for Operations Between Certain Fixed Locations (Docket No. MC-70-2).	This regulation would propose to exempt certain drivers from preparing the driver's log when they operate between specified fixed locations or over the same route day after day within the allowable hours of service. ANPRM published in *Federal Register* on November 9, 1978 (43 FR 58418). (49 CFR pt. 395).	Gerald J. Davis, (202)426-9767.	NPRM January 1980.
Review: Rear End Underride Protection (Docket No. MC-77).	This regulation would propose to provide improved rear end protection on heavy motor vehicles manufactured after a certain date to prevent the underriding of vehicles which impact the rear of those vehicles. (49 CFR pt. 393).	D. W. Morrison, (202)426-1700.	NPRM *September 1979.*
Review: 100-Mile Exemption-Driver's Logs (Docket No. MC-78).	This regulation would propose to increase the present 50-mile radius exemption from the daily log requirement to a radius of 100-miles. NPRM published in *Federal Register* on October 13, 1978 (43 FR 55109). (49 CFR pt. 395).	Gerald J. Davis, (202)426-9767.	FR January 1980.
Toxic Gases in Truck Cabs (Docket No. MC-80).	This regulation would set maximum toxic gas levels in truck cabs. ANPRM published January 1978 (43 FR 120). *NPRM published June 18, 1979 (44 FR 34992).* (49 CFR pt. 392).	Gerald J. Davis, (202)426-9767.	*FR January 1980.*
Ambient Temperature in Heavy Duty Truck Cabs (Docket No. MC-81).	This regulation would set maximum permissible ambient temperatures in truck cabs. ANPRM published in *Federal Register* on February 8, 1978 (43 FR 5397). (49 CFR pt. 399)..	Gerald J. Davis, (202)426-9767.	NPRM *September 1979.*
Review: Parts and Accessories Necessary for Safe Operations (Docket No. MC-82).	This regulation aligns the Federal Motor Carrier Safety Regulations with the Federal Motor Vehicle Safety Standards of the National Highway Traffic Safety Administration to ensure manufacturing and operational compatibility. NPRM was published March 6, 1978 (43 FR 9166). *Final Rule published May 1, 1979 (44 FR 25456).* (49 CFR pt. 393).	D. W. Morrison, (202)426-1700.	*Action Complete.*
Air-brake System on Commercial Motor Vehicles—NHTSA Standard No. 121 (Docket No. MC-83).	This regulation was to require that any anti-lock system installed on the drive axle of truck tractors to comply with FMVSS No. 121 be kept operative. A court order suspended the NHTSA regulations requiring locking devices thereby eliminating the need for these regulations. *Termination of rulemaking published January 31, 1979 (44 FR 6156).*	D. W. Morrison, (202)426-1700.	*Withdrawn.*
Review: Relocation Assistance-Moving Payments-Moving Expense Schedules.	This regulation would set forth the FHWA approved moving expense schedules which are applicable to all residential moves necessitated by all Federal programs administered by all Federal agencies. These schedules are reviewed and updated by each State highway agency on a semiannual basis and approved by FHWA prior to final publication in the *Federal Register* semiannually. (49 CFR pt. 25; FHPM 7-5-3).	R. G. King, (202)426-0116.	*FR July 1980. FR January 1980.*
Employment and Materials Report PR-47.	This regulation would implement new reporting procedures for the collection of data on usage of highway construction materials, supplies and labor (FHPM 6-4-1-9). *It has been determined that the material in this directive is not regulatory. It has now been superseded by 6-1-1-11.*	L. Staron, (202)426-0404.	*Withdrawn.*
Roadway Drainage.....	This regulation would provide FHWA policy and procedures for the design of roadway drainage systems for conveying runoff from highways. (23 CFR pt. 650).	Frank L. Johnson or Philip L. Thompson, (202)472-7690.	NPRM *December 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Uniform Criteria for Warning Devices at Railroad-Highway Grade Crossings (Docket No. 78-13).	This regulation would issue uniform nationwide criteria for the selection of various types of warning devices to be installed at railroad-highway grade crossings. ANPRM published August 10, 1978. (43 FR 35491) (23 CFR pt. 646).	J. A. Carney, (202)426-0104.	NPRM *September 1979.*
Review: Bikeway Design and Construction Standards (Docket No 79-3).	This regulation establishes design and construction standards for bikeways. *ANPRM published on February 8, 1979 (44 FR 7979).*	Ken Rickerson (202)426-0314.	*NPRM September 1979.*
Review: The General Part of the Federal Motor Carrier Safety Regulations (FMCSR).	The FHWA is considering amending Part 390 in the first step of a general revision of the FMCSR. The purpose of the revision is to improve and simplify the regulations (49 CFR pt. 390).	Gerald J. Davis, (202)426-9767.	NPRM *January 1980.*
Review: Cardiovascular Requirements.	The FHWA considered amending the minimum cardiovascular requirements (49 CFR 391:41(b)(4) in order to introduce a classified approach for examining physicians to evaluate the status of individual drivers with cardiovascular disease. NPRM published in *Federal Register* on April 27, 1976 (41 FR 17569). *Termination of rulemaking published May 29, 1979 (44 FR 30704)* (49 CFR 391.4).	Gerald J. Davis, (202)426-9767.	*Withdrawn.*
Applachian Highway Procedures.....	This regulation revision would reflect the recent legislative change in the participation percentage for Appalachian funds and would make several minor changes to existing procedures. (23 CFR pt. 633, subpt. B; FHPM 6-9-10-1).	W. Bullard, (202)426-0175.	NPRM *October 1979.*
Carpool and Van Summary.....	This regulation revision would reflect the required changes brought about by the Surface Transportation Assistance Act of 1978 plus related program modifications. (23 CFR pt. 656; FHPM 4-8-3).	Barbara Reichart, (202)426-0210.	*NPRM August 1979.*
Step, Handhold, and Deck Requirements on Commercial Motor Vehicles..	This regulation would require (1) step, deck, and handhold requirements on high profile Cab Over Engine type tractors; (2) step, handhold, and deck requirements on the rear of all other truck tractors; and (3) step and handhold requirements on the front of trucks as well as all trucks/tractors. NPRM was published in the *Federal Register* on February 15, 1978 (42 FR 6638), *Final Rule was published July 26, 1979 (44 FR 43730).* (49 CFR pt. 393).	Gerald J. Davis, (202)426-9767.	*Action Complete.*
Safer Off-System Roads Program (Docket No. 79-1).	This revision to the regulation is necessitated by the provisions of Section 168(d) of the Surface Transportation Assistance Act of 1978 which requires that not less than 50 percent of the SOS funds be obligated for highway safety improvement projects. *Final Rule was published February 1, 1979 (44 FR 6380). (23 CFR pt. 922).*	J. L. Rummel, (202)426-2131.	*Action Complete.*
*Federal-aid Program Approval and Project Authorization (Docket No. 78-37).	This revision reflects the change of the Surface Transportation Assistance Act of 1978 requiring State highway agencies (SHA) to consult with local officials when selecting projects for the use of secondary system funds where all public roads and highways are under the control and supervision of the SHA. Final Rule was published March 1, 1979 (44 FR 11541). (23 CFR pt. 630 Subpt. A; FHPM 6-3-2-2).	V. Ciletti, (202)426-0450.	Action Complete.
*Federal Participation in Cost of Truck Weighing Station Construction Items..	This revision reflects the change of the Surface Transportation Assistance Act of 1978 to now allow the use of Federal-aid construction funds to construct scales and scale-houses which facilitate an effective vehicle weight enforcement program. The regulation prohibiting such use was rescinded March 2, 1979 (44 FR 11754). (23 CFR pt. 630 Subpt. I; FHPM 6-3-2-11).	V. Ciletti, (202)426-0450.	Withdrawn.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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FHWA — **Federal Highway Administration**

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
*Hours of Service—Drivers Declared "Out of Service".	This regulation permits Bureau of Motor Carrier Safety agents to declare a driver "out of service" for a consecutive eight-hour period if the driver has not produced driver's logs for the day of examination and for the prior seven consecutive days. Final Rule published June 18, 1979 (44 FR 34960). (49 CFR 395.8).	Gerald J. Davis, (202)426-1967.	Action Complete.
*National Bridge Inspection Standards.	This regulation provides guidance and establishes procedures concerning the national bridge inspection standards in accordance with Section 124 of the Surface Transportation Assistance Act of 1978. *Final Rule published May 1, 1979 (44 FR 25434).* (23 CFR pt. 650 Subpt. C).	Stanley Gordon, (202)472-7697.	Action Complete.
*State Highway Safety Agency (Docket No. 79-10).	This rule would replace the existing Joint FHWA/NHTSA Orders on State agencies with a new Part 1251, *State Highway Safety Agency* in Title 23, Code of Federal Regulations. It proposes to establish new requirements for the authority and function of State highway safety agencies. (23 CFR pt. 1251).	FHWA J. L. Rummel, (202)426-2131. NHTSA George Reagle, (202)426-0068.	FR August 1979.
	FR August 1979		
*State Matching of Planning and Administration Cost.	This Notice proposes to establish NHTSA and FHWA policy on State planning and administration costs associated with carrying out a highway safety program under the Highway Safety Act with a new Part 1252, *State Matching of Planning and Administration Costs* in Title 23, Code of Federal Regulations. It would define planning and administration costs, describe the expenditures that may be used to satisfy the State matching requirement, prescribe how the requirement will be met, and specify when the State will have to comply with the requirement. *NPRM was published on July 16, 1979 (44 FR 41244).* (23 CFR pt. 1252).	FHWA J. L. Rummel, (202)426-2131. NHTSA George Reagle, (202)426-0068.	FR October 1979.
	FR October 1979		
*Innovative Project Grants	An ANPRM will be issued by FHWA and NHTSA to solicit suggestions, views and comments from all interested parties for use in the development of proposed criteria, procedures, and policies to be issued in an NPRM for administration of Innovative Project Grants under 23 U.S.C. 407 when funds are appropriated. *ANPRM published July 19, 1979 (44 FR 42233).* (23 CFR pt. 1217).	FHWA J. L. Rummel, (202)426-2131. NHTSA George Reagle, (202)426-0068.	NPRM December 1979.
	NPRM December 1979		
*Equal Employment Opportunity on Federal-aid Highway Construction Contracts.	This rule would replace existing Forms PR 1391 and PR 1392 with revised Forms PR 1391 and PR 1392 to conform with the standard racial/ethnic categories set forth by the Office of Management and Budget Circular A-46 for statistical reporting of employment data in Federal agencies. (23 CFR pt. 230, subpt. A; FHPM 6-4-1-2).	K. L. Ziems, (202)426-4847.	FR August 1979.
*Program Approval and Project Authorization Procedures.	This rule would focus attention on the statutory provisions of 23 U.S.C. 109 and highlight a provision added by Section 141(g) of the Surface Transportation Assisstance Act of 1978 insuring continued travel routes for mopeds, bicycles and pedestrians. (23 CFR pt. 630; FHPM 6-3-2-2).	V. Ciletti, (202)426-0450.	FR August 1979.
*Bicycle Grants Programs	This rule would revise FHPM 6-9-14 Bikeway Demonstration Program to include the bicycle grants program authorized under Section 141 of the Surface Transportation Assistance Act of 1978. The FHPM title will be changed to "Bicycle Grants Program." (23 CFR pt. 663; FHPM 6-9-14).	Ken Rickerson, (202)426-0314.	NPRM September 1979.
*Seat Belts for Buses	This ANPRM would request comments on a proposal to require seat belts for passengers on buses for the two front seats and the unprotected center aisle back seat (49 CFR pt. 393).	D. W. Morrison, (202)426-1700.	ANPRM September 1979.
*Retread Tires for Trucks	This ANPRM would request comments on a proposal to extend the prohibition from buses to trucks on using retreaded or regrooved tires on the front wheels of these vehicles.	D. W. Morrison, (202)426-1700.	ANPRM September 1979.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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FHWA — Federal Highway Administration

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
*Accessibility of Highway Rest Area Facilities to Handicapped Persons.	This proposed revision of this regulation is to be included as part of a general review of part 752. (23 CFR pt. 752).	Ken Rickerson, (202)426-0314.	NPRM April 1980.
*Manual on Uniform Traffic Control Devices.	The Manual on Uniform Traffic Control Devices (MUTCD) contains the national standards for traffic control devices erected on all streets and highways open to public travel. These standards are constantly under review and revisions and amendments are published from time to time. This portion of the Agenda lists the individual standards which are currently undergoing this process. (23 CFR pt. 1204).	J. C. Partlow, 426-0411.	
	(1) Color of Type III Object markers		NPRM October 1979.
	(2) Use of a black border around the periphery of RR crossbuck signs.		NPRM October 1979.
	(3) Addition of a bicycle parking sign		NPRM October 1979.
	(4) Color of pedestrian signal walk lenses		NPRM October 1979.

NHTSA — National Highway Traffic Safety Administration

Significant Regulations

Title	Summary	Contact	Decision date
Uniform Tire Quality Grading System (Docket No. 25).	**A. Description:** Grades tires on treadlife, wet traction and temperature resistance and requires that these relative grades be made available to purchasers.	Michael Brownlee, (202)426-1740.	*Action Complete.*
	B. Why Significant: This action is considered significant because of public interest.		
	C. Regulatory Analysis: Not required		
	D. Need: This regulation is Congressionally mandated and the Agency is under court order requiring its issuance.		
	E. Legal Basis: National Traffic and Motor Vehicle Safety Act of 1966, as amended, Title II Section 203.		
	F. Chronology: NPRM (39 FR 20808) issued in June 1974 and Final Rule issued in May 1975, (40 FR 23073). The rule was challenged by the domestic manufacturers but was upheld, except for remand for minor changes, by the Sixth Circuit Court of Appeals. Effective dates for the bias and belted bias tires issued July 12, 1978 (43 FR 30542). A notice soliciting comments on procedures for using existing rule for radials treadwear grading issued November 6, 1978 (43 FR 51735). *Comment period extended to December 19, 1978. (43 FR 57308) FR issued 3/9/79 (44 FR 15721).*		
	G. Citation: 49 CFR pt. 575.*104*		
Light Truck and Van Fuel Economy Rulemaking (Docket No. FE 78-01).	**A. Description:** Would set average fuel economy standards for Model Years 1982-1985 light trucks.	Richard Strombotne, (202)426-0846.	NPRM *September 1979.*
	B. Why Significant: The rule is considered significant because of the impact on the automotive industry, the public, and energy consumption.		

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NHTSA **National Highway Traffic Safety Administration**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	C. Regulatory Analysis: Required		
	D. Need: Conservation of petroleum		
	E. Legal Basis: Motor Vehicle Information and Cost Savings Act, as amended, 15 USC 2002.		
	F. Chronology: None yet		
	G. Citation: 49 CFR pt. 533		
Air Brake Systems (Docket No. 75-16).	**A. Description:** Proposes a moratorium on the anti-lock requirements of Federal Motor Vehicle Safety Standard FMVSS) 121 for trailers and the establishment of a test program to determine the effects of anti-lock.	A. Malliaris, (202)426-0842.	*Withdrawn.*
	B. Why Significant: The rule is considered significant because of the level of public and Congessional interest.		
	C. Regulatory Analysis: Not required		
	D. Need: In response to complaints from truck users about the safety and reliability of the anti-lock systems.		
	E. Legal Basis: National Traffic and Motor Vehicle Safety Act of 1966, as amended.		
	F. Chronology: *An NPRM was published March 9, 1978 which proposed a suspension of the "no lockup" provision in the performance requirements for air brake systems (43 FR 9626). Subsequently, the "no lockup" requirement was invalidated by the Ninth Circuit in Paccar v. National Highway Traffic Safety Administration and Department of Transportation. 573 F.2d 632 (9th Cir. 1978). Therefore, further rulemaking became unnecessary and the proposal was withdrawn on February 15, 1979. (44 FR 9783).*		
Passenger Automobile Fuel Economy Rulemaking.	**A. Description:** Reevaluates average fuel economy standards for model years 1984 and 1985 passenger automobiles and would set average fuel ecomony standards for model year 1986 passenger automobiles.	Richard Strombotne, (202)426-0846.	*Further action to be determined pending review.*
	B. Why Significant: The rule is considered significant because of the impact on the automotive industry, the public, and energy consumption.		
	C. Regulatory Analysis: Required		
	D. Need: Conservation of petroleum		
	E. Legal Basis: Motor Vehicle Information and Cost Savings Act, as amended—15 USC 2002. Because of the recent decision to maintain the 1981-85 passenger car fuel economy standards, this rule was withdrawn.		
	F. Chronology: *Because of the recent decision to maintain the 1981-85 passenger car fuel economy standards, activity on this rule was temporarily suspended.*		
	G. Citation: 49 CFR pt. 531		
Confidential Business Information (Docket No. 78-10).	**A. Description:** Would codify existing method of processing confidential information from manufacturers.	*Frank Berndt,* (202)426-9511.	FR *September 1979.*
	B. Why Significant: This rule considered significant because of the controversial nature of confidential business information.		

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NHTSA — **National Highway Traffic Safety Administration**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	C. Regulatory Analysis: Not required D. Need: To assure the manufacturer a more predictable process of information gathering and to streamline and speed up NHTSA use of data. E. Legal Basis: National Traffic and Motor Vehicle Safety Act of 1966, as amended, and the Motor Vehicle Information and Cost Savings Act, as amended 15 USC 1381; 15 USC 2002. F. Chronology: NPRM issued 5/25/78. (43 FR 22412) G. Citation: 49 CFR pt. 512		
Light Truck and Van Fuel Economy Rulemaking (Docket FE 77-05).	A. Description: Chrysler Corporation has petitioned the NHTSA to reduce the 1981 model year light truck average fuel economy standards. B. Why Significant: The petition is considered significant because of the impact on the automotive industry, the public, the light truck fuel economy standards for model years 1982-1984, and energy consumption. C. Regulatory Analysis: Required D. Need: Balance the Chrysler claims of restricted light truck production against the conservation of petroleum provided by the existing standard. E. Legal Basis: Motor Vehicle Information and Cost Savings Act, as amended, 15 USC 2002. F. Chronology: September 20, 1978—Initial Chrysler recommendation. September 28, 1978—Chrysler requested that the recommendation be treated as a petition. October 16, 1978—NHTSA request for additional information to enable handling recommendation as a petition. December 13, 1978—NPRM issued. January 17, 1979—Closing date for public comments. *Final rule issued 6/25/79 (44 FR 36975)* G. Citation: 49 CFR pt. 533	Richard Strombotne, (202)426-0846.	*Action Complete.*
Air Brake System (Docket *79-03)*...	A. Description: *Seeks public comment on steps to be taken regarding a new Air Brake Standard No. 130 for trucks buses, and trailers to replace Air Brake Standard No. 121 including reinstatment,* without a no wheel lock-up requirement, of a stopping distance requirement in the standard to replace the one invalidated by the Ninth Circuit Court of Appeals decision. Also would seek public comment on problems associated with disconnecting anti-lock systems and in building vehicles to comply with the standard as modified by the court action. B. Why Significant: The rule is considered significant because of the level of public and Congressional interest. C. Regulatory Analysis: Not required D. Need: *To terminate the adversary atmosphere related to fixing the existing Air Brake Standard and* to prevent degradation of current braking performance as a result of the Court's action. E. Legal Basis: National Traffic and Motor Vehicle Safety Act of 1966 as amended.	A. Malliaris, (202)426-0842.	*NPRM September 1980.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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NHTSA — **National Highway Traffic Safety Administration**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	F. Chronology: *ANPRM issued 2/15/79. (44 FR 9783). Comment period closed 4/16/79.*		
	G. Citation: *49 CFR 571.121*		
Truck and Trailer Brake Systems	**A. Description:** Would establish long term agency interest in such advanced braking systems concepts as antilock systems, automatic brake adjustors for heavy trucks and buses, and disc brakes for heavy trucks and buses.	A. Malliaris, (202)426-0842.	ANPRM *August 1979.*
	B. Why Significant: This rule is considered significant because of the level of public and Congressional interest.		
	C. Regulatory Analysis: Not required		
	D. Need: To establish long term plans for truck braking regulations.		
	E. Legal Basis: National Traffic and Motor Vehicle Safety Act of 1966, as amended.		
	F. Chronology: None yet		
	G. Citation: 49 CFR 571.121. 49 CFR 571. 105-75		
*Multipiece Rims on Trucks and Buses.	**A. Description:** NHTSA is examining the need to issue a requirement prohibiting the use of multipiece rims because of their potential for explosive separation.	A. Malliaris (202)426-0842.	Further action to be determined.
	B. Why Significant: This rulemaking is considered significant because of the level of interest shown by users and manufacturers of these rims, and because of the cost impacts.		
	C. Regulatory Analysis: Required		
	D. Need: Balance the safety hazards associated with the use of these rims against the added costs of using safer single-piece rims.		
	E. Legal Basis: National Traffic and Motor Vehicle Safety Act of 1966, as amended.		
	F. Chronology: ANPRM issued March 5, 1979. (44 FR 12072).		
	G. Citation: 49 CFR 571.120		
*Bumper Standard	**A. Description:** NHTSA released an updated cost benefit analysis on the bumper standard on June 1, 1979.	Michael Brownlee, (202)426-1740.	Further action to be determined.
	B. Why Significant: This rulemaking is considered significant because of the level of interest shown by Congress, bumper manufacturers, and because of the cost impacts to consumers.		
	C. Regulatory Analysis: Not required		
	D. Need: Congress has asked for a cost benefit study analyzing the merits of 2.5 mph bumpers vs. 5.0 mph bumpers.		
	E. Legal Basis: National Traffic and Motor Vehicle Safety Act of 1966, as amended.		

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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NHTSA **National Highway Traffic Safety Administration**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	F. Chronology: ANPRM issued 3/1/79 (44 FR 11569). Comment period closed 4/30/79. Task Force organized and contractor began work on Bumper Study, April 2, 1979. Final report published June 1, 1978. G. Citation: 49 CFR pt. 581		

NHTSA **National Highway Traffic Safety Administration**

Non-significant Regulations

Title	Summary	Contact	Decision date
Seat Belt Assemblies (Docket No. 74-14).	Would improve seat belt comfort, convenience, reliability and effectiveness by prescribing parameters for performance of seat belt assemblies. (49 CFR 571.208).	A. Malliaris, (202)426-0842.	NPRM *September 1979.*
Child Restraint Systems (Docket No. 74-9).	Would upgrade performance of all child restraints by performing dynamic tests using child and infant dummies; regulate infant restraints. NPRM issued 5/18/78 (49 CFR 571.213).	A. Malliaris, (202)426-0842.	FR *November 1979.*
School Bus Passenger Seating and Crash Protection.	Would amend FMVSS 222 to increase the maximum allowable seat spacing in school buses from 20 to 21 inches; this spacing would accommodate large high school students while still ensuring a safe level of school bus seat performance. *FR issued 3/29/79 (44 FR 18674)* (49 CFR 571.222).	A. Malliaris, (202)426-0842.	*Action Complete.*
School Bus Crash Protection (Docket No. 73-03).	Would amend 571.3 definitions to include a subclassification for "School Activities Bus" and amend FMVSS 222 as it would apply to this vehicle class. (49 CFR 571.222).	A. Malliaris, (202)426-0842.	NPRM *November 1979.*
Test Dummies Representing 6-Month Old and 3-Year Old Children (Docket No. *78-09).*	Would provide specifications for dummies to be used in testing for compliance with FMVSS 213, Child Restraint Systems, in conjunction with proposal to amend that standard to provide for dynamic testing and to extend its applicability. NPRM issued 5/18/78. (43 FR 21490) (49 CFR pt. 572).	A. Malliaris, (202)426-0842.	FR *November 1979.*
Adjudicative Procedures Fuel Economy.	Would establish procedures and rules of practice for adjudications to enforce the fuel economy provisions in Title V of the Motor Vehicle Information and Cost Savings Act. This was issued as an interim regulation 10/16/78 (43 FR 47507-28). Public comments will be invited. (49 CFR pt. 511).	Stephen Wood, (202)426-2992.	FR *August 1979.*
Low Volume Manufacturers Fuel Economy Rulemaking (Docket No. FE 76-04).	A rule may be proposed to streamline the requirements regarding the contents of and procedures for disposition of petitions from low volume automobile manufacturers (gasoline and diesel) for exemption and for establishment of alternative standards. *NPRM issued 4/9/79 (44 FR 21051)* (49 CFR pt. 525).	Richard Strombotne, (202)426-0846.	FR *September 1979.*
Occupant Protection in Interior Impacts.	Would extend to trucks, buses, and multipurpose vehicles of 10,000 pounds or less, the current standard for passenger cars designed to cushion impact of passengers striking interior vehicle structures. NPRM issued 11/9/78, (43 FR 52264-68), (49 CFR 571.201).	A. Malliaris, (202)426-0842.	FR *August 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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NHTSA **National Highway Traffic Safety Administration**

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Energy Absorbing Steering Column.	Would extend to trucks, buses, and multipurpose passenger vehicles of 10,000 pounds or less, the current standard for passenger cars designed to protect drivers striking the steering column. NPRM issued 11/9/78, (43 FR 52264-68), (49 CFR 571.203).	A. Malliaris, (202)426-0842.	FR *August 1979.*
Steering Control Rearward Displacement.	Would extend to trucks, buses, and multipurpose passenger vehicles of 10,000 pounds or less, the current standard for passenger cars designed to limit the rearward movement of the steering assembly to reduce the likelihood of death and injury to the driver. NPRM issued 11/9/78, (43 FR 52264-68) (49 CFR 571.204).	A. Malliaris, (202)426-0842.	FR *August 1979.*
Door Locks and Door Retention Components.	This technical amendment would clarify existing test procedures and extend the applicability of FMVSS 206 such that present side door requirements cover transverse rear doors. (49 CFR 571.206).	A. Malliaris, (202)426-0842.	NPRM *August 1979.*
Gross Coupling Weight Rating (Docket No. 73-15).	An amendment to the regulations on certification (49 CFR pt. 567) and of vehicles manufactured in two or more stages (49 CFR pt. 568) would require labeling of the gross coupling weight rating for semi-trailers.	A. Malliaris, (202)426-0842.	FR *September 1979.*
Fields of Direct View (Docket No. 70-7).	This proposal would establish requirements for the maximum allowable size of obstructions in the field of view of drivers, the luminous transmittance of glazing, and the location and functional characteristics of sun visors. NPRM issued 11/6/78 (43 FR 51677).	A. Malliaris, (202)426-0842.	FR March 1980.
Rear View Mirrors (Docket No. 71-3a).	This proposal would amend FMVSS 111 to: (a) reduce the blind areas by upgrading mirror visibility using improved compliance testing procedures, (b) upgrade occupant protection requirements and add pedestrian protection requirements using shatter resistant and breakaway or foldaway tests, (c) set specifications for day-night reflectance requirements to reduce headlight glare, (d) set specifications for convex mirror quality and use, and (e) minimize obstruction of the forward view by establishing mirror location specifications. NPRM issued 11/6/78 (43 FR 51657), (49 CFR 571.111).	A. Malliaris, (202)426-0842.	FR March 1980.
Hydraulic Brake Systems (Docket No., 70-27).	This proposal would extend coverage of FMVSS 105-75 from passenger cars to multi-purpose vehicles, buses, and trucks. (49 CFR 571.105). For vehicles, *with* Gross Vehicle Weight Rating (GVWR) of 10,000 lbs. *or less.* For vehicles over GVWR 10,000 lbs.	A. Malliaris, (202)426-0842.	NPRM *September 1979* NPRM Fiscal Year 1980.
Brake System Inspectability.....	Would require vehicle modifications in order to inspect for certain levels of brake degradation in accordance with proposed test procedures and criteria for measurement.	A. Malliaris, (202)426-0842.	NPRM September 1979.
Theft Protection (Docket No. 1-21).	Would amend existing standard to require separate keys for doors and ignition, door lock modifications, internal control of hood latch, modification in ignition wiring and ignition key alarm. Would apply to passenger cars, light trucks and vans. NPRM issued 5/1/78. (49 CFR 571.114).	A. Malliaris, (202)426-0842.	*FR September 1979.*
Lamps, Reflective Devices, and Associated Equipment (Docket No. 69-19).	This proposal would revise the minimum size requirement of lenses used on moped stop lamps. It is in response to a petition that the current requirements are excessively stringent. (49 CFR 571.108).	A. Malliaris, (202)426-0842.	*NPRM August 1979.*
Vehicle Identification Number (VIN) (Docket No. 1-22).	Responds to petitions for reconsideration of FR issued 8/78. An NPRM was issued 11/9/78 (93 CFR 52268) proposing certain format changes. *FR issued 3/15/79. (44 FR 17489).* (49 CFR 571.115).	A. Malliaris, (202)426-0842.	*Action Complete.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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NHTSA **National Highway Traffic Safety Administration**

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Pedestrian Protection	Would reduce adult pedestrian lower torso and leg injuries and child injuries through modification of the bumper, grille and hood edges. *(49 CFR 571).*	A. Malliaris, (202)426-0842.	ANPRM *September 1979.*
Consumer Information—Wet Stopping Distance.	Develop a new rule for consumer information if tests indicate that there are significant differences in wet stopping distances among different models of cars on asphalt or concrete road surfaces. (49 CFR 105.75).	Michael Brownlee, (202)426-1740.	NPRM *November 1979.*
Bumper Standard	Extend the bumper height requirements to all vehicles under 10,000 lbs. GVWR. Increase the extent to which the vehicle population has matching bumpers, thereby reducing the underride/override problem in vehicle to vehicle accidents involving a light truck, van or multipurpose vehicle. (49 CFR pt. 581).	Michael Brownlee, (202)426-1740.	ANPRM *September 1979.*
Rear Lighting and Signalling	Would establish requirement for the separation of function of rear lighting and signalling and establish requirements for the location of brake lights. (49 CFR 571.108).	A. Malliaris, (202)426-0842.	ANPRM September 1979.
Battery Explosions	Would establish performance requirements and labeling of batteries to reduce the incidence of battery explosions while jump starting. (49 CFR 571).	A. Malliaris, (202)426-0842.	NPRM September 1979.
Interior Noise Levels	Would establish maximum allowable interior noise levels in all heavy trucks by extending the current Bureau of Motor Carrier Safety requirement to new vehicles. (49 CFR 571).	A. Malliaris, (202)426-0842.	NPRM September 1979.
*Controls & Displays (Docket No. 1-18).	(a) This final rule would respond to petitions for reconsideration by making minor clarifications.	A. Malliaris, (202)426-0842.	FR August 1979.
	(b) A NPRM will amend the standard to include several symbols adopted by the International Standards Organization (ISO).	A. Malliaris, (202)426-0842.	NPRM September 1979.
*Speedometers and Odometers	A final rule on FMVSS 127 was issued 3/22/79 (44 FR 17500) which responded to petitions for reconsideration by deleting the 10% limit on distance between graduations on speedometer scales, increasing the leadtime for speedometer accuracy and odometer tamper resistance and clarifying the irreversibility option for odometers. An NPRM (also in response to the petitions for reconsideration) was also issued on the same day to further amend the standard with regard to replacement odometers and further refinements in the irreversibility option for odometers.	A. Malliaris, (202)426-0842.	FR September 1979.
*Air Brake Systems	This final rule would ease the compliance burden by allowing parking brakes to be applied by air pressure. It would finalize a portion of a NPRM issued 9/78.	A. Malliaris, (202)426-0842.	FR August 1979.
*Truck Rear Underride Protection	Would require protective devices to eliminate vehicle penetration under the rear-ends of heavy trucks and trailers and to dissipate crash force, thus reducing accident severity.	A. Malliaris, (202)426-0842.	NPRM September 1979.
*Fuel System Integrity (Docket No. 73-20).	This ANPRM discusses the possibility of establishing specific performance requirements in Safety Standard No. 301-75 for non-metallic fuel tanks (plastic tanks) used in motor vehicles. ANPRM issued 6/2/79. (44 FR 33441).	A. Malliaris, (202)426-0842.	ANPRM September 1979.
*Tire Identification and Recordkeeping.	Amendment to require ID on outward facing sidewall of motor vehicle tires.	A. Malliaris, (202)426-0842.	NPRM September 1979.
*Consumer Information—Acceleration and Passing Ability and Tire Reserve Load.	Would amend the Consumer Information Regulations by deleting the acceleration and passing ability items and modify the class of vehicles to which the tire reserve load provisions apply. NPRM issued 3/15/79 (44 FR 15748).	Michael Brownlee (202)426-1740.	FR September 1979.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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NHTSA — **National Highway Traffic Safety Administration**

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
*Motorcycle Helmets	This technical amendment would increase the percentage of helmet sizes covered by FMVSS 218 by testing large and extra-large helmets with the medium (size "C") headform. Currently, only medium size helmets are covered. (49 CFR 571.218).	A. Malliaris, (202)426-0842.	NPRM August 1979.
*Windshield Retention and Windshield Zone Intrusion.	This technical amendment would change the crash test requirements for FMVSS 212 and 219 for trucks manufactured in more than one stage. (49 CFR 571.212, 571.219).	A. Malliaris, (202)426-0842.	NPRM August 1979.
*Side-Door Strength	This technical amendment would change the test requirements for FMVSS 214 to allow the seats to remain in the car during the side door crush test. The seats currently must be removed. NPRM issued 6/2/79 (44 FR 33444). (49 CFR 571.214).	A. Malliaris, (202)426-0842.	FR September 1979.
*Glazing Materials	This technical amendment would delete the abrasion resistance requirements for certain types of glazing used on side windows of light trucks and vans (49 CFR 571.205).	A. Malliaris, (202)426-0842.	NPRM September 1979.
*Designated Seating Position	This final rule amended the definition of "designated seating position" to clarify which seating positions must be considered as positions that will be used by vehicle occupants while the vehicle is in motion. Final rule issued 4/12/79. (44 FR 23229). (49 CFR 571.3).	A. Malliaris, (202)426-0842.	Action Complete.
Vehicle Speed Control	Trailways Bus Company petitioned for a FMVSS to require road speed governors for all commercial vehicles. A request for comments was published in the **Federal Register** on 3/19/79 with a closing date of 8/17/79. Further Agency action will await results from research.	A. Malliaris, (202)426-0842.	Further action to be determined.
*New Pneumatic Tires	Proposed amendments would delete Appendix A (Tire Tables) of FMVSS 109 to ease introduction of new tire concepts and would add criteria to insure compatibility of new concepts with existing tire types.	A. Malliaris, (202)426-0842.	ANPRM September 1979.
*Odometer disclosure	Would amend disclosure requirements to allow the States to use an abbreviated disclosure statement on all State-supplied transfer documents, as well as on certificates of title. NPRM issued 5/14/79. (44 FR 28032).	John Womack, (202)426-1834.	FR September 1979.
*State Highway Safety Agencies	Would establish new requirements for the authority and function of state highway safety agencies, in keeping with the direction of Congress in the Surface Transportation Assistance Act of 1978. The proposal would upgrade the safety agencies by authorizing them to review and comment on all highway safety programs in the state, regardless of funding source. NPRM issued 6/21/79. (44 FR 36204).	George Reagle, (202)426-0068.	FR September 1979.
*State Matching of Planning and Administration Costs.	Would establish procedure for the the States to provide 25 percent of highway safety planning and administration costs as required by subsection 207(d) of the Surface Transportation Assistance Act of 1978.	George Reagle, (202)426-0068.	NPRM July 1979.
*Innovative Project Grants	Would establish procedures and criteria for the award of grants for innovative highway safety projects, as provided by section 208 of the Surface Transportation Assistance Act of 1978.	Charles Livingston, (202)426-0837.	ANPRM July 1979.
Fuel Economy Exemptions:			
Exemption from and Establishment of Fuel Economy Standards (Docket No. LVM 77-01).	Analysis of petition for exemption from 1979 and 1980 standards for Avanti Motor Corp. (49 CFR pt. 525).	R. Strombotne, (202)426-0846.	NPRM *September 1979.* FR *November 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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NHTSA — National Highway Traffic Safety Administration

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Exemption from and Establishment of Fuel Economy Standards (Docket No. LVM 77-03).	Analysis of petition for exemption from 1979 and 1980 standards and setting of alternative standards for Checker Motors. NPRM issued 10/23/78. (43 FR 49336). (49 CFR pt. 525).	R. Strombotne, (202)426-0846.	FR *September 1979.*
Exemption from and Establishment of Fuel Economy Standards (Docket No. LVM 77-02).	Analysis of petition for exemption from 1978 standard and setting of alternative standard for Rolls-Royce Motors Inc. NPRM issued 7/15/78. (49 CFR pt. 525). *Final rule issued 1/18/79. (44 FR 3710).*	R. Strombotne, (202)426-0846.	*Action Complete.*
Exemption from and Establishment of Fuel Economy Standards (Docket No. LVM 77-05).	Analysis of petition for exemption from 1978 standard and setting of alternative standard for Excalibur Automobile Corp. NPRM issued 7/31/78. (49 CFR pt. 525). *Final rule isued 1/18/79. (44 FR 3708).*	R. Strombotne, (202)426-0846.	*Action Complete.*
Exemption from and Establishment of Fuel Economy Standards (Docket No. LVM 77-02).	Analysis of petition for exemption from 1979 and 1980 standards and setting of alternative standards for Rolls-Royce Motors, Inc. (49 CFR pt. 525).	R. Strombotne, (202)426-0846.	NPRM *September 1979.* FR *November 1979.*
Exemption from and Establishment of Fuel Economy Standards (Docket No. LVM 77-04).	Analysis of petition for exemption from 1979-1980 standards and setting of alternative standards for Aston Martin Lagonda. (49 CFR ot. 525).	R. Strombotne, (202)426-0846.	NPRM *September 1979.* FR *November 1979.*
Exemption from and Establishment of Fuel Economy Standards (Docket No. LVM 77-05).	Analysis of petition for exemption from 1979 and 1980 standards and setting of alternative standards for Excalibur Automobile Corp. (49 CFR pt. 525).	R. Strombotne, (202)426-0846.	NPRM *September 1979.* FR *November 1979.*
Exemption from and Establishment of Fuel Economy Standards.	Analysis of petition for exemption from 1979 and 1980 standards and setting of alternative standards for Lamborghini, S.p.A. (49 CFR pt. 525).	R. Strombotne, (202)426-0846.	NPRM *September 1979.* FR *November 1979.*
Exemption from and Establishment of Fuel Economy Standards.	Analysis of petition for exemption from 1978 standard and setting of alternative standard for Maserati S.p.A. *FR issued 3/1/79. (44 FR 11548).* (49 CFR pt. 525).	R. Strombotne, (202)426-0846.	*Action Complete.*
Exemption from and Establishment of Fuel Economy Standards.	Analysis of petition for exemption from 1979 and 1980 standards and setting of alternative standards for Maserati, S.p.A. (49 CFR pt. 525).	R. Strombotne, (202)426-0846.	NPRM *August 1979.* FR *October 1979.*

FRA — Federal Railroad Administration

Significant Regulations

Title	Summary	Contact	Date
Strobe Lights on Locomotives (Docket No. RSGC-2).	**A. Description:** Lighted warning devices that include strobe lights have been shown to be more readily visible than normal lighting devices. FRA is considering requiring the installation of strobe lights on locomotives. **B. Why Significant:** Degree of controversy reflected by response to ANPRM. **C. Regulatory Analysis:** Required. **D. Need:** Grade crossing accidents represent the single largest group of railroad related fatalities each year. Available data indicate that the conspicuity of locomotives may be a factor in many of these accidents. Limited research with one railroad has indicated that equipping locomotives with strobe lights will improve their conspicuity and may lead to a reduction in these accident statistics. **E. Legal Basis:** The Federal Railroad Safety Act of 1970 (45 U.S.C. 431). **F. Chronology:** The ANPRM was published 3/7/78 (43 FR 9328). *NPRM was published 6/18/79 (44 FR 34982).* **G. Citation:** Will be 49 CFR pt. 222.	John A. McNally, (202)426-9178.	FR *December 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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FRA — Federal Railroad Administration

Significant Regulations—Continued

Title	Summary	Contact	Date
Final Station Program Cost Sharing Determination (FRA Intercity Passenger Docket No. 1).	**A. Description:** Title VII of the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act) (45 U.S.C. 851 *et seq.*) provides for the upgrading by the Secretary of Transportation of the passenger railroad system between Washington, D.C. and Boston, Massachusetts, including the funding of certain station improvements. Non-Federal parties will have to bear one-half of the cost of the non-operational portions of stations (as determined by the Secretary) used in intercity passenger service and of related facilities. This notice would set forth the Department's determination as to what will constitute a "nonoperational portion" of a station and a "related facility" for purpose of allocating station project costs between the Federal government and other participating entities. **B. Why Significant:** Great interest on the part of State and local transportation agencies due to the shared cost implication of the Secretary's determination. **C. Regulatory Analysis:** Not required. **D. Need:** Required by statute. **E. Legal Basis:** Sec. 703(1)(B) of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 853(1)(B)). **F. Chronology:** NPRM was published on 4/28/78 (43 FR 18394). It had been under development since early 1977. **G. Citation:** No CFR citation as yet.	Jeff Godwin, (202)426-7710.	FR *September 1979.*

FRA — Federal Railroad Administration

Non-significant Regulations

Title	Summary	Contact	Date
Construction of Railroad Employees Sleeping Quarters (Docket No. HS-2).	The final rule implements a Congressional directive in the Hours of Service Act (45 U.S.C. 62(a)(4)) making it unlawful to begin construction of sleeping quarters in the immediate vicinity of a railroad yard. FR issued 7/19/78 (43 FR 31006). Petition for reconsideration by rail unions *denied 2/6/79.*	Grady C. Cothen, (202)426-8220.	*Action Complete.*
Railroad Bridge Safety Standards...	The proposed rule would establish safety standards for inspection and rating of load capacity for railroad bridges.	William R. Paxton, (202)426-0912.	ANPRM *August 1979.*
Railroad Noise Emission Compliance Regulations (Docket No. RNE-1).	The proposed rule would amend FRA Railroad Noise Emission Compliance Regulations to reflect EPA Standards for fixed railroad facilities that are to be issued by *8/79* (49 CFR pt. 210).	John A. McNally, (202)426-9178.	NPRM *January 1980.*
Rules, Standards, and Instructions for Railroad Signal Systems.	The proposed rule would seek to make miscellaneous technical amendments to the signal inspection rules (49 CFR pt. 236). To be included in general revision of Part 236 after completion of General Safety Inquiry; see FRA REVIEWS UNDER CONSIDERATION.	William R. Paxton, (202)426-0912.	Action deferred pending completion of general safety inquiry.
Safety Standards for Cabooses (Docket No. RSC-76-6).	The proposed rule would seek to establish comprehensive safety standards for cabooses.	Robert E. Abbott, (202)426-9186.	NPRM *January 1980.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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FRA

Federal Railroad Administration

Non-significant Regulations—Continued

Title	Summary	Contact	Date
Rail Services Assistance to States Under Section 5 of the DOT Act (FRA Economic Docket No. 4).	This action would amend 49 CFR pt. 266 to provide guidelines for a more comprehensive application for substitute service assistance, to implement proposals offered by the grantees at a recent public meeting, and to make changes necessitated by the enactment of the Local Rail Service Assistance Act of 1978. NPRM published on 1/6/78 (43 FR 1108).	Larry A. Friedman, (202)426-7737.	FR—*August 1979.*
Financial Assistance for Railroad Passenger Terminals—Revision of Regulations.	On 5/22/78, the regulations (49 CFR pt. 256) were amended to exclude certain functions transferred by law out of DOT, and to extend the deadlines for filing of applications (43 FR 21886). Although the regulations were issued in final form, comments were solicited until 7/1/78. As warranted, changes will be made on the basis of the comments received. *FR published 4/11/79 (44 FR 21646).*	David Talley, (202)472-5305.	*Action Complete.*
Safety Inquiry—Lifting Lugs on Freight Cars (Docket RSSI-76-2).	On 10/5/78, FRA published an order temporarily staying effectiveness of industry standards requiring lifting lugs on all new freight cars (43 FR 46052). FRA also published a notice of a special safety inquiry on this subject and conducted a public hearing on 10/31/78 (43 FR 46106). *Termination notice published 5/18/79 (44 FR 29416).*	Rolf Mowatt-Larssen, (202)426-0924.	*Action Complete.*
Improved Glazing Materials for Railroad Rolling Equipment (Docket No. RSGM-1).	Formerly classified as significant regulation. NPRM published 10/16/78 (43 FR 47579) proposing minimum safety requirements for glazing materials in windows of locomotives, passenger cars and cabooses to increase protection, against bullets and other projectiles. Public hearing held 11/29/78 (49 CFR pt. 229).	Robert E. Abbott, (202)426-9186.	FR *August 1979.*
Review: Freight Car Safety Standards (Docket No. RSFC-6).	Outgrowth of regulatory review in general safety inquiry. NPRM published 1/5/79 (44 FR 1419) proposing to revise Part 215.	Robert E. Abbott, (202)426-9186.	FR *October 1979.*
Review: Locomotives (*Docket No. LI-6).*	Outgrowth of regulatory review in general safety inquiry. Revision and updating of regulations to reflect technological advances and eliminate requirements that are no longer necessary for safety (49 CFR pt. 230). NPRM published *5/21/79 (44 FR 29604).*	Arthur T. Ireland, (202)426-9186.	FR *December 1979.*
Review: Track Safety Regulations.	Outgrowth of regulatory review in general safety inquiry. Revision and updating of current requirements. (49 CFR pt. 213).	William R. Paxton, (202)426-0912.	NPRM *July 1979.*
Review: Safety Appliance Standards.	Outgrowth of regulatory review in general safety inquiry. Revised standards for new and existing equipment. (49 CFR pt. 231).	Ralph R. Smith, (202)426-9187.	NPRM *August 1979.*
Review: Power Brake Rules.....	Outgrowth of regulatory review in general safety inquiry. Revision and updating of current requirements. (40 CFR pt. 232).	Ralph R. Smith, (202)426-9187.	NPRM *October 1979*
Nondiscrimination in Federally Assisted Railroad Programs.	*On 6/21/79, a FR was published (44 FR 36338) amending* 49 CFR pt. 265 *by establishing a new definition of minority business enterprise (MBE) and providing guidance in determining whether a business is an MBE.*	Rufus S. Watson, (202)472-5311.	*Action Complete.*
*Review: Signal and Communication Systems.	Outgrowth of regulatory review in general safety inquiry. Revision and updating of current requirements of Parts 235 and 236.	S. H. Stotts, (202)426-0912.	NPRM November 1979.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

FRA — Federal Railroad Administration

Routine and Frequent Non-significant Regulations

Title	Summary	Contact	Date
Rules for Use of Radio in Train Operations (Docket No. RSOR-5).	This final rule would establish penalty schedules for violations of radio rule requirements (49 CFR pt. 220).	John A. McNally, (202)426-9178.	FR *September 1979*

UMTA — Urban Mass Transportation Administration

Significant Regulations

Title	Summary	Contact	Decision date
Withdrawal of Interstate Segments and Substitution of Alternative Projects (Docket No. 77-9).	The regulation is being jointly developed by UMTA and FHWA and is summarized elsewhere in this agenda by the Federal Highway Administration.	Richard White (202)472-6991.	NPRM *August* 1979.
Private Enterprise Participation in Federally-Assisted Programs.	**A. Description:** Pursuant to sections 3(e) and 8(e) of the UMT Act, as amended, UMTA plans to publish procedures regarding the involvement of private mass transit operators in federally-assisted programs. **B. Why Significant:** While these regulations would implement statutory requirements, this is a controversial issue for both the transit industry and private operators. **C. Regulatory Analysis:** Not required. **D. Need:** To resolve an area of continuing controversy. **E. Legal Basis:** Sections 3(e) (1) and (2), and Section 8(e) of the UMT Act, as amended. **F. Chronology:** 8(e) was added to the Urban Mass Transportation Act by the Federal Public Transportation Act of 1978. NPRM to be prepared by *August* 1979. **G. Citation:** 49 CFR pt. 619.	Edward Gill, (202)426-1908.	NPRM *August* 1979
Paratransit Policy.	**A. Description:** UMTA will publish a policy regarding the availability of federal assistance for public and private operators in the provision of paratransit services. In addition, an ANPRM will be issued seeking comments on development of more specific guidelines concerning paratransit and the involvement of private operators in the planning and provision of service. Paratransit services addressed in the policy are meant to encompass those forms of collective passenger transportation which provide flexible, shared-ride service to the general public, or to special categories of users (such as elderly or handicapped persons) on a regular and predictable basis, but which do not necessarily operate on fixed schedules or over prescribed routes. **B. Why Significant:** The regulation is expected to have a direct or indirect effect on competition. **C. Regulatory Analysis:** Not required. **D. Need:** To provide uniform guidance to public and applicants. **E. Legal Basis:** The UMT Act, 49 U.S.C. 1601.	Douglas Birnie, (202)426-4060.	ANPRM *December* 1979

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

UMTA **Urban Mass Transportation Administration**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	F. Chronology: ANPRM to be prepared and issued by *December* 1979. G. Citation: None		
Urban Transportation Planning Process/Transportation Improvement Program.	The regulation is being jointly developed by UMTA and FHWA and is summarized elsewhere in this agenda by the Federal Highway Administration.	Bob Kirkland, (202)426-4991.	NPRM *October* 1979.
Environmental Procedures	A. Description: These regulations will prescribe UMTA procedures for environmental assessments and preparation of environmental impact statements on major agency actions significantly affecting the quality of the human environment. B. Why Significant: UMTA policy in this area may be expected to be of substantial interest to both UMTA grantees and the public. C. Regulatory Analysis: Not required D. Need: To provide uniform guidance to the public and applicants. E. Legal Basis: National Environmental Policy Act; DOT Order 5610.1; Section 14 of UMT Act; Council on Environmental Quality Regulations implementing NEPA (40 CFR pts. 1500–1508 (43 FR 55978)). F. Chronology: NPRM to be issued by *August* 1979 G. Citation: 49 CFR pt. *622*	*John Collins,* (202)426-1908.	NPRM *August* 1979.
Public Transportation for Non-Urbanized Areas.	The regulation is being jointly developed by UMTA and FHWA and is summarized elsewhere in this agenda by the Federal Highway Administration.	Kay Regan, (202)*472-7037.*	NPRM *August* 1979.
Major Urban Transportation Investment.	The regulation is being jointly developed by UMTA and FHWA and is summarized elsewhere in this agenda by the Federal Highway Administration.	Joel Ettinger, (202)426-2360.	FR *August* 1979.
"Buy America" Requirements of Surface Transportation Assistance Act of 1978.	A. Description: These regulations implement section 401 of the Surface Transportation Assistance Act of 1978, which provides, with exceptions, that funds authorized may not be obligated for urban mass transportation projects unless materials and supplies are of United States origin. These regulations were issued as a final rule but comments were solicited until February 15, 1979 and changes *will* be made based on the comments received. B. Why Significant: There *is* substantial public interest concerning these regulations because of their impact on urban mass transportation projects. C. Regulatory Analysis: Not required D. Need: These regulations implement section 401 of the Surface Transportation Assistance Act of 1978. E. Legal Basis: 49 U.S.C. 1602 note; P.L. 95-599, Section 401. F. Chronology: The statute creating this provision was signed by the President on November 6, 1978 and required immediate implementation. The emergency final rule was published on December 6, 1978. (*43 FR 57144*) Comments were invited through February 15, 1979. *UMTA is currently analyzing the comments received and will issue revised final regulations in September 1979.*	John Collins, (202)426-1908.	*Revised FR September 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

UMTA — Urban Mass Transportation Administration

Significant Regulations—Continued

Title	Summary	Contact	Decision date
Regulation Implementing the Nondiscrimination Section of the Urban Mass Transportation Act.	**G. Citation:** 49 CFR pt. 660 **A. Description:** The proposed regulations would unify the civil rights regulations that recipients of funds under the Urban Mass Transportation Act must meet. **B. Why significant:** Substantial public interest is anticipated. **C. Regulatory Analysis:** Not required **D. Need:** Regulations are needed to implement a new statutory provision which consolidates UMTA's authority to assure effective and uniform compliance with civil rights and equal employment opportunity requirements in a manner comparable to other agencies within the Department of Transportation. **E. Legal Basis:** Section 19 of the UMT Act (49 U.S.C. § 1615). **F. Chronology:** Section 19 was added to the UMT Act in November 1978 by the Federal Public Transportation Act of 1978. **G. Citation:** 49 CFR Chapter VI	*Edward Gill, (202)426-1906.*	NPRM *November 1979.*

UMTA — Urban Mass Transportation Administration

Non-significant Regulations

Title	Summary	Contact	Decision date
Charter and School Bus Regulations.	These regulations provide more detailed information regarding the restrictions placed on charter and school bus operations in section 3(f) and 3(g) of the UMT Act, 49 U.S.C. 1601. UMTA received considerable comments as a result of an ANPRM dated December 29, 1976 (41 FR 56680) and a hearing held thereafter and it is now planning to issue an NPRM for comment. (49 CFR pt. 604 and pt. 605).	Prentis Cook, (202)426-1906.	NPRM *October 1979.*
Innovative Techniques and Methods Set-Aside.	These regulations would prescribe policies and procedures for administering the grant programs for projects using innovative techniques and methods in the management and operation of public transportation services.	Joseph Goodman, (202)426-4984.	NPRM *January 1980.*
Rail Transit Car Testing	These regulations would prescribe policy guidance for the testing of rail transit cars, the test schedule to be followed and requirements of the tests to be performed.	Robert Haught, (202)426-9545.	NPRM *August 1979.*
Reporting Requirements for Urbanized Areas.	This regulation establishes a mechanism for submission of bus and rail data from all urbanized areas for apportionment funds under Section 5 of the UMT Act of 1964, as amended. These regulations were issued as *an emergency* final rule but comments were solicited and changes *were* made based on the comments received. *(December 18, 1978, 43 FR 58928). The revised regulations were published on May 3, 1979 (44 FR 26850).*	Peter Benjamin, (202)472-2435.	*Action Complete.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

UMTA **Urban Mass Transportation Administration**

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Regulations Governing Formula Assistance to Urbanized Areas.	A formula assistance grant program for urbanized areas (areas whose population exceeds 50,000) was created by statute in 1974 as Section 5 of the Urban Mass Transportation Act (49 U.S.C. § 1604). The policies and procedures governing this program are described in UMTA Order 9050.1. In November of 1978, this Section 5 program was amended by P.L. 95-599 to modify the formula mechanism, to define new terms, to change the maintenance of effort provision, and to require public hearings prior to fare changes. Furthermore, Sections 304 and 319(a) of P.L. 95-599 required UMTA to collect new types of data to administer this modified Section 5 program. On December 18, 1978, UMTA published changes to 49 CFR pt. 630 which describe the types of data that must be submitted to UMTA. *These changes were amended on May 3, 1979 (44 FR 26850)..* The purpose of the new regulation that is proposed here is to streamline the policies and procedures that were described in UMTA Order 9050.1 and to modify and expand those procedures to meet the new statutory mandates. The changes made in December to 49 CFR pt. 630 will be reviewed to lessen the reporting borden to local public bodies. (49 CFR pt. 630).. *A proposed regulation governing the public hearing requirements is being published separately and is described elsewhere in this document.*	Peter Benjamin, (202)472-2435.	NPRM *September 1979.*
*Miscellaneous Amendments—Organization, Functions, and Procedures.	These amendments will reflect modifications in the organization and distribution of functions as well as changes in the delegations of authority within the Urban Mass Transportation Administration (49 CFR pt. 401).	Patricia Colbert, (202)426-4011.	FR *August* 1979.
*Public Hearing Requirements.....	UMTA is proposing regulations to implement Section 5(i)(3) of the Urban Mass Transportation Act of 1964, as amended. This section requires a public hearing or an opportunity for a public hearing prior to increases in general levels of transit fares or substantial changes in service. A notice of proposed rulemaking was published on July 16, 1979 (44 FR 41272). Comments have been invited through August 30, 1979.	Charlotte Adams, (202)472-6997.	FR September 1979.
*Standardized Specification for Rail Rapid Transit Cars.	These regulations would require UMTA grantees to use standard specifications for rapid transit cars. The emphasis in the specifications would be placed on standardizing performance requirements and subsystems rather than in the area of dimensions.	Stephen Teel, (202)426-0090.	September 1979.
*Investigation of Safety Hazards in Urban Mass Transportation Systems.	These regulations would establish the policy and proceedings to be followed in the implementation of Section 107 of the National Mass Transportation Assistance Act of 1974, including the investigation of an unsafe condition, the requiring of a plan for correcting an unsafe condition, and the withholding of financial assistance until such a plan is approved or implemented.	William Rhine, (202)426-9545.	September 1979.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

UMTA — Urban Mass Transportation Administration

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
*Human Resource Needs in Transit Industry.	Section 20 of the Urban Mass Transportation Act of 1964, as amended, provides that the Secretary of Transportation, through UMTA, may provide financial assistance for national and local programs that address human resource needs as they apply to public transportation activities. It is intended that the number of minority and female employees in the public transportation field will be increased and that the quality of opportunities will be increased through outreach, training, and management development. The proposed regulations would set out the types of potential eligible projects and the requirements that a project must meet to receive Section 20 funds.	Irvin Bromall, (202)426-2285.	September 1979.

SLSDC — Saint Lawrence Seaway Development Corporation

Non-significant Regulations

Title	Summary	Contact	Decision date
Operational Regulations	Annual update of 33 CFR Part 401 operational regulations developed, for the most part, jointly with the Seaway Authority of Canada.	Frederick A. Bush, 315-764-0271.	August 1979. Repeated in June 1980.

RSPA — Research and Special Programs Administration

Significant Regulations

Title	Summary	Contact	Decision date
Highway Routing of Radioactive Materials (Docket No. HM-164).	**A. Description:** This regulation would establish routing requirements for the highway carriage of radioactive materials. **B. Why Significant:** There is substantial public interest and controversy over the regulation and it would have a significant impact on the Federal Highway Administration. **C. Regulatory Analysis:** Not required **D. Need:** To provide a basis for deciding whether Federal routing requirements are necessary for the highway transportation of hazardous materials. **E. Legal Basis:** 49 U.S.C. 1803, 1804, 1808 **F. Chronology:** Administrative ruling *on federal pre-emption:* Published a public notice and invitation to comment on Aug. 15, 1977 (42 FR 41202); Public hearing was held on Nov. 10, 1977 (42 FR 54487); Ruling published April 20, 1978 (42 FR 16945); Rulemaking: ANPRM issued August 17, 1978 (43 FR 36492); Hearing in New York, held November 29, 1978. **G. Citation:** 49 CFR pt. 177	D. Crockett, (202)426-2075.	NPRM *September* 1979.
Development of New Standards for Transportation of Hazardous Waste Materials (Docket No. HM-145A).	**A. Description:** Would establish new standards and procedures for the transportation of hazardous waste materials.	A. Roberts, (202)426-0656.	FR *December* 1979.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

RSPA — **Research and Special Programs Administration**

Significant Regulations—Continued

Title	Summary	Contact	Decision date
	B. Why Significant: This regulation would have a significant impact on the operating administration and the Environmental Protection Agency (EPA). C. Regulatory Analysis: Not required D. Need: These standards are necessary to govern the transportation of hazardous waste materials and to provide consistency with the hazardous waste materials regulations to be promulgated by EPA under the Resource Conservation and Recovery Act. E. Legal Basis: 49 U.S.C. 1803, 1804, 1808 F. Chronology: NPRM jointly developed with EPA; public hearing held on Oct. 26, 1977 (42 FR 51625); NPRM issued May 25, 1978 (43 FR 22626); public hearing on NPRM held on June 20, 1978 (43 FR 22626). G. Citation: 49 CFR pts. 171, 172, 173, 174, 175, 176, and 177.		
Development of New Standards for Liquefied Natural Gas (LNG) Facilities (Docket No. OPSO–46).	A. Description: Comprehensive new standards would be proposed for the siting, design, construction, operation, and maintenance of LNG facilities. B. Why Significant: Major rulemaking due to substantial public interest and controversy, and due to potential danger of large-scale LNG spills. C. Regulatory Analysis: Not required D. Need: The concerns of Federal, State, and local agencies over LNG safety. E. Legal Basis: 49 U.S.C. 1672 F. Chronology: *ANPRM Apr. 21, 1977 (42 FR 20776).* NPRM (siting, design, and construction): *Feb. 8, 1979 (44 FR 8142).* NPRM (operation and maintenance): *Sept. 1979* Final rules (siting, design, and construction) *Dec. 1979* Final rules (operation and maintenance): *July 1980* G. Citation: 49 CFR pt. 193 (new)	L. Furrow, (202)426–0135.	FR *December* 1979.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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RSPA — Research and Special Programs Administration

Non-significant Regulations

Title	Summary	Contact	Decision date
Intermodal Portable Tanks (Docket No. HM-167).	Proposed standards for new specifications for portable tanks and procedures for use of these portable tanks for certain hazardous materials. NPRM published December 11, 1978 (43 FR 58050). (49 CFR *107.400-.407,* 178,271, 178.272).	E. Altemos, (202)246-0656.	FR *December* 1979.
Review: Recodification of Radioactive Requirements (Docket No. HM-169).	Proposed consolidation, simplification and recodification, of the existing requirements applicable to the transportation of radioactive materials *to make them compatible with latest revised international standards as promulgated by the International Atomic Energy Agency. NPRM published January 8, 1979 (44 FR 1852).* (New pt. 127 to 49 CFR).	R. Rawl, (202)426-*0656.*	FR *Pending Publication of Companion Document by U.S. Nuclear Regulatory Commission.*
Transportation of Asbestos (Docket No. HM-160).	Establishes standards to control asbestos emissions during transportation (49 CFR 172.101, 173.1090). NPRM published March 2, 1978 (43 FR 8562); FR published December 4, 1978 (43 FR 56664).	A. Roberts, (202)426-0656.	*Petition for reconsideration under review to be answered by August 1979.*
Safety Improvement Program for DOT 105 Tank Care (Project 264-78).	Consideration of possible changes to current safety performance standards of DOT 105 tank cars (49 CFR pt. 179.	W. Black, (202)426-2748.	NPRM *August* 1979.
Detonators and Detonating Primers (Docket No. HM-161).	Proposed standards for establishing appropriate shipping descriptions and hazard classifications for many detonators which are currently used in commercial service: NPRM issued May 4, 1978 (43 FR 19242). (49 CFR 172.101). Comment period extended to permit development of testing data.	C. Schultz, (202)755-4906.	FR *August* 1979.
Cryogenic Liquids (Docket No. HM-115)..	Proposed standards and procedures for the transportation of cryogenic liquids, *NPRM published March 8, 1979. (44 FR 12826) (49 CFR 172.101, 173.316). Hearing (Washington, D.C.) held on April 17, 1979. Comment period extended to permit further consideration of issues raised in hearing.*	P. Seay, (202)755-4906.	FR *February 1980.*
Hazardous Materials Aboard Aircraft (Docket NO. HM-168).	Proposed standards for the safe operation of aircraft having certain hazardous material aboard. NPRM published December 11, 1978 (43 FR 57928). (49 CFR pts. *107, 171,* 175).	*E. Mazzullo,* (202)*755-4902.*	FR *September* 1979.
Availability of Shipping Papers to Emergency Response Personnel (Project 259-78).	Proposal to require shipping papers covering hazardous materials to be made available by train crew to emergency personnel. This proposal has been reconsidered and will become a part of Project *273-78, Hazardous Materials Communications Regulations (49 CFR pts. 171-177).*	J. Horning, (202)755-4902.	NPRM *September* 1979.
Use of United Nations Materials Shipping Terminology/Number (Project 266-78).	Proposed incorporation of shipping descriptions and serial numbers from United Nation regulations covering the transport of dangerous goods, *NPRM published July 26, 1979 (44 FR 43864). (49 CFR 172.102)..*	E. Altemos, (202)426-0656.	*FR December 1979.*
Definition of a Flammable Solid (Docket No. HM-118).	Proposed new standards for classifying a material as a flammable solid (49 CFR 173.150). Action deferred pending further review.	C. Schultz, (202)755-4906.	Review August 1979.
Radiation Exposure of Transportation Workers (Project 263-78).	Consideration of methods which will reduce radiation exposure levels to transportation workers (New Sections).	R. Rawl, (202)426-*0656.*	NPRM *November* 1979.
Requirements for Radioactive Materials (Docket No. HM-152).	Proposed revisions of certain secs. of pt. 175 which will reduce the exposure to radioactive materials for passengers aboard aircraft (49 CFR pt. 175). NPRM published June 21, 1977 (42 FR 37424).	R. Rawl, (202)426-*0656.*	FR *August* 1979.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

RSPA — Research and Special Programs Administration

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Forbidden Materials (Docket No. HM-159).	Proposed standards to add the names of materials to the Hazardous Materials Table that are known to be too hazardous to be permitted in commercial transportation. *NPRM published July 26, 1979 (44 FR 43861).* (49 CFR 172.101).	C. Schultz, (202)755-4906.	*FR November 1979.*
Review: Recodification of Operating Procedures For Motor Vehicles (Project 261-78).	Proposed simplification and recodification of the existing operating procedures for transportation of hazardous materials by motor vehicles as prescribed in Part 177 (49 CFR pt. 177).	*R. Toth,* (202)426-1700.	NPRM *March 1980.*
Safety Plans for Normal Operations and Emergencies for Pipelines Carrying Highly Volatile Liquids (Docket No. PS-51).	Criteria would be proposed to govern a carrier's plans for preventing and handling emergencies for pipelines carrying highly volatile liquids, e.g., LPG/NH_3. NPRM published Aug. 10, 1978 (43 FR 35513). Comment period was extended to Nov. 6, 1978 (43 FR 46015). Final rule published July 16, 1979. (44 FR 41197) (49 CFR pt. 195).	F. Robinson, (202)426-0135.	*Action Complete.*
Standards to Reduce Spill Size Risks Associated with Pipeline Transportation of Highly Volatile Liquids such as Liquid Petroleum Gas (Docket No. PS-53).	Proposal would require valve spacing or other requirements to minimize the amount of commodity or vapor that can spread into populated areas in event of a spill. NPRM published Sept. 5, 1978 (43 FR 39402). *On reveiw, the NPRM is being isued as an amendment.* (49 CFR pt. 195).	F. Robinson, (202)426-0135.	FR August 1979.
Joining Plastic Pipe (Docket No. PS-59).	Qualifications would be established for procedures and personnel in joining plastic pipe. NPRM published Oct. 23, 1978 (43 FR 49334). Final rule published July 23, 1979 (44 FR 42968) (49 CFR pt. 192).	P. Cory, (202)426-2392.	*Action Complete.*
Standards to Reduce Pipeline Failure Rates in Pipelines Carrying Highly Volatile Liquids (LPG/NH_3) (Docket No. PS-5).	Testing or operating requirements would be proposed to assure the safe operation of existing pipelines transporting highly volatile liquids. NPRM published Nov. 7, 1978 (43 FR 52500). (49 CFR pt. 195).	F. Robinson, (202)426-0135.	FR September 1979
Corrosion Control (Docket No. PS-52).	*Specification of a sampling procedure for inspecting cathodic protection on transmission lines. NPRM issued Sept. 5, 1978* (43 FR 39401). (49 CFR pt. 192).	P. Cory, (202)426-2392.	FR November 1979.
Requirements for Reporting Gas Incidents (Docket No. OPS-49).	The present reporting forms would be revised to provide additional and more appropriate information about gas safety problems and to require reports from certain systems not now covered. NPRM issued June 5, 1978 (43 FR 24478). Comment period was extended to July 7, 1978 (43 FR 30590). *Supplemental Notice to NPRM of June 5, 1978, issued February 1, 1979.* (49 CFR pt. 191).	*R. Langley,* (202)426-2082.	FR September 1979.
Miscellaneous Proposals Concerning Rail Transportation (Project 259-78).	Proposals concerning availability of hazardous materials shipping papers to emergency personnel, car placement, compliance with track standards, and tank car safety appurtenances. (49 CFR 174.24, 174.91, 174.7, 174.31 and pt. 179). *Availability of shipping papers to emergency response personnel proposal has been reconsidered and will become a part of Project 273-78, Hazardous Materials Communications Regulations. Compliance with track standards proposal has been denied. Other proposals will be considered for incorporation into a rulemaking action at a later date.*	J. Horning, (202)755-4902.	*Withdrawn.*
Color Specifications for Hazardous Warning Labels (Docket No. HM-151).	Incorporation of color specifications for hazard warning labels printed directly on a packaging. (Correction of final rule in HM-112, April 15, 1976, 41 FR 15972). *Final rule published February 15, 1979 (44 FR 9756).* (49 CFR pt. 172).	L. Metcalfe, (202)426-0656.	*Action Complete.*
Flattening Test Requirements for Seamless Cylinders (Docket No. HM-156).	Deletion of requirement that certain seamless cylinders be hydrostatically tested prior to flattening test. (NPRM published January 19, 1978, 43 FR 2741). *Final rule published January 29, 1979* (44 FR 5666). (49 CFR pt. 178).	J. Pena, (202)755-4906.	*Action Complete.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

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RSPA **Research and Special Programs Administration**

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Glass Carboy in Expanded Polystyrene Packaging (Docket No. HM-117).	Deletion of obsolete specification packagings; new specification for glass carboy in expanded polystyrene packaging (NPRM published June 14, 1974, 39 FR 20805). *Final rule published March 2, 1979 (44 FR 14194). (49 CFR pts. 173, 178).*	M. Gigliotti, (202)755-4906.	*Action Complete.*
Hazardous Polluting Substances *(Docket HM-145B).*	Proposed new classification for materials designated as hazardous polluting substances by EPA under the Clean Water Act. *NPRM published February 22, 1979 (44 FR 10676).* (49 CFR pts. 171-177).	*L. Metcalfe* (202)426-*0656.*	FR *September* 1979.
Use of Interested Inspectors for Cylinder Inspections (Docket No. HM-74A).	Discontinuance of "interested" inspectors to perform inspections and testing of domestically manufactured low pressure gas cylinders. NPRM published March 17, 1976 (41 FR 11179). (49 CFR pt. 178).	*H. Mitchell,* (202)*755-4902.*	*NPRM November 1979.*
Deletion of Tank Car Stenciling (Project 276-78).	Amendment to eliminate tank car stenciling requirements which duplicate or conflict with existing marking requirements. *Final Rule published April 5, 1979 (44 FR 20433).* (49 CFR pts. 174, 179).	W. Black, (202)426-2748.	Action Complete.
Hazardous Materials Communications Regulations (Project 273-78).	Development of changes to shipping papers, marking, labeling, and placarding requirements (49 CFR pts. 171-177).	A. Roberts, (202)426-0656.	NPRM *September* 1979.
Cylinders Mounted on Motor Vehicles (Project 284-74).	Proposed protection for devices and appurtenances on cylinders mounted on motor vehicles (49 CFR pt. 173).	A. Mallen, (202)755-4902.	NPRM *August* 1979.
Display of Hazardous Materials Identification Numbers (Docket No. HM-126*A*).	Development of numerical identification code for hazardous materials for use in emergencies. *NPRM published June 7,* 1979 *(44 FR 32972).* (49 CFR pt. 172).	*L Metcalfe,* (202)426-0656.	*FR November* 1979.
Development of Training Requirements for Drivers of Cargo Tank Motor Vehicles (Project 270-78).	Development of minimum driver training requirements necessary to prevent unintentional releases of hazardous materials (49 CFR pt. 177).	*R. Toth,* (202)426-1700.	ANPRM *August* 1979.
Specification for 55-gallon Plastic Drum (Project 278-78).	Proposal to authorize 55-gallon capacity plastic drums and authorization for use with certain hazardous materials (49 CFR pt. 178).	M. Gigliotti, (202)755-4906.	NPRM *October* 1979.
Development of Standards and Requalification Tests for Cargo Tank Hoses (Project 271-78).	Development of standards and periodic tests to prevent rupture of hoses used to load and unload cargo tanks (49 CFR pts. 173,177).	*R. Toth,* (202)426-1700.	ANPRM *August* 1979.
Consolidation and Revision of Requirements for the Carriage of Explosives by Vessel (Project 279-78).	Proposed consolidation and revision of requirements for the carriage of military and commercial explosives by vessel and adoption of United Nations scheme for classification and compatability of explosives for the water mode (49 CFR pt. 176).	L. Gibson, (202)426-1577.	NPRM *October* 1979.
Oxidizing Materials Definition, Criteria and Proposed Regulations (Project 160-71).	Development of new standards for classifying a material as an oxidizing material (49 CFR pt. 173).	C. Schultz, (202)755-4906.	ANPRM *November 1979.*
Attendance of Cargo Tanks During Transportation (Project 272-78).	Proposed revision of attendance requirements to include transportation activities other than loading and unloading (49 CFR pt. 177).	*R. Toth,* (202)426-1700.	NPRM *March 1980.*
Establish Performance Standards for Specification Bags (Project 280-78).	Development of performance standards for specification bags (49 CFR pt. 178).	M. Gigliotti, (202)755-4906.	ANPRM *October 1979.*
Organic Peroxide Requirements (Project 186-72).	Proposed listing of and packaging requirements for organic peroxides. (49 CFR pts. 172, 173). *May be combined with (Project 160-71) (49 CFR pt.173).*	C. Schultz, (202)755-4906.	ANPRM *November 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

RSPA **Research and Special Programs Administration**

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Odorization of Gas (Project 277–78).	Proposed odorization requirements for certain compressed gases. *This proposal has been reconsidered and will become a part of Project 273–78, Hazardous Materials Communications Regulations.* (49 CFR pt. 173).	A. Roberts, (202)426–0656.	NPRM *September 1979.*
Inspection and Testing of Compressed Gas Cylinders (Project 235–74).	Proposed revision and simplification of requirements concerning the inspection, testing, requalification and use of compressed gas cylinders (49 CFR pts. 173, 178).	A. Mallen, *(202)755–4906.*	NPRM *July 1980.*
Aluminum Cylinder Specification (Project 228–73).	Development of specifications for aluminum cylinders (49 CFR pts. 173, 178).	A. Mallen, (202)755–4906.	NPRM *November 1979.*
Design and Construction of Pipelines Carrying Hazardous Volatile Liquids (*Docket No. PS–56).*	Additional or more stringent design and construction standards would be proposed for pipelines carrying highly volatile liquids. *ANPRM published February 5, 1979 (44 FR 6961).* (49 CFR pt. 195).	F. Robinson, (202)426–0135.	*ANPRM September 1979.*
Retention of Radiographic Film	Recordkeeping requirement for radiographic film would be revoked for hazardous liquid pipelines. (49 CFR pt.195).	F. Robinson, (202)426–0135.	NPRM November 1979.
Offsetting Longitudinal Weld Seams on Adjacent Pipe Lengths (Docket No. OPSO–48).	Construction requirement for offsetting weld seams on adjacent pipe lengths in hazardous liquid pipelines would be revoked. (49 CFR pt. 195).	F. Robinson, (202)426–0135.	FR December 1979.
Time Required to Hydrostatically Test a Hazardous Liquids Pipeline.	An 8-hour minimum time period would be proposed for hydrostatically testing hazardous liquid pipelines. (49 CFR pt.195).	F. Robinson, (202)426–0135.	NPRM August 1979.
Placing Longitudinal Weld Seams in Upper Pipe Half.	Requirement to locate longitudinal weld seams in the upper half of pipe during construction of hazardous liquid pipelines. (49 CFR pt. 195).	F. Robinson, (202)426–0135.	ANPRM October 1979.
Heat Treatment of Hard Spots in Steel Pipe.	Allowable temperature for heat treating hard spots in steel pipe would be increased (49 CFR pt. 192).	P. Cory, (202)426–2392.	NPRM July 1979.
Qualifying Components for Use in Gas Pipelines.	General criteria would be proposed for qualifying the use of pipeline components other than the pipe itself. (49 CFR pt. 192).	P. Cory, (202)426–2392.	NPRM October 1979.
Transportation of Natural and Other Gas By Pipeline (PS–57).	Requirements for procedures and instrumentation for use in monitoring gas for odorants would be proposed. *NPRM published February 22, 1979 (44 FR 10604).* (49 CFR pt. 192).	P. Cory, (202)426–2392.	*FR December 1979.*
Leak Survey	Present leak survey requirements would be amended in accordance with practices necessary for safety. (49 CFR pt. 192).	P. Cory, (202)426–2392.	NPRM August 1979.
Interior Piping	The adequacy of existing standards with regard to safety problems concerning interior piping would be examined and new standards may be proposed. (49 CFR pt. 192).	P. Cory, (202)426–2392.	ANPRM December 1979.
Monitor Pressure Regulating Station.	Monitoring equipment would be required for systems served by a single district pressure regulating station. (49 CFR pt. 192).	*R. Simmons,* (202)426–2082.	NPRM *August* 1979.
Procedures to Guard Against Blasting Effects in Gas Pipelines.	Proposed standards requiring gas pipeline operators to have procedures to protect facilities affected by blasting. (49 CFR pt. 192).	*R. Langley,* (202)426–2082.	NPRM November 1979.
Location, Size, and Operating Pressure of Pipelines.	Operators would be required to maintain maps and records to identify the location, size, and operating pressure of all pipelines (49 CFR pt. 192).	*R. Langley,* (202)426–2082.	ANPRM *August* 1979.
Hot Taps in Gas Pipelines	Operators would be required to identify a pipeline by pressure monitoring or other means before performing a hot tap on it. (49 CFR pt. 192).	*R. Langley,* (202)426–2082.	NPRM September 1979.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

AGENDA

RSPA — Research and Special Programs Administration

Non-significant Regulations—Continued

Title	Summary	Contact	Decision date
Excavation Damage	Operators would be required to participate in a program to prevent excavation damage to underground pipelines (49 CFR pts. 192 and 195).	*R. Langley,* (202)426-2082.	NPRM *August* 1979.
Occupational Health and Safety (Docket No. OPS-39).	Advance notice on possible occupational standards for working conditions *has been withdrawn. Withdrawn May 17, 1979. (44 FR 28831).*	L. Furrow, (202)426-0135.	*Withdrawn.*
*Matches (Project 281-78)	Proposed revision and simplification of requirements concerning matches. (49 CFR pts. 172, 173).	H. Mitchell, (202)755-4902.	NPRM *August* 1979.
*Marking and Record Retention for Cylinders (Project 284-79).	Proposed revision and clarification of cylinder marking requirements; deletion of approval for changes to owner markings, user markings, and serial numbers; deletion of submission requirements for cylinder test reports and substitute record retention requirement. (49 CFR pts. 173, 178).	H. Mitchell, (202)755-4902.	NPRM December 1979.

RSPA — Research and Special Programs Administration

Routine and Frequent Non-significant Regulations

Title	Summary	Contact	Decision date
Conversion of Individual Exemptions to Regulations of General Applicability (Docket No. HM-139).	NPRM approximately every three months; with FR targeted approximately two months thereafter.	D. Raines, (202)755-4962.	January 1979-January 1980.
Minor Regulatory Adjustments to Regulations of General Applicability (Docket No. HM-166).	NPRM approximately every four months; with FR targeted approximately two months thereafter.	D. Raines, (202)755-4962.	January 1979-January 1980.
Matter Incorporated by Reference (Docket No. HM-22).	NPRM every six months; with FR targeted two months thereafter.	J. Horning, (202)755-4902.	January 1979-January 1980.
Withdrawal of Certain Delegations of Authority to the Bureau of Explosives (Docket No. HM-163).	Prior responsibilities delegated to the Bureau of Explosives would be withdrawn in series of rulemaking actions. NPRM every three months; with FR targeted two months thereafter.	D. Raines, (202)755-4962.	January 1979-January 1980.
Matter Incorporated by Reference	Documents incorporated by reference would be updated to later published editions. NPRM every six months, with FR three months later.	A. Garcia, (202)426-2082.	January 1979-January 1980.

REVIEW LIST

USCG — U.S. Coast Guard

Reviews Under Consideration

Title	Reasons for selection	Contact	Decision date
Charges for Duplicate Medals and Sales of Personal Property, Equipment or Services and Rental (33 CFR 1.26).	Length of time since last evaluated: changing economic factors.	Mr. A. Bell, (202)426-1863.	September 1979.
Regulations, United States Coast Reserve (33 CFR pt. 8).	Length of time since last evaluated; need to reflect changed procedures.	Capt. Grover, (202)426-2348.	*August 1979.*
Boating Safety: Equipment requirement Personal Flotation Devices (33 CFR 175.15).	Length of time since last evaluated; Research and Development project initiated to determine need for carriage regulations revision.	Mr. Gauthier, (202)426-4176.	August 1980.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

REVIEW LIST

USCG — U.S. Coast Guard

Reviews Under Consideration—Continued

Title	Reasons for selection	Contact	Decision date
Boats and Associated Equipment: Safe Loading (33 CFR Pt. 183, subpart C)..	Length of time since last evaluated; standards may not be effective for all boats to which these regulations apply.	Mr. L. Gray, (202)426–4027.	January 1981.
Boats and Associated Equipment: Safe Powering (33 CFR pt. 183, subpart D)..	Length of time since last evaluated; standards may not be effective for all boats to which these regulations apply.	Mr. L. Gray, (202)426–4027.	January 1980.
Boats and Associated Equipment: Flotation Standards (33 CFR pt. 183).	Length of time since last evaluated; standards may be limited in applicability.	Mr. L. Gray, (202)426–4027.	August 1980.
Vessel Inspection (46 CFR pt. 2)....	Being reviewed for purposes of simplification, clarification and accuracy.	Comdr. Delenonardis, (202)426–2183.	Action Complete.
Regattas and Marine Parades (33 CFR pt. 100).	Length of time since last evaluated; survey of District Commanders will determine if District conditions have changed.	Mr. Gauthier, (202)426–4176.	Action Complete.
Revision of Approval of Cargo Containers Regulations (Docket No. CGD 79–027).	Would update regulations implementing International Convention for Safe Containers (OSC) to incorporate internationally agreed upon interpretations and public comments.	Mr. C. Hochman, (202)426–1577.	NPRM August 1979.

FAA — Federal Aviation Administration

Reviews Under Consideration

Title	Summary	Contact	Decision date
Rotorcraft Review.....	These regulations were selected for review to determine the need for (1) developing instrument flight rules airworthiness standards for rotorcraft certification and (2) improving and updating the rotorcraft airworthiness requirements and operating regulations. *Conference scheduled for 12/9–14/79. Notification of Conference location will be published in the Federal Register.*	William J. Sullivan, (202)755–8716.	*December* 1979.
Light Transport Airplane—Airworthiness Review.	These regulations were selected for review to determine the need for developing airworthiness standards for small airplanes carrying 10 or more passengers. *Request for proposals published 3/19/79 (44 FR 16855). Proposals due by 7/9/79. Conference Scheduled for 9/17–19/79, Published 4/16/79 (44 FR 22656).*	William J. Sullivan, (202)755–8716.	*September* 1979.

FRA — Federal Railroad Administration

Reviews Under Consideration

Regulations selected for review	Reasons for selection	Contact	Target date
General Safety Inquiry.....	FRA has initiated a General Railroad Safety Inquiry to obtain information from the public to assist in evaluating and improving its safety program. A series of public hearings, each focused on a single regulatory topic, have been scheduled as indicated below.		
Topic: Locomotives (49 CFR pt. 230).	Hearing notice published May 8, 1978 (43 FR 19696). Public hearing held June 14 and 15, 1978. *Rulemaking initiated; see listing under Nonsignificant Regulations..*	R. Mowatt-Larssen, (202)426–*0924.*	*Action Complete.*
Topic: Power Brakes (49 CFR pt. 232).	Hearing notice published August 8, 1978 (43 FR 36659). Hearing held on September 13 and 14, 1978. Rulemaking to be initiated; see listing under Nonsignificant Regulations.	R. Mowatt-Larssen, (202)426–*0924.*	Completion *October 1979.*

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

REVIEW LIST

FRA — Federal Railroad Administration

Reviews Under Consideration—Continued

Regulations selected for review	Reasons for selection	Contact	Target date
Topic: Track and Related Structures, Appliances and Devices (49 CFR pt. 213).	Hearing notice published September 25, 1978 (43 FR 43339). Notice of rescheduling of public hearing published October 4, 1978 (43 FR 45905). Hearing held November 15 and 16, 1978. *Rulemaking to be initiated; see listing under Nonsignificant Regulations.*	R. Mowatt-Larssen, (202)426-*0924.*	Completion *August 1979.*
Topic: Signal and Communication Systems (49 CFR pts. 235 and 236).	Hearing notice published December 12, 1978 (43 FR 58100). Public hearing rescheduled for February 21 and 22, 1978; Notice of change in hearing dates published in *Federal Register* on 1/3/79 (44 FR 925). *Hearing held February 22 and 23, 1979. Rulemaking to be initiated; see listing under Nonsignificant Regulations.*	R. Mowatt-Larssen, (202)426-*0924.*	Completion November 1979.
Guarantee of Certificates of Trustees of Railroads in Reorganization (Pursuant to the Emergency Rail Services Act of 1970).	The financial assistance program under the Emergency Rail Services Act of 1970, 45 U.S.C. 661 *et seq.,* is likely to become active again due to the July 1, 1978 repayment of $50 million in trustee certificates by the Penn Central Trustees. The regulations' (49 CFR pt. 250) information requirements are currently being modified to make them consistent with the regulations issued under FRA's other loan guarantee program (49 CFR pt. 260). *Review completed and regulation amended 4/23/79 (44 FR 23851).*	Larry Friedman, (202)426-7737.	*Action Complete.*
Nondiscrimination in Federally Assisted Railroad Programs.	See FRA Nonsignificant Regulations.	Rufus S. Watson, (202)472-5311.	*Action Complete.*
Assistance to State, Local and Regional Transportation Authorities in the Northeast Region for Continuation of Local Rail Services.	The grant program under section 402 of the Regional Rail Reorganization Act of 1973 (45 U.S.C. 762) was repealed as of April 1, 1978. Because grants entered into prior to April 1, 1978 are still in effect and subject to the section 402 regulations (49 CFR pt. 255), a determination will be made as to when the regulations will be repealed after the grants have expired *in 1981.*	Larry Friedman, (202)426-7737.	*Withdrawn.*

NHTSA — National Highway Traffic Safety Administration

Reviews Under Consideration

Regulations selected for review	Reason for selection	Contact	Target date
*Five Year Plan for Motor Vehicle Safety & Fuel Economy Rulemaking.	Annual review to update the plan. Purpose of the plan is to inform the public of proposed safety rulemaking priorities and each planned fuel economy and safety rulemaking action for the coming 5 year period.	Deborah Parker, (202)426-1570.	April 1980.
Air Brakes (49 CFR 571.121)	Cost, Safety Benefits and Public Interest	Frank Ephraim, (202)426-1574.	*September 1979.*
Hydraulic Brakes (49 CFR 571.105).	Cost and Safety Benefits	Frank Ephraim, (202)426-1574.	December 1980.
Lamps, Reflective Devices and Associated Equipment (49 CFR 571.108).	Cost and Safety Benefits	Frank Ephraim, (202)426-1574.	December 1980.
Head Restraints (49 CFR 571.202).	Costs	Frank Ephraim, (202)426-1574.	*October 1979.*
Seating Systems (49 CFR 571.207).	Costs	Frank Ephraim, (202)426-1574.	December 1980.
Child Seating Systems (49 CFR 571.213).	Public Interest	Frank Ephraim, (202)426-1574.	Preliminary Review March 1980.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

REVIEW LIST

NHTSA — National Highway Traffic Safety Administration

Reviews Under Consideration—Continued

Regulations selected for review	Reason for selection	Contact	Target date
Occupant Protection (49 CFR 571.213).	Cost, Safety Benefits and Public Interest	Frank Ephraim, (202)426-1574.	Active Belts August 1979. Passive Belts, Air Cushion Restraints or other Passive Systems Preliminary Review FY-85.
Side Door Strength (49 CFR 571.214).	Public Interest	Frank Ephraim, (202)426-1574.	November 1979.
Exterior Protection (49 CFR 571.215) and (49 CFR pt. 581).	Cost and Public Interest	Frank Ephraim, (202)426-1574.	August 1980.
Fuel System Integrity (49 CFR 571.301).	Cost, Safety Benefits and Public Interest	Frank Ephraim, (202)426-1574.	*September 1979.*
School Bus Protection (49 CFR 571.220).	Public Interest	Frank Ephraim, (202)426-1574.	Preliminary Review December 1980.
School Bus Body Joint Strength (49 CFR 571.221).	Public Interest	Frank Ephraim, (202)426-1574.	Preliminary Review December 1980.
School Bus Seating System (49 CFR 571.222).	Public Interest	Frank Ephraim, (202)426-1574.	December 1980.
Tire Reserve Load (49 CFR 575.102).	Public Interest	Michael Brownlee, (202)426-1740.	*October 1979.*
Acceleration and Passing Ability (49 CFR 575.106).	Public Interest	Michael Brownlee, (202)426-1740.	*October 1979.*

RSPA — Research and Special Programs Administration

Reviews Under Consideration

Regulations selected for review	Reasons for selection	Contact	Decision date
Shippers-General Requirements for Shipments and Packagings (49 CFR pt. 173); Matches (49 CFR 173.176).	Due to inquiries requesting an interpretation of this section and to eliminate the possibility of noncompliance based on a misunderstanding of the requirements, there is a need to simplify and clarify present standards.	J. Horning, (202)755-4902.	*Action Complete.*
Electric Storage Batteries Wet (49 CFR 173.260).	Due to inquiries requesting an interpretation of this section and to eliminate the possibility of noncompliance based on a misunderstanding of the requirements, there is a need to simplify and clarify present standards.	J. Horning, (202)755-4902.	*September* 1979.
Charcoal (49 CFR 173.162)	Due to inquiries requesting an interpretation of this section and to eliminate the possibility of noncompliance based on a misunderstanding of the requirements, there is a need to simplify and clarify present standards.	J. Horning, (202)755-4902.	*October* 1979.
Welding of Steel in Gas Pipelines (49 CFR pt. 192, subpt. E).	Present requirements to be examined in light of changes in technology.	L. Furrow, (202)426-0135.	*August* 1979.
Maintenance of Gas Pipelines (49 CFR pt. 192, subpt. M).	The performance required by the maintenance standards needs clarification as indicated by extent of interpretations generated by these standards.	L. Furrow, (202)426-0135.	*August* 1979.
Flammable Solids; definitions criteria (49 CFR 173.150).	Inquiries; lack of objective regulatory standard	J. Horning, (202)755-4902.	August 1979.

DEPARTMENT OF TRANSPORTATION SEMI-ANNUAL REGULATIONS AGENDA AND REVIEW LIST

REVIEW LIST

RSPA
Research and Special Programs Administration

Regulations selected for review	Reasons for selection	Contact	Decision date
Toxic Materials; definitions, criteria, and proposed regulations (49 CFR 173.326, 173.343).	Need for quantitative criteria	J. Horning, (202)755-4902.	*December* 1979.
Line Markers (49 CFR 195.410)	The requirement for installation of markers at navigable waterways needs clarification as indicated by extent of interpretations.	F. Robinson, (202)462-2392.	*September* 1979.
Hydrostatic Testing (49 CFR Part 195, Subpart E).	There is a need to clarify present standards as indicated by extent of interpretation.	F. Robinson, (202)462-2392.	August 1979.
Welding Requirements (49 CFR Part 195, Subpart D).	Present requirements to be examined in light of changes in technology.	F. Robinson, (202)462-2392.	December 1979.
Petroleum Gas Systems (49 CFR 192.11).	There is a need to eliminate inappropriate regulations.	W. Dennis, (202)426-2082.	*August* 1979.

Appendix A—Instructions for Obtaining Copies of Regulatory Documents

United States Coast Guard (USCG)

Anyone desiring a copy of a USCG regulatory document listed in the Agenda should write to: U.S. Coast Guard, G-CMC/81, 400 7th Street, SW., Washington, D.C. 20590.

The request should reference the name of the document and the associated regulatory docket (CGD) number which can be found in the Agenda together with the listing of the document. Persons wishing to be placed on mailing lists for all notices and rules to be issued by the USCG or for notices and rules dealing with a particular area should indicate this clearly for proper handling.

Federal Aviation Administration (FAA)

The FAA has a mailing list system for Notices and Advance Notices of Proposed Rulemaking (NPRMs and ANPRMs). Persons interested in obtaining future copies of all of those documents to be issued by the FAA or only of those concerning certain Parts of the Federal Aviation Regulations should request a copy of Advisory Circular No. 11-2, which describes the application procedure, by calling 202-426-8058 or by writing to: Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591

Federal Highway Administration (FHWA)

The FHWA is in the process of establishing a consumer mailing list for individuals and agencies wishing to routinely receive Federal-aid highway related rulemaking actions. Persons may selectively choose to receive rulemaking materials in a number of separately identified program categories from the Code of Federal Regulations, Title 23. Those wishing to take advantage of the FHWA consumer mailing list may obtain additional information by writing to: Consumer Affairs Representative, Office of Public Affairs, Room 4208, Federal Highway Administration, 400 7th Street, SW., Washington, D.C. 20590.

Persons who desire to obtain a copy of any regulatory document to be issued by the FHWA that is listed in this Agenda should communicate with the contact person listed with the regulation either by telephone or by letter to the contact person at the following address: (Name of contact person), Federal Highway Administration, 400 7th Street, SW., Washington, D.C. 20590.

Federal Railroad Administration (FRA)

Persons who desire to obtain a copy of any regulatory document to be issued by the FRA that is listed in this Agenda should communicate with the contact person listed with the regulation either by telephone or by letter to the contact person at the following address: (Name of contact person), Federal Railroad Administration, 400 7th Street, SW., Washington, D.C. 20590.

National Highway Traffic Safety Administration (NHTSA)

Persons who desire to obtain a copy of any other regulatory document to be issued by the NHTSA that is listed in this Agenda should communicate with the contact person listed with the regulation either by telephone or by letter to the contact person at the following address: (Name of contact person), National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, D.C. 20590, (202)426-0679.

Urban Mass Transportation Administration (UMTA)

Persons who desire to obtain a copy of any regulatory document to be issued by UMTA that is listed in this Agenda should communicate with the contact person listed with the regulation either by telephone or by letter to the contact person at the following address: (Name of contact person), Urban Mass Transit Administration, 400 7th Street, S.W., Washington, D.C. 20590 (202)426-1909.

Saint Lawrence Seaway Development Corporation (SLSDC)

Persons who desire to obtain a copy of any regulatory document to be issued by SLSDC that is listed in this Agenda should communicate with the contact person listed with the regulation either by telephone or by letter to the contact person at the appropriate address specified below: *For contact persons with (202), telephone area code:* [name of contact person], Saint Lawrence Seaway Development Corporation, 800 Independence Avenue, S.W., Washington, D.C. 20591. *For contact persons with (315) telephone area code:* [name of contact person], Saint Lawrence Seaway Development Corporation, P.O. Box 520, Massena, New York 13662.

Research and Special Programs Administration (RSPA)

Persons wishing to be placed on mailing lists for regulatory documents to be issued by RSPA should contact: Mrs. Marge J. Sands, Information Services Division, DMT-43, Materials Transportation Bureau, 2100 2nd Street, S.W., Washington, D.C. 20590.

Office of the Secretary (OST)

Persons desiring to receive future copies of the Regulations Agenda should submit their request to: Assistant General Counsel for Regulation and Enforcement, C-50, Office of the General Counsel, Department of Transportation, Washington, D.C. 20590, (202)426-4723.

Persons who have an interest in specific regulatory documents to be issued by the Office of the Secretary should forward requests for copies of those documents to the same address. These requests should fully identify the document desired.

[FR Doc. 79-26650 Filed 8-24-79; 8:45 am]
BILLING CODE 4910-62-M

Monday
August 27, 1979

Federal Register

Part III

Federal Trade Commission

Trade Regulations: Labeling and Advertising of Home Insulation

FEDERAL TRADE COMMISSION

16 CFR Part 460

Trade Regulation Rules; Labeling and Advertising of Home Insulation

AGENCY: Federal Trade Commission.

ACTION: Final trade regulation rule.

SUMMARY: The Federal Trade Commission issues a final rule which prescribes standardized test methods for determining the R-values of home insulation materials; mandates prepurchase point-of-sale disclosure of R-values and related information to consumers; requires disclosures in certain types of advertisements for home insulation; and requires substantiation and qualifying disclosures in connection with energy savings claims. The rule is designed to enable consumers to evaluate and compare the thermal performance characteristics of these materials, and to ensure that promotional claims for home insulation products will be fair and nondeceptive.

EFFECTIVE DATE: November 30, 1979.

FOR FURTHER INFORMATION CONTACT: Paul J. Petruccelli, Federal Trade Commission, PE–S–7319–A, 414–11th Street NW., Washington, D.C. 20580, (202) 724–1508.

SUPPLEMENTARY INFORMATION:

Statement of Basis and Purpose

I. Introduction

A. *Overview of the Rule.* Insulation can be a very significant energy conservation measure. Its insulating capacity can be measured only by its R-value, which signifies the insulation's degree of resistance to the flow of heat. No other piece of information can tell the consumer how the insulation is likely to perform as an insulator, and whether the cost of the insulation is justified. Yet the record demonstrates that the home insulation market has frequently failed to provide this crucial information to consumers. In the Commission's opinion, the industry's failure systematically to provide R-value information prior to sale is both an unfair and deceptive practice within the meaning of Section 5 of the Federal Trade Commission Act.

The primary purpose of the Rule being promulgated today is to correct the failure of the home insulation marketplace to provide this essential pre-purchase information to the consumer. The information will give consumers an opportunity to compare relative insulating efficiencies, to select the product with the greatest efficiency and potential for energy savings, to make a cost-effective purchase, and to consider the main variables limiting insulation effectiveness and realization of claimed energy savings.

The Rule mandates that specific R-value information for home insulation products be disclosed in certain ads and at the point of sale. The purpose of the R-value disclosure requirement for advertising is to prevent consumers from being misled by certain claims which have a bearing on insulating value. At the point of transaction, some consumers will be able to get the requisite R-value information from the label on the insulation package. However, since the evidence shows that packages are often unavailable for inspection prior to purchase, no labeled information would be available to consumers in many instances. As a result, the Rule requires that a fact sheet be available to consumers for inspection before they make their purchase.

In general the fact sheets and labels for each insulation product disclose the same basic kind of information about R-value. The fact sheet also gives consumers further information that has an important bearing on how they should assess their insulation needs and their likely fuel savings from insulation. The Commission believes that these additional disclosures are necessary to prevent deception and to allow consumers to make rational, well-informed choices in their insulation purchases.

The Rule also requires that R-value disclosures be accompanied by a brief explanation that R-value is a measure of insulating power; the higher the R-value, the greater the insulating power. Since the evidence shows that many consumers are unfamiliar with the concept—in part because the industry has failed to promote it—the Commission believes that an explanation of the term is needed to compensate for this market deficiency and thereby to ensure that consumers will benefit from the prescribed R-value information.

To ensure that consumers are provided with accurate and comparable R-value information, the Rule requires that R-values be determined scientifically in accordance with standard test methods published by the American Society of Testing and Materials ("ASTM"), a private standards-setting organization. Most types of home insulation can be tested at a reasonable cost using one of several permissible procedures. Because R-values per unit for most insulation materials are non-linear, and actually decrease significantly with increases in thickness up to a point, R-values must be determined either at a product's installed or "representative" thickness. The latter is the point at which the adverse effect of thickness on R-value becomes insignificant.

The other major provision of the Rule addresses energy savings and other promotional claims for home insulation products, including tax benefit and government certification claims. Claims that a product is certified or qualifies for a tax benefit are prohibited unless true. Since the amount of energy and money that can be saved by insulation is affected by a number of factors unrelated to the performance of the insulation itself, the Rule provides that energy savings must be substantiated and accompanied by a short disclaimer that savings will depend on the consumers' particular circumstances.

This discussion has highlighted the central elements of the Rule. Virtually all other provisions of the Rule are designed to ensure the integrity of this disclosure scheme. Since determining that a rule was necessary to eliminate consumer abuses in the home insulation industry, the Commission's overriding objective has been to fashion a rule that protects the consumer while minimizing the impact of compliance on the insulation industry which, while economically concentrated in the hands of a few producers, is also comprised of hundreds of relatively small businesses. The Commission believes that this Rule, one that has been tightened considerably from the original proposals, represents a reasonable and sustainable effort toward meeting this objective.

B. *Background.* On November 18, 1977, the Federal Trade Commission published in the Federal Register a proposed trade regulation rule governing the labeling and advertising of residential thermal insulation materials.(1) Shortages in fuel supplies and rising fuel prices had resulted in a dramatic increase in insulation purchases by consumers. As a result, the Commission found, pursuant to its Rules of Practice,(2) that the public interest required the use of expeditious procedures for this rulemaking.(3) The use of these procedures, coupled with the generally cooperative attitude of the rulemaking participants,(4) resulted in Commission consideration of the rule approximately one year after it was proposed.

Interested persons were invited to submit written comments during the two months following publication of the proposed rule.(5) Hearings were then held in Washington, D.C. from February

13 to March 9, 1978,(6) followed by a 30-day period during which the participants were permitted to comment on the hearing record.(7)

A wide variety of parties contributed to the record, both in writing and in oral testimony. At the hearings, approximately 50 witnesses represented manufacturers of all types of home insulation, retailers, installers, trade associations, testing laboratories and organizations, consumer and environmental groups, and state and federal government agencies.(8) In addition to the Commission's staff, nine group representatives were permitted to examine and cross-examine all witnesses.(9)

In July of 1978, approximately three months after the close of the rebuttal period, the rulemaking staff published its report analyzing the record evidence and recommending a final rule.(10) In August of 1978, the Presiding Officer published his report, noting several areas of disagreement with the staff's recommendations.(11) The procedures adopted by the Commission for this rulemaking called for 30 days of public comment following the publication of the Presiding Officer's report.(12) To ensure that all interested persons would have a full opportunity to comment on the recommended rule, however, the public was invited to submit comments immediately following publication of the staff's report in July of 1978.(13) The availability of the Presiding Officer's report was announced in August.(14) When the public comment period closed on September 22, 1978, more than 100 written comments had been received.(15)

At the close of this comment period, the Commission convened a special meeting to permit interested persons to make direct presentations to the Commissioners themselves.(16) After carefully considering the rulemaking record as a whole, the Commission has voted to promulgate a trade regulation rule governing the labeling and advertising of home insulation.

C. *Description of the Industry.* Home insulation is manufactured and sold in a variety of forms. All "mass" insulations(17) are made of solid materials—either cellular, granular, or fibrous—and are heterogeneous in nature. Gas-filled voids within these solid materials retard the flow of heat. The effectiveness of the material in retarding heat flow is measured by its "R-value." (18) The higher the R-value, the greater the insulation's resistance to heat flow.(19)

The types of insulation covered by this rule are mineral wool (fiberglass and rock wool), cellulose, cellular plastics (urea-formaldehyde foam, polystyrene, polyurethane, and polyisocyanurate), vermiculite, perlite, and reflective (aluminum foil). These materials are produced in loose-fill, formed-in-place, flexible or semirigid, and rigid forms.(20)

Fiberglass and rock wool are produced in batt, blanket, and loose-fill forms for new construction and retrofit(21) applications in ceilings, walls, and floors.(22) Cellulose is a loose-fill made from shredded waste paper, to which flame retardant chemicals are added. It is used in the ceilings of new houses, and in the ceilings and wall cavities of existing structures.(23) Vermiculite and perlite are granular loose-fill materials. They are used primarily in attics and wall cavities, and in the hollow cores of masonry block walls.(24)

Cellular plastics are low-density foams which are either manufactured as insulating boards at the factory, or foamed-in-place at the application site. Polystyrene, polyurethane, and polyisocyanurate typically are produced in rigid board form, and are used in new home construction as exterior sheathing and wall and siding insulation.(25) Urea-formaldehyde foam can be produced only through a foaming instrument at the site of application. Thus, its primary use is in insulating the enclosed wall cavities of existing houses.(26)

Reflective materials, primarily aluminum foil, are generally used to insulate residential walls and floors, often in combination with mass insulations. They are commonly found as facings on mineral wool batts and blankets or exterior sheathing materials, and on gypsum board for dry wall.(27) In addition, foil insulation is manufactured in an expandable, accordion-like foam, in which two or more sheets of foil are separated by air spaces.(28) Unlike mass insulations, the thermal resistance of reflective foil is not provided by the material itself. Rather, insulating ability is provided by installing the foil adjacent to an airspace, significantly increasing the thermal resistance of the airspace itself.(29)

The three manufacturers of fiberglass account for approximately two-thirds of the insulation currently sold for residential uses.(30) Cellulose producers, who number in the hundreds, hold a substantial share of the remaining third.(31) Rock wool and urea-formaldehyde foam account for most of the rest, with other products holding very small market shares.(32)

D. *Factors Affecting Insulation Performance.* There are a number of testing procedures available to provide a laboratory measurement of an insulation's R-value.(33) These tested R-values are not always representative of in-use effectiveness, however, because there are a variety of factors which can affect the thermal performance of an insulation material. Some of these factors are inherent in the nature of the insulation product. In other cases, environmental and installation-related occurrences can change the R-value of the insulation.

1. *Thickness.* In general, the thicker an insulating material is, the better it resists the flow of heat.(34) However, the record demonstrates that, for most mass insulations, the relationship between thickness and thermal performance is not linear.(35) In other words, the tested R-value of a one-inch sample of insulation cannot simply be multiplied by six in order to obtain the total R-value for six inches of the material. For almost all insulations, the R-value produced by such a multiplication process, which is based on an assumption of linearity, will be too high.(36) This "thickness effect" eventually levels off, usually at a thickness of approximately three or four inches.(37) As a result, the record reflects strong scientific agreement that in any reliable measurement of thermal performance, the material must be evaluated either at the thickness at which it is to be used or at a thickness beyond which the R-value per unit will remain constant despite increases in thickness (the "representative thickness").(38)

2. *Temperature.* Normally, the R-value of any mass insulation decreases as the temperature to which it is exposed rises.(39) The record demonstrates that the effect of temperature upon R-value will be about the same for all mass insulations, and that this effect can be substantial.(40) To account for this temperature effect, most members of the insulation industry use a mean temperature of 75° Fahrenheit for all R-value testing.(41) Federal purchasing specifications for insulation also prescribe a mean test temperature of 75° Fahrenheit.(42) While it is generally recognized that 75° Fahrenheit is not representative of all environmental conditions across the country,(43) this is the standard test temperature which the industry has long used to permit R-value comparisons.

3. *Aging.* For certain cellular plastics insulations, the R-value of the product will change as the material ages.(44) This aging process affects polyurethane, polyisocyanurate, and extruded polystyrene.(45) During the first few years of use, exposure of these insulations to the environment results in

a release of certain gases, lowering the R-value of the products significantly.(46) Thus, if the product is tested immediately after manufacture, its R-value will be much higher than it would be in actual use.(47) To account for this effect, some manufacturers test their products for R-value several years after the insulation has been manufactured.(48) Others test for R-value after subjecting their products to an "accelerated aging" process, which simulates years of aging during a three-month period.(49)

4. *Compression.* Compression is a problem peculiar to flexible insulation, and is particularly a problem with respect to air duct insulation. For example, compression of a mineral wool batt increases its density, thus lowering its thermal resistance.(50) In the case of batt insulation, the product is generally compressed during installation so that it will fit snugly between the studs in attic or wall cavities. Following installation, however, the product will generally spring back to its original thickness and R-value. Air duct insulation presents a different problem. This flexible product is wrapped around rectangular air ducts and then sealed. Thus, the insulation is compressed when it is folded at the edges of the duct, and is compressed further when it is taped. This compression results in a reduction of the product's tested R-value.(51)

5. *Settling.* In general, the material particles of all loose-fill insulations tend to settle after being installed in open or unconfined areas such as attics.(52) The particles also will settle when blown into a confined area, such as an enclosed wall cavity, if they are not sufficiently compressed during installation.(53) As the particles settle, the insulation becomes more dense and also loses some of its depth or height. Any settling of a loose-fill insulation reduces the R-value of the area in which it is installed.(54)

Industry members generally agreed that all loose-fill should be tested for R-value at the "settled density" of the product, *i.e.*, the density to which the product can be expected to settle over time.(55) As is the case with aging, loose-fill R-values based on tests that take settling into account will more accurately reflect the actual thermal performance of the product over time.(56) Although there is no generally accepted settled density test for loose-fill mineral wool insulation,(57) the federal purchasing specification for cellulose insulation requires that R-values be based on testing performed at the settled density of the product.(58) This specification provides detailed procedures for determining the settled density of any cellulosic insulation.(59)

6. *Shrinkage.* The inherent properties of urea-based foam insulation will interact after application to cause the material to lose volume, or "shrink," thereby leaving the wall partially uninsulated.(60) Although both the rate and extent of shrinkage are somewhat dependent on the quality of the on-site formulation and application of the urea-based foam material,(61) the shrinkage process itself is an independent event—an inherent characteristic of the product.(62) In other words, even if UF foam insulation is installed perfectly, the material will still shrink.

During the curing period and succeeding stages of shrinkage, the UF foam material will pull away from the wall cavity in all three directions—namely, at the sides, at the ends, and at both the top and the bottom of the "cube" formed by the wall cavity. The resulting gaps between the foam and the cavity walls and studs create a continuum of airspaces in the cavity that may encompass the insulating material. The size and position of these airspaces, and the extent of the resulting loss in insulating efficiency, will depend upon the severity of the shrinkage that occurs.(63)

The record indicates that it is extremely difficult to state a typical amount of UF foam shrinkage during and beyond the curing period.(64) Nevertheless, a substantial body of laboratory and field data has been generated on the subject. In the United States, the National Bureau of Standards (NBS) observed shrinkage of 8.1 percent over a two-year period after UF foam insulation had been installed in a test house.(65) The Department of Housing and Urban Development concluded from field observations that shrinkage of UF foam ranges between 1 and 11 percent, and averages about 6 percent.(66) Canada's National Research Council conducted field observations and reported that long-term shrinkage of UF foam varies between 5 and 10 percent, with the average rate of shrinkage being 7 percent.(67) Governmental bodies in Europe have also concluded that UF foam shrinkage ranges between 4 and 8 percent.(68) Other studies in the record confirm these findings.(69)

The UF foam insulation industry contends that these shrinkage findings are exaggerated, and that excessive shrinkage is invariably due to improper installation of the material.(70) Yet, even UF foam industry members conceded that the product shrinks between 1 and 3 percent (71) or 1 and 4 percent (72) under normal conditions. Moreover, studies submitted by these industry members reveal instances in which shrinkage of properly installed foam insulation has exceeded these levels.(73)

Taken as a whole, the record evidence shows that UF foam insulation invariably shrinks after application, and that the shrinkage has reached levels of 5 percent and above in a broad range of field studies. These shrinkage levels may occur even in the absence of installation problems, which are known to exacerbate the shrinkage problem.(73a)

The process of shrinkage reduces the effective thermal resistance of UF foam insulation by creating void spaces around the foam in the wall cavity.(74) Heat loss occurs through these void spaces,(75) and additional heat loss occurs as a result of movement of air throughout the continuum of void spaces that may encompass the UF foam cube.(76) The record establishes that the process of shrinkage reduces the effective thermal resistance of the UF foam-filled cavity below the R-value of the foam itself as measured under laboratory conditions.(77) Industry members do not dispute this conclusion.(78)

Nevertheless, there is considerable dispute regarding the extent of the loss in insulating efficiency caused by UF foam shrinkage. Actual heat loss measurements and laboratory tests performed by both NBS and the Canadian government have shown reductions in thermal resistance of 40 and 50 percent after shrinkage of UF foam insulation in wall cavities.(79) In addition, some governmental bodies have employed standard engineering calculations to determine the reduction in thermal resistance caused by shrinkage. The Department of Housing and Urban Development calculated that the effective R-value of UF foam insulation is 28 percent lower than its laboratory R-value, if shrinkage is on the order of 6 percent.(80) The Canadian government, assuming a shrinkage rate of 7 percent, confirmed its 40 percent "derating" (81) of UF foam R-values by similar engineering calculations.(82)

The UF foam industry contends that the specific R-value deratings assigned to its product by NBS, HUD, Canada, and others are exaggerated.(83) Nevertheless, the industry generally concedes that shrinkage reduces the effective R-value of a UF foam-filled wall cavity in the neighborhood of 12 to 15 percent.(84)

Based on the record evidence taken as a whole, the Commission concludes that UF foam insulations shrink, and that the shrinkage can significantly reduce the R-value of the insulated area.

II. Unfair and Deceptive Acts and Practices in the Home Insulation Market

A. *Characteristics of the Home Insulation Market.* As fuel prices have climbed in recent years, insulation has become an increasingly attractive investment for consumers. In addition, governmental activities have promoted insulation purchases. Because of the important role that insulation can play in conserving energy, the President's National Energy Plan set as its goal that 90 percent of all homes be insulated by 1985.(*85*) Attainment of this goal will require insulation purchases by several million homeowners each year.(*86*)

To encourage these purchases, Congress passed a sizable tax credit for consumers who buy insulation or other energy conservation measures.(*87*) Congress also has mandated a comprehensive program under which utility companies will promote energy conservation purchases.(*88*) Under this program, virtually every homeowner in the country will receive a brochure from the local utility company. These brochures will urge consumers to purchase insulation and other energy conservation products, and will contain estimates of the savings associated with such products. The utilities also will make available, at the request of any homeowner, individualized energy audits and specific recommendations for conservation purchases. They will provide lists of lending institutions, as well as contractors and suppliers of the various products, and will offer to arrange for the installation and financing of products purchased by the homeowner. In short, through this program, the federal government will be playing a pivotal role in efforts to encourage the purchase of insulation and other energy conservation measures.

Governmental bodies have also promoted insulation purchases in other ways. In recent years, numerous federal and state agencies have issued pamphlets recommending the addition of insulation to existing homes.(*89*) A federal low-income weatherization program administered by the Department of Energy funds state-run programs under which houses owned by low-income persons are insulated.(*90*) With respect to new housing, both the Farmers Home Administration and the Department of Housing and Urban Development have issued revised minimum property standards for federally-assisted housing.(*91*) The result of these revisions is an increase in the amount of insulation required in new homes.

In light of the rising fuel prices and active governmental intervention in the home insulation market, it is not surprising that nearly eight million homeowners had some insulation installed or added between 1974 and 1976.(*92*) In the first half of 1977 alone, three million homeowners added insulation to their homes.(*93*) Approximately 70 percent of the insulation being added to existing homes is installed by do-it-yourself consumers.(*94*) who generally buy their insulation through retail hardware and department stores.(*95*) Insulation is sold and installed in the remaining 30 percent of the retrofit market by seven to ten thousand contractors across the country,(*96*) and is sold or financed by a growing number of utility companies.(*97*)

Insulation is also acquired by consumers through the purchase of a new home. Housing starts in 1977 were at their highest level in several years, and the average amount of insulation being placed in each new home continued to rise.(*98*) Not surprisingly, the record shows that purchasers of new homes are increasingly attentive to energy efficiency as a critical feature of the home.(*99*) One survey showed that most new home buyers are willing to spend additional money for insulation when advised to do so by builders.(*100*)

Despite the enormous numbers of home insulation purchasers in the market today, it appears that most consumers know very little about available insulating materials and the factors that should affect any purchasing decision. Consumers have a general awareness of insulation and of the energy-saving benefits it can provide, but they are largely uninformed about insulation effectiveness. There are several obvious reasons for this state of affairs. Home insulation is an expensive product, which is purchased very rarely by homeowners.(*101*) Thus, consumers are unable to learn through repetitive purchases how effective the various insulation products are. Moreover, insulation is not the kind of product that can be readily evaluated even by relatively knowledgeable consumers. It is not possible to determine prior to purchase how the insulation material will perform, since insulation effectiveness must be measured by scientific test methods.(*102*) Similarly, after the product has been installed, the consumer has no practical way of determining whether the insulation has been installed properly to attain the desired level of effectiveness; further, the number of variables affecting home energy consumption—e.g., climate, type of dwelling, and lifestyle—make it virtually impossible for the consumer to assess whether the insulation is having any impact on the home's energy consumption, or what the impact is.(*103*) In sum, home insulation is a "credence good" because prospective purchasers do not have the sophistication, the resources, or the opportunity to evaluate its likely effectiveness or impact on energy consumption either prior or subsequent to their purchasing decisions.

B. *Unfair and Deceptive Acts and Practices.* 1. *Insulation R-values.* Since consumers cannot independently determine the effectiveness of home insulation, they need to be informed of some product feature or features that they can rely on to provide them with information concerning the material's effectiveness. The central component of the rule initially proposed by the Commission was the requirement that consumers be told, prior to purchase, the R-value of home insulation materials.(*104*) This proposal was based on the Commission's belief that R-value was that one significant piece of information that measures insulation effectiveness and without which consumers cannot make rational purchasing decisions.(*105*) In other words, the Commission believed that R-value was a material fact in any insulation purchasing decision.

The record overwhelmingly bears out this early belief.(*106*) It demonstrates that the R-value of an insulation material is the only existing measurement that enables the consumer to compare the thermal performance of competing insulations.(*107*) Thickness cannot serve as the appropriate gauge, since three inches of one insulation may be twice as effective as three inches of another.(*108*) Similarly, price is not a useful measure of performance, since a high price is not necessarily indicative of superior insulation effectiveness.(*109*) Nor is there any other performance yardstick suited to this purpose. As one industry member put it, an insulation material's R-value "is the only quantifiable . . . measure of thermal resistance that might provide the typical consumer with a means to evaluate insulation products."(*110*)

Despite the crucial role that R-value information should play in any insulation purchasing decision, the evidence demonstrates that industry members often fail to disclose product R-values to consumers.(*111*) For example, consumer protection specialists in Arizona, California, Georgia, and New Jersey noted that few insulation ads in their respective

jurisdictions disclose product R-values.(*112*) These contentions are corroborated by record evidence of numerous ads, in both print and broadcast media, for a wide variety of insulation materials.(*113*)

Nor is this widespread failure to disclose R-values necessarily remedied when the consumer actually purchases the product. In a survey of package labels in twelve retail outlets in the Washington, D.C. area, approximately 40 percent of the labels contained no R-value disclosure.(*114*) The survey further revealed that, in half of the stores, package labels are not available for inspection prior to purchase.(*115*) Thus, even if R-value information does appear on the label, consumers may have no opportunity to use the information in reaching a purchasing decision. Indeed, a survey of Wisconsin homeowners showed that 75 percent of those interviewed had never heard of the term "R-value" as applied to home insulation.(*116*)

a. *Failure to disclose R-value as an unfair practice.* These findings illustrate a classic case of deficient market performance. Despite the established centrality of R-value to evaluating insulating performance and the absence of public or private restraints against its disclosure,(*117*) market forces have not caused industry members to generate this vital information and make it available to the consuming public. Although the record evidence provides no clear explanation for this failure of the marketplace, the conditions and incentives operating in the home insulation market may account for it.

For example, the recent past has witnessed rapid growth in the insulation industry, characterized by a dramatic influx of manufacturing and contracting firms. In many cases, these firms lacked either substantial experience in the insulating business or sensitivity to the informational needs of insulation consumers. Yet, this phenomenon can account for only part of the market failure, since there are numerous established firms that have also failed to disclose this information. The failure also could be attributable in part to the economic self-interest of sellers of low R-value products, whose success in marketing their products may depend on their ability to shift the competitive focus to some other more favorable attribute of their product. Again; however, this would account for only a portion of the failure to disclose R-values, since the record evidence demonstrates that low as well as high R-values have been disclosed on occasion.

Even for firms that are experienced and that have no incentive to withhold R-value information, the insulation market simply does not encourage the promotion of R-values. For example, the failure to disclose R-values is attributable in part to the general ignorance of consumers concerning insulation products. In other words, since many consumers do not know that R-value is the performance feature that should be evaluated in an insulation purchasing decision, there has been no market demand for R-value information. In addition, this lack of understanding on the part of consumers may mean that industry members have no incentive to attempt to promote the R-value concept. Since many consumers do not know what R-value means, an advertisement that focuses on R-value is often simply another advertisement to buy insulation. Thus, the R-value information in the ad often does not benefit the advertiser. In fact, an ad that attempts boldly to educate consumers about R-value may inure as much to the benefit of competitors as it does to that of the advertiser; a competitor with comparable R-value material will be able to exploit the consumer education paid for by the advertiser. This risk, one which no reasonable advertiser wishes to take alone, encourages industry members to focus instead on product features that consumers will understand.

Moreover, the same market forces that have operated to deprive consumers of R-value information in the past will continue to do so in the future. Buyers of low R-value products will continue to be ignorant of the significance of R-value, and therefore will not demand this information. The risk of sacrificing competitive advantage from lone attempts at R-value education will remain, encouraging industry members to focus consumer attention on other product features. More importantly, governmental intervention in the insulation market will, if anything, become more intensive in the years to come.(*118*) This intervention may be a distorting factor in the marketplace, as it has been in the past. It inflates the demand for insulation products, so that industry members gain increased sales regardless of the presence or absence of R-value information about their products.

The preceding discussion demonstrates that conditions in the home insulation market are not encouraging industry members to make R-value information available to consumers. This market failure is significant because it results in substantial injury to comsumers of home insulation products.(*119*) There are several elements of the economic injury that flow from the absence of R-value information for use in making purchasing decisions.

As noted earlier, consumers are unable to assess R-value or insulation performance on their own. They cannot ascertain the R-value of a product merely by examining it,(*120*) nor will they discover through repeat purchases the relative efficiencies of insulation products. In other words, in the absence of a seller's disclosure, consumers do not have a ready means for determining R-value, and their search costs in seeking out that information would be extraordinarily high. The imposition of this search cost on consumers is in itself a genuine economic injury, which would be prevented by the introduction of R-value information into the marketplace by those who are able to do so most efficiently.(*121*) Further, extensive consumer search is an unnecessary injury, since the R-value of any particular product is already known to each manufacturer in the ordinary course of its business.(*122*) In light of this fact, it is not surprising that the record reveals a broad consensus of industry support for the Commission's proposal for mandatory disclosure of R-values.(*123*) Thus, this is not a matter in which the Commission must weigh complicated evidence concerning the relative merits of competing objectives, or decide how much consumer injury should be sustained for the sake of preserving some industry or consumer benefit.

In addition to raising consumer search costs, the failure of sellers to disclose R-value impedes the ability of consumers to make rational purchasing decisions. The only significant reason to buy insulation is to save energy, and the only measurement that permits consumers to judge the anticipated level of thermal performance is R-value. Moreover, R-values vary significantly from product to product. Thus, unless consumers know the R-values of all available products, they are effectively deprived of any opportunity to compare relative insulating efficiencies, and to select the product with the greatest efficiency and potential for energy savings. Given the general relationship between thermal resistance and potential energy savings, the inability to comparison shop for the optimum R-value can result in purchases of insulation products that are relatively ineffective. The result is that consumers' expectations of energy savings are disappointed, and the market continues to operate in a manner that frustrates the national program of energy conservation.

There is another element of the economic injury that derives from the failure to disclose R-value information. In order to judge the economic value of an insulation product, that is, to estimate whether the purchase price will be justified by insulating performance, the consumer must know the product's R-value. The only rational way to price shop for home insulation is to determine, for each competing product, how many square feet of space can be insulated to a desired level of R-value for a stated price. Without this R-value information, consumers are deprived of a rational basis for making a very expensive economic decision, and of the opportunity to seek the lowest price at which they can obtain the level of performance they desire. The consequence of this impediment to the buying process is that consumers may make unwarranted, excessively costly insulation purchases.

Thus, the failure of the home insulation market to generate R-value information causes substantial injury to consumers. What is most significant about this injury, however, is that it occurs randomly. In the absence of R-value information, no individual consumer has any assurance that his or her insulation purchase was a rational one in light of his or her needs. Each prospective purchaser is involved in a game of chance, virtually taking it on faith that this will not be one of the randomly dispersed purchases that turns out to be erroneous. On the other hand, if R-value information is available, each consumer can determine how much energy savings to strive for, how much insulation performance to buy, and what price should be paid for that level of performance. For these reasons, the Commission believes that the failure of insulation sellers to disclose R-value information prior to purchase is unfair within the meaning of section 5 of the Federal Trade Commission Act.

The foregoing analysis is sufficient to support the Rule's provision for mandatory disclosure of R-values, because of the public policy favoring the existence and efficient functioning of free markets. A free market cannot function property in the absence of effective competition which focuses on the merits and value of competing products and services. An essential element of effective competition is the availability of information that consumers need to evaluate competing products and to make the best possible choices. This fundamental public policy of encouraging informed consumer decisions has repeatedly found expression in federal statutes requiring the disclosure of material information.(*124*) Market imperfections that impede the process of providing such material information in the regular flow of commerce discourage consumer consideration of salient product features, diminish comparison shopping, and create unwarranted competitive parity or advantage for inferior products. Thus, a market that functions in this way not only harms consumers but also lessens fair and open competition. In addition, as earlier discussion of the market disincentives for R-value disclosure illustrates, a market that functions imperfectly may by its very nature be incapable of self-correction. Given the nexus between healthy competition and consumer welfare, and considering a market's own capacity to eliminate imperfections, the test of unfairness here is whether the acts or practices at issue inhibit, and are likely to continue to inhibit, the functioning of the competitive market in a manner that causes harm to consumers.(*125*) The Commission concludes that this unfairness test is met.

It is also noteworthy that the mandatory disclosure of R-value information complements the strong public policy in favor of energy conservation.(*126*) Indeed, in light of the extensive governmental participation in the home insulation market, it is especially important for the Commission to ensure that insulation purchases are not tainted by unfairness. Thus, by enhancing competition and free commerce in the insulation market, the Commission's decision to require R-value disclosure both protects insulation consumers and furthers the nation's energy conservation goals.(*127*)

b. *Failure to disclose R-value as a deceptive practice.* The failure of insulation manufacturers to disclose product R-values is also a deceptive practice under section 5. It is an established principle of section 5 that when a consumer's normal expectations concerning a product are at odds with actual information about the product, this disparity must be corrected through disclosure.(*128*) In the context of home insulation materials, the physical attributes of the most commonly purchased products lend themselves to consideration and purchase by consumers on the basis of thickness. In addition, price is an important consideration in any insulation purchase. Although the record reflects general agreement that consumers are misled when they buy insulation on the basis of price or thickness,(*129*) their erroneous expectations are being exploited and perpetuated by current marketing practices in the industry. For example, although a scientific survey of insulation ads is not available, fully 20 percent of the ads placed on the record by staff and other parties from available media refer to thickness and/or price without disclosing the product's R-value.(*130*) As noted earlier, this limited and misleading information is not always fleshed out when consumers purchase the product.(*131*) Many labels do not disclose R-values, and labels are often unavailable for inspection prior to purchase.(*132*) Since most insulation sales are made to do-it-yourself consumers,(*133*) and since the physical attributes of the most commonly purchased materials lend themselves to purchase on the basis of thickness,(*134*) it is reasonable to conclude that a significant number of insulation purchases are being made on the basis of the product's thickness or price, with no knowledge of its R-value. Yet, the record reflects general agreement that consumers are misled when they purchase insulation on the basis of price or thickness.(*135*) For example, although a material's R-value is partly a function of its thickness, insulation R-values per unit thickness vary significantly from product to product.(*136*) Thus, a three-inch thickness of one product may provide twice as much R-value as a three-inch thickness of another. Similarly, a consumer is misled when he or she is told simply that a certain area, in square feet, can be covered with insulation at a price of $100. As the record reflects, the consumer cannot evaluate this price prior to purchase without knowing the R-value that will be attained over the area for the stated price.(*137*)

Since thickness and price are the elements upon which consumers must rely in the absence of R-value disclosures, and since the record demonstrates that consumers are misled when they purchase insulation on the basis of these factors, the Commission concludes that the failure to disclose product R-values to consumers prior to purchase is deceptive.

c. *Disclosure of R-value in a deceptive and unfair manner.* In many instances, product R-values which are claimed by industry members are exaggerated. The record contains numerous examples of ads which state R-values that greatly exceed those generally agreed to be realistic values for products in that same class.(*138*) State consumer protection officials also agreed that ads with overstated R-values are common in their respective jurisdictions.(*139*) Indeed, even some industry members conceded

that excessive R-value claims are being made to consumers.(*140*)

Moreover, even if an advertiser's R-value claims accurately reflect available test results, the conditions under which R-value testing takes place can greatly enhance the resulting R-value. Testing an insulation material at a one-inch thickness, for example, inherently produces a higher R-value than testing at greater thicknesses.(*141*) Yet, most manufacturers currently base their R-value representations on one-inch R-value testing. In fact, many manufacturers affirmatively represent their product's "R-value per inch," (*142*) clearly leading consumers to believe that insulation R-values are linear. Similarly, R-value claims based on testing at a low mean temperature, such as 35° Fahrenheit, inevitably mislead consumers.(*143*) Testing performed at this lower temperature will invariably produce a higher R-value than testing performed at the standard temperature of 75° Fahrenheit.(*144*)

Further, most manufacturers fail to reduce their claimed R-value to account for factors that are known to affect thermal performance, such as settling, shrinkage, and aging.(*145*) the result is that R-value claims for these insulation products are exaggerated.(*146*) Moreover, since the deleterious effects of settling, shrinkage, and aging vary not only among classes of products but among individual materials of the same type, the failure to reduce R-values to account for these factors effectively prevents consumers from comparing product R-values on a fair and accurate basis. Finally, if R-value information is needed for comparison purposes to make the market function effectively, as discussed earlier in this section, then it is unfair not to give R-values that reliably take these comparative differences into account. The Commission therefore concludes that these practices are both deceptive and unfair to consumers of home insulation.

d. *Failure to explain the meaning of R-value.* As noted earlier in this section, consumers are unfamiliar with the concept of insulation R-values.(*147*) Indeed, one survey showed that 75 percent of the respondents had never heard of the term "R-value" as applied to home insulation materials.(*148*) This is not entirely surprising, since virtually no ads or labels for home insulation disclose the meaning of the term.(*149*) Even if the survey finding reflects a more extreme degree of consumer ignorance than can be assumed in the population at large, it nevertheless shows that many consumers cannot benefit from the Commission's decision to require R-value disclosures unless the meaning of the term is explained to them. Moreover, the same factors that, as previously discussed, have unfairly prevented dissemination of R-values, will unfairly prevent dissemination of an R-value explanation.

As a result, the Commission has decided that R-value disclosures must be accompanied by a brief explanation of the meaning and significance of the term.(*150*) In the Commission's judgment, the R-value explanation required by the Rule is justified by the industry's past failure to educate and inform consumers about R-value, and is needed to implement the Commission's R-value disclosure scheme.(*151*)

2. *Savings claims.* The record in this proceeding demonstrates that insulation consumers are frequently confronted with energy savings claims made by industry members.(*152*) In many instances, these claims take the form of advertisements that state that the consumer's fuel bills will be reduced by a specified percentage or by a specified dollar amount after insulation is installed.(*153*) These claims are often exaggerated, with some advertisers claiming that fuel bills will be reduced by as much as 50 or 60 percent.(*154*) State consumer protection officials who have asked to see the proof behind these claims have found that they cannot be substantiated by the firms.(*155*)

Moreover, the amount of energy that can be saved by any individual homeowner through the purchase of insulation is affected by a plethora of factors.

These factors include the geographic region in which the house is located; the type and size of the house; the efficiency of existing heating and cooling systems; the amount of insulation already in the house; the presence or absence of other energy saving features, such as storm windows and doors; the number of occupants and their lifestyle; and the type and cost of the fuel used in the house.(*156*) Yet, with rare exceptions, savings claims do not disclose these factors to consumers.(*157*) Nor do they disclose that savings vary from consumer to consumer and that there are other factors to be considered.(*158*) Since any individual consumer's savings from insulation will depend on his or her particular circumstances, as well as on the purchased insulation's thermal efficiency, it is misleading to suggest that insulation can save *any* energy without disclosing that savings will depend on the consumer's particular circumstances.(*159*)

3. *Other claims.* Two remaining types of claims warrant attention. First, several ads on the record deceptively suggest that consumers will qualify for a tax credit through the purchase of insulation.(*160*) In addition, one state agency pointed out that numerous retailers had been misrepresenting the availability of federal tax credits.(*161*) These claims were being made long before the National Energy Act was passed by Congress, and certainly before it was clear that federal tax credits for insulation purchases would be available.(*162*) Now that the tax credit is enacted and available, the Commission is concerned, based on this record of past deception, that some products which are not eligible for tax credits may be advertised deceptively.

Second, several ads for insulation claim that the products have been "certified" by federal agencies.(*163*) these claims are misleading. Federal agencies merely set procurement standards which apply to any insulation purchases made or funded by the agency. However, no federal agency certifies the performance or acceptability of any insulation product.(*164*)

C. *Prevalence of Unfair and Deceptive Acts and Practices.* In making its assessment of the frequency with which unfair or deceptive practices are occurring in the home insulation industry, the Commission must consider a number of factors. These include the number of consumer complaints;(*165*) the opinions of experts in the field; documentary evidence such as insulation labels, advertisements, and other promotional materials; (*166*) the testimony of industry members regarding the need for a trade regulation rule;(*167*) studies and investigations performed by state and federal governmental agencies; newspaper investigations and exposes; and the Commission's own prior experience in regulating the practices of insulation industry members through individual cease and desist orders. In sum, the issue of prevalence requires the Commission to examine all of the materials in the record. Moreover, the issue of prevalence involves an examination of both the number of industry members engaging in practices violative of section 5 and the number of consumers affected by the practices.

Millions of consumers are adding insulation to their homes each year,(*168*) and there are thousands of home insulation manufacturers, distributors, and retailers. As the preceding discussion indicates, many of the industry practices that violate section 5 of the Federal Trade Commission Act are almost uniformly used. For example, most industry members base their R-

value claims on tests performed with one-inch thick insulation samples. Similarly, almost no firms reduce their tested R-values to account for aging, compression, settling, or shrinkage of the product; nor do the firms disclose the fact that these physical changes will occur and may significantly reduce the represented R-value. Despite the abundance of savings claims on the record, almost none indicate that the consumer's savings will depend on many factors, or indicate what those factors are.

Many of the other practices found to be unfair or deceptive also are used frequently. For example, the failure of insulation sellers to disclose product R-values occurs quite often. Of the product labels examined in a survey of Washington area stores, 40 percent did not disclose the R-value of the product. Similarly, 20 percent of the insulation ads on the record state a price or thickness without disclosing the corresponding R-value.

Finally, some of the practices affected by the Rule apparently occur only occasionally. Although the record contains evidence of false or misleading certification and tax claims, the evidence does not suggest that these claims have been made on a widespread scale. However, with enactment of the federal tax credit and the residential conservation program under NECPA, the Commission anticipates that such claims will become substantially more prevalent in the future. Moreover, the Rule provisions that govern these claims merely state the obvious principle that false claims are prohibited by section 5. Since such section 5 violations are so patent, the Commission believes that the claims are appropriately addressed in the rule even if only a few firms are making them.

As this discussion indicates, most of the section 5 violations that this Rule addresses are occurring on a widespread scale. On the basis of the record taken as a whole, and in light of the extremely high demand for home insulation, the Commission is convinced that large numbers of consumers are affected by these practices, and that this number represents a significant percentage of all industry-consumer interactions. The record evidence is therefore sufficient to convince the Commission that action to protect the home insulation consumer from these unfair and deceptive practices is justified.

III. The Provisions of the Rule

A. *Scope of the Rule.* The scope of the Rule adopted by the Commission is determined mainly by the definition of "home insulation" in § 460.2, and by the provisions of § 460.4. The Rule applies generally to thermal insulation materials that are "for use in old or new homes, condominiums, cooperatives, apartments, modular homes, or mobile homes."(*169*) With two explicit exceptions,(*170*) the Rule thus covers all thermal insulation products sold for residential applications.

A number of participants contended that the Rule should also apply to other products with insulating characteristics, such as storm windows and doors.(*171*) Despite their insulating characteristics, these products are distinct in several respects from thermal insulation materials, and their treatment would have complicated and prolonged the proceeding.(*172*) In the interest of expeditiously considering regulation of the home insulation industry, the Commission determined at the outset of this proceeding that such products should be excluded from the proposed rule.(*173*) As a result, members of these related industries did not participate in the rulemaking, and the record evidence concerning practices in these industries is sparse. Under these circumstances, the Commission has determined not to include these products in the Rule.

While § 460.2 specifies which products are covered under the Rule, § 460.4 indicates when the Rule applies.(*174*) The Rule must be followed whenever a covered person imports, manufactures, distributes, sells, installs, promotes, or labels home insulation. The Rule also applies to the supplying of written information for,(*175*) and the preparation and use of, home insulation labels, fact sheets, ads, and other promotional materials for consumer use. The relevant limitation here is that the written materials must be "for consumer use." The Commission recognizes that insulation manufacturers often prepare detailed, technical data for building industry professionals, such as architects.(*176*) These professionals should already be sufficiently informed concerning insulation performance characteristics, and manufacturers may wish to provide them with information that differs from that required under the Rule. The Commission has therefore concluded that its Rule should not apply to such materials.

B. *Testing Requirements.* 1. *Duty to test R-value.* In § 460.5 of the Rule, the Commission has required that all insulation R-values disseminated to consumers be based on standard scientific tests of thermal efficiency. The specific testing schemes for mass insulation materials, and for insulation products using reflective aluminum foil, are discussed in Section III.B.3, *infra.*

As noted in Section II.B.1.c of this statement, the record shows that presently used methods for determining R-value fail to consider several factors which have a material effect on thermal performance. As a result, such methods are unreliable forms of R-value substantiation and generate results which can mislead consumers. These methods include: (1) in lieu of testing, using pre-published R-values applicable to a general insulation category but not necessarily accurate for a particular manufacturer's insulation product;(*177*) (2) extrapolating R-values from thin-sample tests, an inherently deceptive procedure because of the non-linearity of per unit R-values;(*178*) (3) testing samples at low temperatures to gain a comparative advantage over competing R-values determined at higher temperatures;(*179*) and (4) testing samples without accounting for the adverse effects of settling, aging, and shrinkage on R-value.(*180*)

In light of this evidence, R-value disclosures based on presently used test methods would sanction the continued deception of consumers. Moreover, unless all home insulation R-values are determined in a standardized manner, consumers will effectively be subjected to the unfairness associated with the failure to disclose R-values. In other words, the disclosure of R-values which are based on differing test methods and which consumers cannot effectively use in making their purchasing decisions is, for all practical purposes, a failure to disclose R-value.

As the record indicates, thermal resistance is a product characteristic reflecting physical properties and environmental factors which can be analyzed only by scientific means. It also indicates that the test methods prescribed by the Rule are the only reliable methods for accurately determining R-value.(*181*) Moreover, the Commission believes that reasonable consumers, generally recognizing the technical nature of insulation materials, would expect R-value claims to be documented by results of some form of scientific testing.(*182*) Given this set of circumstances, the Commission has required that all R-values represented by manufacturers be substantiated by particular scientific test methods as set forth in the Rule.

Section 460.5 prescribes the use of ASTM C177, C518 or C236 for determining the R-value of an insulation material.(*183*) These tests are "consensus" ASTM procedures(*184*) and are published as standard test methods in ASTM's *Annual Book of Standards.*

The prescribed test methods provide R-value measurements under "static" or "steady-state" laboratory conditions.(*185*) In other words, neither these tests nor any other available tests can take into account transient environmental factors, such as moisture and air circulation, which can have a significant effect on insulation performance.(*186*) Thus, the R-value determined by the prescribed laboratory tests may not always accurately reflect "effective," or "*in situ*," insulation performance.(*187*) Notwithstanding this limitation, the record shows that they are the most reliable and accurate test methods available,(*188*). Accordingly, their implementation will permit fair comparisons of product R-values on a standardized basis to provide consumers with a reliable, uniform, and comparative base for their purchasing decisions.

2. *R-value testing for mass insulations.* As previously noted, § 460.5(a) of the Rule designates the use of one of three tests—ASTM C177, C518, or C236—for determining the R-values of all types of mass insulation. The record shows that all three tests are highly accurate and reproducible steady-state methods.(*189*) Since manufacturers of mass insulation materials are unlikely to use on a regular basis ASTM C236, which is a "systems" test,(*190*) this section discusses the provisions relating only to ASTM C177 and C518.(*191*)

a. *Representative thickness testing.* The record shows that mathematical extrapolation of R-value from thin-sample tests is inherently inaccurate and misleading, because it fails to recognize the non-linearity of R-value with increases in thickness.(*192*) In recognition of this problem, ASTM revised both C177 and C518 in 1976(*193*) to discourage such extrapolation and to encourage instead the use of test specimens of sufficient thickness to ensure that thermal resistance measurements will reflect the effect of thickness on R-value.(*194*)

In section 460.6 of the Rule, the Commission has incorporated the 1976 revisions to ASTM C177 and C518 by requiring "representative thickness testing"(*195*) for all mass insulations. Rulemaking participants did not dispute the scientific principle behind this requirement; indeed, virtually every party agreed that changes in thickness affect R-value, and that the use of revised C177 and C518 would improve the accuracy of R-value claims made to consumers.(*196*) Nevertheless, some segments of the industry, principally the mineral wool manufacturers, repeatedly contended that the Commission should not mandate representative thickness testing at this time.(*197*) Instead, these participants recommended that they be allowed to continue promoting R-value results taken from thin-sample tests. They advanced two arguments to support this position.

The first contention is that mandatory representative thickness testing should be postponed until sufficiently thick standard calibration materials are available from the National Bureau of Standards (NBS).(*198*) Without such materials, it is alleged, there will be significant measurement uncertainties associated with representative thickness testing. As a result, different laboratories measuring the same insulation sample could produce different R-values, raising a question of the reliability and comparability of all R-value claims. For this reason, the industry members argue that standard calibration materials are essential to a representative thickness testing program.

Although the Commission recognizes the lack of standard calibration specimens as a shortcoming and encourages the development of such materials for commercial use as rapidly as possible, it also believes that the record evidence contradicts industry's contention in several respects. First, there is evidence that the availability of thin-samples for calibration of thin-samples tests has not completely eliminated measurement variations among different laboratories.(*199*) Second, even by the admission of the mineral wool manufacturers, round robin test results on thick samples using representative thickness testing techniques varied by only three or four percent.(*200*) These results are within acceptable limits,(*201*) and are more precise than those obtained in a 1976 international round robin using thin samples.(*202*) Indeed, they are a very significant improvement over the 10 to 15 percent R-value reduction that consumers unwittingly experience due to the thickness effect.(*203*) These thick-sample round robin results suggest that internal calibration programs can be used effectively until standard calibration materials become available, and that the use of such programs will enable manufacturers to stay well within the tolerance limit imposed by the Rule.(*204*) Third, the record shows that the absence of standard calibration materials has not prevented other segments of the insulation industry from accepting the fact that representative thickness testing has become a realistic objective and should be required by the Rule.(*205*) In fact, despite their recommendation for continued thin-sample testing, the mineral wool manufacturers have been testing their loose-fill products at thicknesses up to six inches for years,(*206*) as have many cellulose manufacturers.(*207*) This has occurred despite the absence of any standard calibration materials at these thicknesses.(*208*)

Lastly, it is noteworthy that this new Commission requirement follows in the wake of similar action recently taken by other governmental and standards-setting bodies. For example, the HUD materials standard for urea-based foam products requires that urea-based foam manufacturers must perform R-value tests on samples at least three inches in thickness.(*209*) Similarly, ASTM 739, the recommended specification for cellulose insulation, requires testing of cellulose at representative thickness, and the Canadian government has adopted a "derating" procedure to account for the effect of thickness on the R-value of cellulose insulation.(*210*) In addition, Canada has required since 1977 that the R-values for mineral wool batts be determined by representative thickness testing.(*211*) Finally, as discussed in Section III.B.3.a, *infra*, the reflective foil manufacturers who, like cellulose and urea-foam producers, are generally very small firms, must perform the more expensive and time-consuming ASTM C236 test so that claimed R-values will be as representative as possible of the performance of the foil system once installed.

This review indicates that many competitors of the mineral wool batt manufacturers must already perform representative thickness testing, and they must do so without any NBS calibration materials. Further, in this proceeding it has been almost exclusively the mineral wool industry members who continue to assert, somewhat contradictorily, that representative thickness testing cannot be implemented until these materials are provided by NBS. Absent immediate implementation of the representative thickness testing requirement in this Rule, the mineral wool manufacturers, who already hold an overwhelming share of the home insulation market, will preserve an unwarranted competitive advantage—at least for their batt products—over other industry members who are already or will be required to do representative thickness testing. For this reason, and in light of the evidence on the issue, the Commission concludes that standard calibration specimens, while desirable, are not essential to the implementation

of a representative thickness testing requirement.

The second argument advanced by mineral wool manufacturers is that there are not yet enough laboratories equipped with thick sample testing devices to be able to perform representative thickness testing for the entire home insulation industry.(*212*) Once again, the record refutes the industry contention. First, the evidence shows that the major fiberglass producers, which account for the great bulk of all home insulation sales, already have the necessary equipment and personnel to do representative thickness testing.(*213*) Second, several independent testing laboratories also have the requisite resources, and would be able to perform representative thickness testing for the non-fiberglass producing segments of the industry.(*214*) Third, there is evidence that additional laboratories are procuring thick-sample testing facilities in light of the 1976 ASTM revisions and in anticipation of a representative thickness testing requirement.(*215*) Fourth, it appears that some manufacturers will be able to continue testing relatively thin samples of their products,(*216*) and that there is more than enough equipment at present to meet these needs.(*217*) Finally, the Commission's deletion of the retesting requirement originally recommended by the staff(*218*) should greatly reduce the industry's testing burden and, thus, alleviate whatever backlogs might result from imposition of a representative thickness testing requirement on the non-fiberglass producers.

For the foregoing reasons, the Commission believes that the record supports its decision to require R-value testing at representative thicknesses. At the same time, the Commission recognizes that the present supply of laboratories is not abundant, and that the industry, especially those manufacturers who do not have in-house testing facilities, will need a reasonable grace period in which to prepare for the advent of mandatory representative thickness testing.(*219*) Accordingly, the Commission has determined that the new testing requirement and resultant changes in R-value disclosures should take effect 90 days following promulgation of the Rule. This length of time is based on detailed staff calculations reflecting the present numbers of testing laboratories and manufacturers in the home insulation market.(*220*)

b. *Test temperature.* As discussed in Section I.C.2 of this statement, R-values fluctute inversely with changes in temperature, so that lowering the test temperature will produce a corresponding rise in the tested R-value of a mass insulation. This aspect of thermal resistance poses a problem with respect to the manner in which R-values are reported to consumers. If two insulation products ordinarily have similar R-values under similar conditions, a significant downward adjustment of the temperature at which one of them is tested will make that product appear to have a higher R-value than the other product.

As this example shows, differences in test temperatures can distort not only the R-value of a particular product, but the comparability of R-values of different and competing products. Because such temperature distortions impede comparison-shopping and have the potential to confuse and mislead consumers, the Commission has required in section 460.5(a) of the Rule that R-value tests for mass insulation materials be conducted at a standard mean temperature.

Specifically, § 460.5(a) requires all R-value tests for these products to be done at a mean temperature of 75° Fahrenheit. The choice of this particular temperature is based on a significant volume of record evidence that 75°F is already a widely used test temperature and is incorporated in many voluntary industry standards and federal procurement specifications.(*221*)

Nevertheless, in specifying 75°F, the Commission acknowledges record evidence that this temperature has no particular advantage over any other temperature. As several participants noted, it is not representative of average temperatures in many geographical regions.(*222*) In light of this fact, the Commission has given careful consideration to recommendations that a lower standard mean temperature be prescribed.(*223*) or that disclosure of R-values tested at other temperatures be allowed to accompany the mandatory disclosure of R-values tested at 75°F.(*224*)

With respect to the first recommendation, the record shows that commenters critical of the 75°F standard nevertheless could not agree on a substitute mean temperature.(*225*) Thus, even if the standard test temperature should be one that is more representative of average climatic conditions than 75°F, the record does not indicate which alternative temperature should be prescribed. Moreover, in view of the fact that temperatures vary from region to region, the Commission doubts that any single temperature would adequately represent the range of average temperature conditions found across the country. Accordingly, the Commission rejects the recommendation that another temperature be substituted for 75°F as the standard mean temperature for R-value tests. The prescribed test temperature will be as effective as any other would be in providing a standard temperature condition for R-value comparison purposes.

With respect to the second recommendation, the Commission recognizes that R-values increase at lower temperatures and that other temperatures may be more applicable than 75°F to the average climates of many consumers. However, the Commission believes that a proliferation of R-value claims at various temperatures would confuse consumers, who are unlikely to be aware of the inverse relationship between R-value and temperature, and would complicate the process of comparison shopping which the Rule is designed to encourage. In addition, the Commission sees only marginal benefit in the recommendation to allow two R-values disclosures—one at 75°F and another at a lower standard temperature that would be designated in the Rule. Since any lower temperature, as previously noted, would not be representative of many areas, and since many consumers probably do not know the average temperature for their own geographical region, the Commission questions the utility of a second disclosure at a lower temperature. On balance, the Commission has concluded that the informational benefit would not be great enough to outweigh the risk of consumer confusion from an additional R-value disclosure at a second temperature. Accordingly, § 460.5(a) prescribes a uniform temperature standard of 75°F for all mass insulation R-value tests.(*226*)

c. *Aging of cellular plastics insulations.* As discussed in Section I.C.3 of this statement, a chemical aging process peculiar to certain cellular plastic materials causes their R-value to decrease over a period of time after manufacture. This aging process affects polyurethane, polyisocyanurate, and extruded polystyrene insulations. It lasts a variable length of time, sometimes as long as several years, and can have a significant adverse impact on the R-values of these products.(*227*) As a consequence, failure to account for this aging effect in the testing of these products results in R-value claims that are inflated and misleading to consumers.

Section 460.5(a) of the Rule addresses this problem by requiring that R-value tests for extruded polystyrene,(*228*) polyurethane, and polyisocyanurate

insulations be performed on aged samples. In particular, the Rule requires that these products be aged in accordance with the "accelerated aging" method specified in GSA Specification HH-I-530A,(*229*) or through a comparable procedure that reflects the adverse effect of aging on the product's R-value.

The GSA accelerated aging test received support from a number of commenters, who noted that it is already used by some industry members, and that it will accurately reflect years of aging.(*230*) However, the representative for the Society of the Plastics Industry noted that some products may suffer physical distortions when subjected to the GSA procedure.(*231*) In addition, at least one manufacturer already has test data showing the R-value of material that has been aged for five years.(*232*) Therefore, the Commission has not specified the use of GSA's accelerated aging test in the Rule. Rather, any procedure that results in R-values fully reflective of aging will be acceptable.

d. *Settled density testing for loose-fill insulations.* As discussed in Section I.C. 4 of this statement, loose-fill cellulosic and mineral wool materials always settle in attics, and will also settle in walls if not installed to the proper density. This settling reduces the R-value of the insulated area.(*233*) Section 460.5(a) of the Rule remedies this deception by prescribing a scheme for testing loose-fill R-values at their "settled density." With respect to cellulose insulation, this provision requires that R-value tests be performed at the settled density determined under GSA Specification HH-I-515D.(*234*) This settled density test for cellulose represents a significant technological advance in the art of insulation testing. More to the point, since cellulose R-value as tested will be discounted for settling, incorporation of the new GSA Specification obviates the need for the cellulose settling disclosure that had been recommended by the staff,(*235*) and will make the cellulose coverage chart information as accurate as current technology permits. In addition, it responds to a number of recommendations in the record for settled density testing.(*236*)

No final settled density testing procedure has yet been accepted for loose-fill mineral wool. However, the mineral wool manufacturers contend that the coverage charts for their loose-fills take settling into account, and that if the coverage information is followed, the consumer will attain the represented R-value.(*237*) Under these circumstances, the Commission is presently imposing a general requirement that loose-fill mineral wool R-values be based on tests that take the adverse effects of settling into account.(*238*) In addition, section 460.5(a) of the Rule states that as soon as a settled density test for loose-fill mineral wool becomes part of a final GSA Specification, R-value tests for that product must be done at the settled density determined under the GSA Specification.(*239*)

3. *R-value testing for foil insulations.* Sections 460.5(b), (c), and (d) of the Rule specify R-value testing requirements for insulation products that use reflective aluminum foil material. Specifically, these provisions prescribe separate testing requirements for reflective aluminum foil systems and for mass insulation materials that have foil facings.

a. *R-value test for reflective aluminum foil systems.* The record demonstrates that ASTM C236 is the appropriate R-value test method to use for reflective aluminum foil materials. Unlike C177 and C518, C236 is principally designed for thermal insulation systems, not for an individual material.(*240*) The record further shows that it is the only current standard test method that can be used to determine the thermal resistance of such integrated products as reflective foil systems.(*241*)

Section 460.5(b) of the Rule accordingly states that the R-value of a foil system with more than one sheet of foil (multiple airspaces) must be determined by the C236 method.(*242*) During the hearings, the Aluminum Association contended at first that the C236 testing requirement would be an unnecessary and undue burden on reflective insulation manufacturers. Instead, the Association recommended that these industry members be allowed to base their R-value claims on the pre-published ASHRAE R-value tables for airspaces.(*243*) The evidence in the record refutes the Association's position in two respects. First the ASHRAE tables do not provide R-values for multiple airspaces systems, but only for single-sheet systems.(*244*) Second, the record shows that extrapolation of a total R-value for a multiple system from the ASHRAE R-value for a single airspace is an unreliable procedure.(*245*) In light of these weaknesses in its position, the Association finally agreed that the rule should require C236 testing for multiple airspace systems.(*246*)

Although the Aluminum Association's argument lacked force with respect to multiple airspace systems, it did lead the staff to recommend that the Commission require a lesser burden of substantiation of R-value claims for single airspace claims by first determining the emissivity (*247*) of the foil and then finding the ASHRAE R-value which corresponded to the determined emissivity level.(*248*)

With one modification, section 460.5(c) of the Rule has incorporated this staff recommendation.(*249*) Based on hearing testimony provided by the Aluminum Association, the staff recommended that the foil's emissivity be determined in accordance with ASTM C445.(*250*) During the post-record comment period, however, it was discovered that C445 was being revoked by ASTM,(*251*) and that one appropriate emissivity test to require instead was ASTM E408.(*252*) Accordingly, section 460.5(c) of the Rule requires the emissivity of foil in single airspace systems to be tested by ASTM E408 or by a comparable test method.(*253*)

b. *Insulations with foil facings.* Mass insulation materials with foil facings (*254*) are distinctive products because they can actually have two R-values, depending on the manner in which they are installed. If the material with facing is simply installed in part of the house, it has only its "material" R-value. However, if it is installed in conjunction with an airspace, the interaction of the airspace and facing provides an additional insulating effect.(*255*) As a result, § 460.5(d) prescribes a particular testing scheme for foil-faced products used alone(*256*) and in conjunction with an airspace. In the latter case, the rule provides that a manufacturer of such a system may determine its total R-value in one of two ways:

(1) The manufacturer may test the system, with its airspace, under C236, following the applicable rules in § 460.5(a) for mass insulation testing; or

(2) The manufacturer may add to the tested R-value of the material, the R-value of the airspace as derived from the ASHRAE tables under the rules in § 460.5(c).(*257*)

Although two commenters suggested that the C236 test be deemed the only permissible method for determining the system R-value of a foil-faced material,(*258*) the Commission believes that this would be an overly burdensome requirement. The Rule already permits the use of the ASHRAE R-values for single airspace reflective systems, and there does not seem to be any basis for distinguishing between these products and single sheets of foil attached to mass insulations. Since C236 is a relatively expensive and time-consuming test, the Commission does not believe that it should be exclusively required absent strong indications that the ASHRAE R-values for single sheets

of foil are inaccurate in the context of foil-faced mass insulation. Thus, the Commission concludes that the discretionary scheme in § 460.5(d) represents the more reasonable and equitable approach to determining the system R-value of foil-faced products used in conjunction with an airspace.

4. *Changes in the test methods.* As noted earlier, the Rule requires that the current version of the referenced test methods be used. The Commission is concerned, however, that its Rule not have the undesirable effect of chilling advances in thermal testing technology. To avoid such stagnation, and, in fact, to promote improvements in the science of thermal testing, numerous participants suggested that the Rule provide for "automatic incorporation" of future test revisions.*(259)* The Commission is in basic agreement with this approach, and § 460.7 states that changes in the test methods specified in the Rule will automatically become a part of the Rule 90 days after they are published.*(260)*

The issue raised by § 460.7 is whether section 18(d)(2)(B) of the FTC Act would require a reopening of the rulemaking proceeding in order to make test method revisions a part of the Rule. The Commission need not resolve this issue at this time. In many instances, changes in the test methods may be of a technical or "housekeeping" nature and, thus, may not rise to the level of a "substantive" amendment to the Rule.*(261)* In other cases, however, a test change may be so significant that formal Commission consideration of the matter seems necessary. In order to allow parties the opportunity to call to the Commission's attention what they regard as significant test changes that should be addressed explicitly by the Commission, § 460.7 of the Rule permits the Commission's staff or any person affected by the change to petition during the 90-day period for formal Commission consideration of the matter.

5. *R-value tolerances.* It is arguable that manufacturers of home insulation products should be required to state with absolute precision the R-values of their products. Practically speaking, however, such precision is not yet possible. As noted in Section I.B.1 of this statement, most home insulations are heterogeneous in nature; that is, they have variable rather than constant properties. In addition, the quality of insulation products varies depending on the presence of inconsistencies in the manufacturing process. These variations in composition and production can have a significant effect on the thermal resistance of home insulation.*(262)* As a result, adequate quality control measures are essential to ensure that the thermal performance of insulation products will be as consistent as is practically possible.

On the other hand, the inherent variability of there materials means that it is necessary to provide manufacturers with a defense for minor R-value variations from product to product. In other words, a quality control provision in the rule serves two purposes. It ensures that represented R-values are accurate within acceptable limits, and it provides manufacturers with enough leeway so that compliance with the Rule is not rendered impossible.

Although the proposed rule did not include any quality control requirements, the notice of rulemaking invited public comments on quality control issues.*(263)* The hearings and comments produced several recommendations for Commission action on this point, ranging from leaving quality control completely unregulated to requiring manufacturers to institute comprehensive quality control programs.*(264)* Given the need for quality control, the former recommendation is clearly unacceptable. Yet, given the differences in approach and the enormous complexities in quality control systems that were described in the proceeding,*(265)* the latter recommendation seems unrealistic and too prescriptive in this context. Between these extremes, however, several more moderate recommendations were made. These included such ideas as third-party testing, sample selection, R-value tolerances, and periodic retesting.*(266)*

The rule recommended by the staff required two of these elements of quality control: periodic retesting and an R-value tolerance limit. Specifically, the staff suggested that R-value tests be repeated at least every 60 days and, in addition, that the actual R-value of an insulation material could not be more than 5 percent below the stated R-value.*(267)*

Although the commenters differed on the soundness of the 60-day retesting requirement, they generally agreed that the record brought to light no specific testing frequency that is superior to all others.*(268)* In addition, several commenters pointed out that the basic quality control standard of the Rule was in the R-value tolerance provision and not in the retesting requirement.*(269)* The reasoning behind this view is that in order to stay within the tolerance limit, manufacturers will have to institute whatever in-plant quality controls are necessary to achieve this objective. Since the record fails to illuminate how much testing is necessary to adhere to a tolerance limit for each product, and since the manufacturers themselves are the best judges of this need, the Commission has deleted the specific retesting provision. In its place, the final Rule establishes the tolerance provision as the governing quality control mechanism.

Although the Commission has decided to make a tolerance limit the chief incentive for quality control, it has raised the 5 percent tolerance ceiling recommended by the staff to 10 percent.*(270)* This change to a 10 percent tolerance limit is more in line with prevailing quality control standards in industry and GSA specifications.*(271)* and will ease the quality control burden on manufacturers. More importantly, it ensures that conscientious manufacturers will not be faced with the prospect of liability for relatively minor variations in product R-values.

The Commission wishes to note that the tolerance provision does not give manufacturers a license to raise their R-values above the levels determined through R-value testing. Rather, the testing sections impose two separate bases for potential liability. First, manufacturers will be liable if their labeled R-values do not accurately reflect the results of tests performed in accordance with the Rule. Second, if the Commission tests the manufacturer's product, the tested R-value must be within 10 percent of the R-value shown on the label. If the product is not within this 10 percent tolerance, the manufacturer will be liable even if the labeled R-value accurately reflects the test results available to the manufacturer.*(272)* In that event, failure to pass the tolerance test indicates that the manufacturer's quality control procedures are insufficient to provide consumers with any assurance that they are achieving the represented R-value.

6. *Recordkeeping.* In response to recommendations on the record and to aid enforcement, the Rule requires records of R-value tests to be kept for three years.*(273)* Under § 460.9, manufacturers and laboratories must keep the information specified in the "Report" section of the ASTM test method that is used for a test. Section 460.9 also specifies retention of the following items: (1) the name and address of the testing lab; (2) the test date; (3) the date a lab sent the test report to the manufacturer and the date the manufacturer received the test report; (4) the age (in days) of tested extruded polystyrene, polyurethane, and polyisocyanurate; and (5) the emissivity level of tested aluminum foil. The Commission believes that retention of

this information is essential to effective enforcement of the Rule.(*274*)

C. *Labeling Requirements.* As the discussion in Section II, *supra,* indicates, the most important component of this Rule is the pre-purchase disclosure to consumers of R-value information for home insulation materials. In light of the prevailing marketing practices in the industry, the Commission has chosen several mechanisms to effectuate the disclosure of this information.

1. *Insulation package labels.* a. *Coverage charts.* Under the rule as initially proposed, all insulation packages were required to be labeled with an R-value and the corresponding thickness and coverage area that would be attained.(*275*) In general, this provision found considerable support in the record.(*276*) However, because of the widespread use of coverage charts in the insulation industry, and because of the ease with which essential pre-purchase information can be conveyed on such charts,(*277*) the Commission agrees with industry members that each package label should contain a coverage chart.

Due to differences among the various forms of home insulation, the staff recommended slightly differing disclosures for the products. Thus, for batt, blanket, and boardstock insulation, all of which are pre-shaped at the factory in specified dimensions, the staff recommended disclosure of the product's R-value, the dimensions of the package, and the number of packages needed to cover 1,000 square feet.(*278*) For loose-fill, the staff's recommended disclosures included the R-value, coverage area, and weight per square foot of the insulation at thicknesses of one, three and one-half, and six inches;(*279*) the number of packages needed to cover 1,000 square feet; and the total weight of the package.(*280*) For aluminum foil insulation, the staff recommended that package labels disclose the number of foil sheets; the number and thickness of the air spaces; and the R-value provided by the foil system when the direction of heat flow is up, down, and horizontal.(*281*)

Those who commented on the Staff Report suggested numerous improvements to the staff's recommended disclosures. Batt, blanket, and boardstock manufacturers, for example, suggested clarifications of the dimensional disclosures required for their products.(*282*) Loose-fill manufacturers urged that the Commission follow the labeling provisions found in the federal purchasing specifications, since they provide essentially the same disclosures in a different format, and since many industry members already comply with the federal specifications.(*283*) Several commenters suggested that the total package weight" disclosure for loose-fills be replaced by a "minimum net weight disclosure, since minor weight variations above the stated minimum will not reduce the R-value below that stated on the label.(*284*) Finally, one manufacturer recommended a separate disclosure provision for mass insulations with reflective facings, to account for the additional R-value that is achieved when such products are installed in conjunction with an airspace.(*285*) This last suggestion received further support during the oral presentations to the Commission.(*286*)

The Rule adopted by the Commission reflects the recommendations of the commenters. With respect to all products for which an existing federal specification includes a labeling provision, the Commission is requiring the same disclosures mandated by the federal specification.(*287*) This approach will provide continuity in the labeling practices of many manufacturers and will minimize the cost of compliance with the Rule. There are several products, however, for which no existing federal specification includes a labeling provision. In these cases, the Commission has required disclosures which the record supports, taking into account the similarities among the products covered by the Rule. Thus, for both boardstock and air duct wrap, which are essentially the same as batt and blanket insulation,(*288*) the Rule requires disclosure of the dimensions and coverage of the insulation in the package, and of its R-value.(*289*) For perlite and vermiculite loose-fill, which have R-values roughly equivalent to those of loose fill mineral wool,(*290*) the Rule requires that the coverage chart in the federal specification for loose-fill mineral wool be followed.(*291*) For aluminum foil insulation, the Rule requires disclosure of the product characteristics that govern the R-value to be achieved: the number of foil sheets; the number and thickness of the airspaces; and the R-value provided by the system when the direction of heat flow is up, down, and horizontal.(*292*)

Mass insulation materials with foil facings present a unique problem: they can have both a "material" R-value and a "system" R-value. The material R-value is simply the R-value of the mass insulution itself, while the system R-value is the R-value that can be achieved if the product is installed in conjunction with an air space.(*293*) Under the Rule adopted by the Commission, the material R-value must be disclosed in all cases. In addition, manufacturers may disclose the system R-value, as long as they clearly and conspicuously state the conditions under which the system R-value can be attained.(*294*)

The labeling disclosures required by the Commission's Rule are essential to the consumer's purchasing decision. Without the dimensional disclosures for batt, blanket, boardstock, and duct wrap insulation,(*295*) for example, the consumer cannot determine whether the material will fit into the area to be insulated or how many packages of the insulation to buy.(*296*) The same is true of the thickness and coverage area disclosures for loose-fill products. A single bag of loose-fill insulation can provide almost any desired R-value, depending on how many square feet are covered and to what thickness. Thus, these disclosures are essential to an evaluation of loose-fill R-value. Finally, the disclosures required for aluminum foil concerning the product's R-value and direction of heat flow are essential to the consumer's purchasing decision. Without this information, the consumer cannot determine whether the installation of the material in a wall or ceiling, for example, will produce the desired R-value.(*297*)

In addition to being essential purchase information, certain of the disclosures required on coverage charts are also needed to effectuate the Commission's R-value disclosure scheme. The minimum weight per square foot and minimum net weight disclosures for loose-fills fall into this category. Without this information, the Commission will not be able to ascertain the accuracy of the manufacturer's R-value and settled density claims.(*298*) Similarly, unless the number of foil sheets and the number and thickness of the airspaces are disclosed for aluminum foil insulation, the Commission will not be able to verify R-value representations for those products.

The Commission therefore concludes that the various labeling disclosures required for each insulation material covered by the Rule are both necessary and reasonable.

b. *Other label disclosures.* Section 460.12 of the Rule requires two additional disclosures that must appear on all package labels. The first of these is a brief explanation of the term "R-value."(*299*) The need for this disclosure is clear, since the record demonstrates that most consumers are totally unfamiliar with the R-value concept.(*300*) In light of this fact, the Commission believes that the R-value explanation is an essential

accompaniment to the R-value disclosures on package labels.(*301*)

The second disclosure required for all package labels concerns the need for proper installation. The record demonstrates that proper installation is crucial to the performance of any insulation material.(*302*) It is not at all clear, however, that insulation consumers are aware of this fact. Many labels on the record do not contain installation instructions, nor do they warn consumers of the critical role that installation plays in insulation performance.(*303*) In addition, two witnesses who have had extensive contact with insulation purchasers in recent years indicated that consumers do not realize the significance of proper installation.(*304*) This position is further supported by evidence that there are many instances in which improper installation occurs, causing a reduction in the R-value achieved by the consumer.(*305*)

To remedy this situation, many participants recommended a label disclosure concerning the importance of proper installation.(*306*) Indeed, a number of parties suggested that the Rule mandate the inclusion of installation instructions in all insulation package.(*307*) The Commission does not believe that it is necessary to go so far. Instead, the Rule requires only that the critical importance of proper installation be disclosed to consumers and, if installation instructions do not come with the package, that this fact also be disclosed on the label.(*308*)

2. *Insulation fact sheets.* In addition to the package labeling requirements in the Rule, the Commission is also requiring that insulation manufacturers provide fact sheets to retailers and installers of their products, for ultimate distribution to consumers. With minor exceptions,(*309*) these fact sheets must contain the same information that would appear on product labels.

There are a number of reasons why fact sheets are needed to supplement the Rule's labeling requirement. First, the evidence shows that insulation sold through retail stores to do-it-yourself consumers is often unavailable for inspection prior to purchase.(*310*) Thus, even if the package is labeled, the consumer may not be able to review the relevant R-value information prior to purchase.(*311*) Second, some products, even though they are sold through retailers, are not generally sold in packaged form.(*312*) As a result, no labeled information would be available with respect to these products.(*313*) Finally, the Rule contains no labeling requirement for insulation that is installed professionally, rather than by the homeowner.(*314*) In this situation, the fact sheet would serve as the product's label. Because of the ways in which home insulation is marketed, the Commission believes that its fact sheet requirement is necessary to effectuate the disclosure of essential pre-purchase information to consumers.

a. *Disclosures required on fact sheets.* In general, the Commission's Rule requires that fact sheets disclose the information required for the product's label under § 460.12. Thus, the sheets must contain an R-value explanation; a disclosure of the importance of proper installation, and the coverage chart required for the product under § 460.12 (b).(*315*) For foamed-in-place insulations, which are not subject to labeling under § 460.12(b),(*316*) the Rule requires a chart showing the product's R-value at a three and one-half inch thickness, and at any additional thicknesses listed by the manufacturer.(*317*) For these foamed-in-place products, the R-value and thickness disclosures provide all of the coverage chart information needed for a pre-purchase evaluation of the material.(*318*)

The Rule also requires specific disclosures on the fact sheets for urea-formaldehyde foam and duct wrap insulation. In the case of urea-formaldehyde foam insulation, the fact sheet must disclose that the product shrinks after installation, and that the shrinkage may significantly reduce the R-value attained by the consumer.(*319*) The record contains overwhelming evidence that UF foam shrinks and that shrinkage reduces R-values.(*320*) There is disagreement, however, concerning the magnitude of the R-value reduction caused by shrinkage.(*321*) Considerable evidence indicates that the R-value reduction may be as high as 28, 40, or even 50 percent,(*322*) but industry members contend that it is much lower.(*323*) Even industry members concede that the R-value reduction attributable to shrinkage may be on the order of 10 or 15 percent,(*324*) though, and the Commission believes that such a reduction is significant.

The staff originally recommended a disclosure that would have had the effect of derating all UF foam R-values by 28 percent.(*325*) Yet, some manufacturers may be able to demonstrate that the shrinkage-related R-value loss for a particular product is less than 28 percent.(*326*) Moreover, an across-the-board 28 percent derating might discourage industry efforts to control the shrinkage phenomenon. At the very least, such a provision would necessitate amendments to, or exemptions from, the Rule as the state of the art in shrinkage testing advances.

In light of these factors, the Commission has decided not to adopt the disclosure recommended by the staff. Instead, the rule requires that fact sheets for UF foam insulation disclose the fact that the product shrinks, and that the shrinkage "may significantly" reduce the R-value attained by the consumer.(*327*) In addition, the Rule provides that manufacturers may derate their products' R-values "based on reliable scientific proof of the extent of shrinkage . . . and of its effect on R-value."(*328*) If the product's R-value is derated in accordance with this provision, the manufacturer need not include the shrinkage disclosure on the fact sheet.(*329*) The Commission believes that this approach will protect consumers from deception, and at the same time encourage product and testing innovations in the UF foam industry.

The other product for which a specific disclosure is required on fact sheets is air duct insulation. This flexible material must be wrapped around the air duct during installation, causing significant compression at the edges of the duct.(*330*) This compression will reduce the R-value of the material below the tested R-value.(*331*) The precise extent of the R-value reduction will depend on the extent to which the material is compressed.(*332*) Since there is no test available to account for this compression factor,(*333*) the fact sheets for air duct wrap must disclose that the product's R-value "varies depending on how much it is compressed during installation."(*334*)

The staff originally recommended a number of other fact sheet disclosures concerning such potential problems as excessive compression of mineral wool batts,(*335*) improper handling of aluminum foil,(*336*) and moisture buildup in insulation materials.(*337*) Although there was some evidence supporting these disclosures,(*338*) they were criticized by commenters as being overly simplified and in conflict with proper installation practices.(*339*) More importantly, the disclosures provided information concerning proper installation techniques, rather than information bearing on the consumer's evaluation of the particular product's R-value.(*340*) Since the purpose of the fact sheets—and of the labeling provisions in general—is to provide information essential to the consumer's assessment of insulation R-values, the Commission has decided not to require these disclosures.

b. *Preparation and distribution of fact sheets.* Under the rule initially

recommended by the staff, manufacturers were required to prepare separate fact sheets for each insulation product they marketed.(341) For example, a producer of batt insulation in several different sizes was required to have a fact sheet for each product.(342) To minimize the costs of compliance with the Rule, the Commission has decided on a different approach. Section 460.13(c)(2) of the Rule permits manufacturers to consolidate the coverage chart information for similar products on the same fact sheet.(343) For example, the coverage charts for several different sizes of batt insulation products could be put on a single fact sheet. Similarly, coverage charts for two different bag sizes of loose-fill products may be consolidated on one fact sheet.(344) On the other hand, separate fact sheets are required for batt and loose-fill materials, since the difference between the two products concerns their characteristics, rather than their dimensions. The Commission believes that this provision of the Rule will significantly reduce the number of different fact sheets that must be prepared by each manufacturer.

The staff's recommended rule also required that manufacturers provide their retailers and installers with enough fact sheets for distribution to each purchaser of the products.(345) Several commenters contended that this provision would require the preparation and distribution of a large number of fact sheets.(346) As an alternative, they suggested that the Commission adopt a "binder system" for fact sheets, modeled on the warranty disclosure rules promulgated under the Magnuson-Moss Warranty—Federal Trade Commission Improvements Act.(347) Under this approach, retailers and installers would receive only one fact sheet for each product. These fact sheets would all be kept in a book or binder, which would be available for inspection by consumers.(348)

The Commission is not convinced that the suggested binder system should be mandated by the Rule. Instead, the Rule permits retailers and installers the flexibility to choose among various disclosure mechanisms, as long as fact sheets are made available to consumers. For example, retailers may use "Take One" displays, or may keep the fact sheets in a central binder.(349) Similarly, installers may actually give the fact sheets to their purchasers, or may show their customers a fact sheet binder prior to purchase.(350) In other words, the thrust of the requirement is simply that consumers must be given an opportunity to analyze the fact sheet information before they commit themselves to a purchase. To generate consumer awareness of the availability of fact sheets, and in support of the Commission's overall purpose of ensuring disclosure of prepurchase information, the disclosures required for certain advertisements encourage consumers to ask for fact sheets before buying insulation products. The advertising disclosures will be discussed shortly.(351)

3. *Disclosure by new home sellers.* Although the proposed rule did not require pre-purchase disclosures to new home buyers, the Commission specifically solicited comment on the question of whether new home sales should be covered by the disclosure provisions of the Rule.(352) The record indicates that most new home buyers will spend additional money on insulation if they are advised to do so by builders.(353) New home sellers, in turn, are capitalizing on this heightened consumer interest in energy conservation by advertising the energy efficient features of their homes.(354) Since a new home has no history of utility bills, the buyer is unable to evaluate anticipated energy consumption patterns. As a result, the amount of insulation to be installed in the home may significantly affect the consumer's decision to buy.(355) Thus, in this context no less than in the context of an insulation purchase alone, the Commission believes that the R-value of the insulation to be installed in the home is a factor material to the consumer's purchasing decision. The disclosure of this information will permit the new home buyer to evaluate the energy efficiency of his or her home, thereby furthering the national policy of energy conservation.(356)

Most of the rulemaking participants agreed that the Rule should require pre-purchase disclosure of R-value information to new home buyers.(357) However, the representative for the National Association of Home Manufacturers disagreed.(358) He agreed that R-values should be disclosed to new home buyers,(359) but he argued that new home builders are already subject to state energy conservation codes,(360) and that R-value information is often provided to new home buyers.(361) On the other hand, he conceded that energy conservation codes only set minimum performance standards, and do not require that R-value be disclosed to consumers.(362) He further conceded that R-values are not always disclosed to new home buyers, and that, in fact, he could not estimate how often such disclosures were made.(363) Since the Commission believes that R-value data must be disclosed, and since the evidence suggests that some consumers are not being provided with this information, a disclosure requirement for new home sales is necessary.

The staff originally recommended that R-value information be provided to new home purchasers via the fact sheets.(364) Under this approach, the seller was to give the buyer fact sheets for the various types of insulation installed in the home, and let the buyer read the fact sheets before signing a sales contract.(365) In the Commission's view, this is a cumbersome scheme, which may be difficult to implement and, possibly, to enforce. In its place, the Rule simply requires that new home sellers disclose in the sales contract the type, thickness, and R-value of the insulation that will be installed in each part of the house.(366) In the event that the buyer signs a sales contract before this information is known, or if the builder substitutes a different material under the terms of the contract,(367) the Rule states that the R-value disclosures must be made as soon as the information is known.(368)

Although the Rule requires that R-value information for new homes appear in the sales contract, the Commission makes no judgment concerning potential state law remedies for nondisclosure or inaccurate disclosure of R-values. Such a disclosure might constitute a warranty in some states, but not in others. The Commission's intent is merely to require that this information be disclosed, and the sales contract provides the most convenient and appropriate vehicle for the disclosure.

4. *Additional disclosure by installers.* Under the rule as initially proposed, all installers were required to provide their customers, after installation, with a written statement of the R-value and thickness of the insulation that was installed.(369) Although various additional disclosures were suggested, this provision was generally supported by the participants.(370) Of course, consumers who purchase from installers will have received a fact sheet prior to their purchase.(371) Unlike do-it-yourself consumers, however, these purchasers will never actually see a label stating the R-value, thickness, and coverage area achieved. Consumers who buy insulation through installers are, thus, in the same position as new home buyers. Absent a requirement to disclose exactly what was installed, they cannot fully assess the energy efficiency of their homes.(372) In addition, disclosure of this information

will provide them with an available reference, if they consider the purchase of additional insulation in the future. The Commission therefore believes that its R-value disclosure program cannot be fully effective unless these consumers, like do-it-yourselfers and new home buyers, are informed of the R-value that is actually installed in their homes.

The general requirement embodied in § 460.17 of the Rule is that R-value, thickness, and coverage area be disclosed to the consumer on a contract or receipt that is dated and signed by the installer. For loose-fill insulation, the receipt must also state the number of bags.(*373*) For aluminum foil, the number and thickness of the air spaces, the direction of heat flow, and the R-value must be disclosed. The Rule explicitly states that the installer may not multiply the R-value for one inch of the material by the number of inches installed. Instead, installers must use the R-value data provided by manufacturers, which will be based on representative thickness testing in accordance with the Rule.

D. *Insulation Advertisements.* 1. *Claims that trigger R-value disclosures.* When this rule was proposed, the Commission solicited comments concerning the circumstances under which insulation advertisements should be required to disclose R-value, thickness; and coverage area information.(*374*) The record evidence on this point indicates that there are several circumstances under which advertising disclosures are necessary.

First, the evidence shows that thickness and R-value must always go hand in hand. A thickness disclosure is necessary before consumers can evaluate products with the same R-value, since different materials provide the same R-value at disparate thicknesses.(*375*) Conversely, a thickness representation leads consumers to believe, mistakenly, that insulation materials can be evaluated without reference to their R-values. The Commission believes that a reference to either of these product attributes, thickness or R-value, without mentioning the other, is unfair and deceptive to consumers. Sections 460.18 (a) and (c) of the Rule therefore require that an ad which states the product's thickness must disclose the corresponding R-value, and that an ad which states the product's R-value must disclose the corresponding thickness.

The Commission also sought comment on the question whether a statement of an insulation material's price in an ad should trigger additional disclosures.(*377*) Based on the record evidence, the Commission concludes that a price claim, standing alone, is both unfair and deceptive. For example, a consumer cannot evaluate the significance of a claim that his or her attic can be insulated for "as little as $100," without knowing what R-value will be attained at that price. Moreover, even if the ad includes the price for a stated R-value and thickness, the consumer may still be misled. A very high R-value can be achieved at a very low price if, for that price, only a small area will be insulated.(*378*) Thus, the Commission's rule requires that price claims be accompanied by the R-value, thickness, and coverage area at that price.(*379*)

The proposed rule contained a provision requiring comparative claims of thermal performance to be based on equal coverage area and to include R-value, thickness, and coverage area disclosure.(*380*) As the discussion of price claims suggests, the requirement that comparisons be based on equal coverage areas is necessary to prevent unfair and deceptive comparisons. In addition, the record contains a number of examples of comparative claims which fail to disclose the R-values of the products being compared.(*381*) This is so despite general agreement that R-value is the measure of thermal performance that permits consumers to evaluate competing insulation products.(*382*) Section 460.18(d) of the Rule thus requires that ads which compare the thermal performance of one type of insulation with that of another disclose the R-value and thickness of each material.(*383*)

2. *The R-value explanation.* The proposed rule stated that, whenever an ad mentioned a product's R-value, it was required to disclose the explanation: "The higher the R-value for a given area, the more you save on fuel."(*384*) This provision was based on the Commission's belief that consumers do not understand the R-value concept, a belief which is fully supported on the record, and on the view that the market has contributed directly to this lack of understanding by failing to educate and inform consumers about insulation R-values.(*385*)

In light of this fact, there was general agreement that R-value disclosures should be accompanied by an explanation of the term.(*386*) However, the disclosure initially proposed by the Commission was criticized because it erroneously implied a direct correlation between adding insulation and saving fuel.(*387*) The explanation in the Rule now states: "The higher the R-value, the greater the insulating power. Ask your seller for the fact sheet on R-values."(*388*) The first sentence of this disclosure explains the R-value concept correctly and succinctly. The second sentence, as noted earlier, is a necessary component of the Commission's effort to provide consumers with pre-purchase R-value information.(*389*)

As initially proposed, the R-value explanation was to be required in ads for only a one-year period.(*390*) Since insulation is a very infrequently purchased commodity, (*391*) however, the Commission is uncertain that the R-value concept will become widely and permanently understood in a short period of time. Unfortunately, the record does not provide a basis for selecting a longer period of time, such as three or five years. In light of this fact, the Rule does not indicate any expiration date for the R-value explanation disclosure in ads. Nevertheless, the Commission intends to conduct a survey several years from now, and will then reexamine the need for a continuation of the R-value explanation in insulation ads.

3. *Other disclosures.* As the discussion in Section II.C.2.a noted, the R-values achieved by consumers who purchase urea-formaldehyde foam insulation will be lower than the tested R-value.(*392*) This occurs because current testing practices for these materials do not take shrinkage into account.(*393*) Absent a disclosure of the effects of shrinkage, ads that state urea-formaldehyde foam R-values will always deceive consumers. The Commission's Rule therefore requires a skrinkage disclosure, or a reduction in the claimed R-value to account for this factor,(*394*) whenever ads for the product mention its R-value.(*395*)

E. *Savings Claims.* As noted in Section I.E.2 of this statement, the evidence shows that many industry members are making savings claims for their products. Some of these claims are general in nature, stating that consumers can cut their fuel bills by installing insulation.(*396*) Others refer specifically to a dollar amount or percentage by which fuel bills can be reduced.(*397*)

It seems obvious that a consumer's purpose in buying insulation is to reduce fuel use and, consequently, fuel bills.(*398*) Savings claims, then, are not mere "puffing" by the advertiser, which no one expects the consumer to believe. Rather, the claims are designed to persuade consumers to purchase the products. Yet, because so many factors affect the savings achieved by an individual homeowner,(*399*) any savings claim is untrue with respect to many consumers. In other words, those

consumers who save will do so as a function of their own particular circumstances, and are unlikely to save the amount represented by the advertiser.[400] Moreover, as noted earlier, some consumers will save little or no fuel by adding insulation to their homes.[401]

To remedy this problem, the staff originally recommended that savings claims include a series of disclosures designed to inform consumers of the particular circumstances under which the advertised savings were achieved.[402] The Commission has decided against this approach for two reasons. First, the length and detail of the disclosures would possibly overburden the ad and, as a result, unduly discourage savings claims in advertisements.[403] Second, it could be very difficult for consumers to absorb and comprehend this amount of information in the usually modest amount of advertising space or time available to insulation advertisers, most of which (except for the mineral wool manufacturers, as discussed above) are quite small. Third, even if the staff's proposed disclosures could be adequately presented and absorbed most of the time, the Commission does not believe that consumers could use the disclosed information to evaluate the claim.[404]

Instead of the approach suggested by the staff, the Commission has adopted a much simpler and far less burdensome disclosure provision. This provision is based on the conclusion that, to remedy the deception inherent in savings claims, consumers must be told that savings depend on many factors, and what those factors are. Since a disclosure containing all of this information would be lengthy, however, section 460.19(b) of the Rule simply requires a brief statement that savings vary and a reference to the fact sheets for further information.[405] A detailed enumeration of the factors that affect fuel savings is required in the fact sheets, where space limitations are not so serious a problem.[406] The Commission believes that this disclosure provision will serve as an effective remedy for the misleading nature of savings claims, and will also contribute to the Rule's overall pre-purchase disclosure mechanism.[407]

In light of the evidence that some savings claims are unsubstantiated, and in accordance with the principles announced in the *Pfizer* decision,[408] the Rule also requires that industry members have a reasonable basis for such claims.[409] Since the record indicates that the state of the art in savings claim substantiation is developing,[410] it is not possible to specify in the Rule precisely what would be an acceptable basis for the variety of possible claims. It is clear that scientifically reliable measurements of fuel use in actual houses, or reliable computer models or methods of heat flow calculation, would meet the reasonable basis requirement imposed by the Rule. However, the Commission cautions advertisers that the language used in a savings claim will influence the level of substantiation required. Thus, an advertiser who claims that adding insulation will "slash fuel bills," or "cut fuel use in half," will be required to produce competent and reliable scientific proof that such high levels of savings will be achieved.

The record also indicates that some industry members claim that a combination of products, such as attic insulation and storm doors, will combine to reduce fuel use.[411] At least in some cases, one of the products results in substantially greater savings than the other or others in the combination.[412] Since savings claim substantiation is still a developing technology, however, it is not always possible to determine precisely how much of the savings was attributable to each product.[413] As a result, the Rule requires that savings claims for more than one product disclose the combination of products used.[414] The ad must also indicate how much of the savings came from each product. However, if the exact or approximate contributions of the products cannot be ascertained under available technologies, the advertiser may rank the products in order of their relative degrees of contribution.[415] This disclosure, while imperfect, will at least apprise consumers of the fact that not all of the products in the combination contributed equally to the savings achieved.

F. *Miscellaneous Provisions.* 1. *R-value per inch claims.* Since the record demonstrates that R-values are not linear,[416] ads, labels, and other promotional materials that express a product's thermal resistance in terms of its R-value per inch deceive consumers.[417] In addition, the Commission believes that references to the R-value for a one-inch thickness of the material will encourage consumers to think that it is appropriate to multiply this figure by the desired number of inches, as though the R-value per inch was constant. Section 460.20 consequently prohibits unqualified R-value per inch claims or references to the R-value for one inch of the material, unless the product is recommended for use at a one-inch thickness[418] or actual test results prove that its R-value per inch does not drop at increased thicknesses. However, the section provides an alternative to industry members who wish to refer to a product's R-value per inch. The Rule permits these industry members to state a range of R-values per inch, if the claim is accompanied by an explanation of the inverse relationship between thickness and R-value.[419]

2. *Certification claims.* Although the proposed rule did not treat false governmental certification claims, ads on the record reveal that manufacturers sometimes deceptively associate their products with federal agencies.[420] While an insulation material may meet federal procurement standards, no product is certified or recommended by the government for private use.[421] The Rule therefore prohibits false representations that governmental agencies use, certify, recommend, or otherwise favor a product, or that the product complies with a government standard or specification.[422]

3. *Tax claims.* The record also contains evidence that industry members deceptively suggested to consumers that products were eligible for federal tax credits before the tax credit had been passed by Congress.[423] In addition, now that the tax credit legislation is in effect, the Commission is concerned that some products which are not eligible for tax credits may be advertised deceptively. The Commission therefore concludes that it is necessary to prohibit false claims that a product is eligible for tax credits. This conclusion is reflected in § 460.22 of the Rule.

4. *Clear and conspicuous requirement.* Section 460.10 of the Rule restates the Commission's long-standing view that affirmative disclosures must be made clearly and conspicuously, if they are to remedy the unfair or deceptive practices to which they relate. The determination that a disclosure is clear and conspicuous rests on a variety of factors. However, the Rule states that, among other things, the Commission's previous Enforcement Policy Statements for Foreign Language Advertising[424] and for Clear and Conspicuous Disclosures in Television Advertising,[425] both of which are appended to the Rule, must be followed.

There is one important exception to the requirement that television advertisers must adhere to the Commission's earlier Enforcement Policy Statement. The Statement would require, for TV ads, that any disclosures mandated by the Rule be made in print

with a voice-over. Although the Commission believes that this provision generally is appropriate, the voice-over requirement must be tempered by practical considerations of the cost it imposes upon advertisers. In this case, the Commission has decided to require a voice-over only for the R-value explanation and the savings disclaimer. These are the most important disclosures in the Rule and, since they will contribute significantly to the Rule's pre-purchase disclosure scheme, they should be made in the most effective manner possible. With respect to other disclosures required by the Rule, the Commission has concluded, on balance, that the benefits provided by a voice-over would be outweighed by the costs to advertisers of complying with such a requirement.(426)

G. *Preemptive Effect of the Rule.* In § 460.23 of the Rule, the Commission has indicated the extent to which state and local laws and regulations are preempted by the Rule. The Commission does not believe it appropriate for it to preempt incipient efforts to experiment with alternative forms of consumer protection in areas covered by the Rule, except to the extent necessary to prevent frustration of the Commission's own efforts.

The determination that a state law does or does not "frustrate the purposes of" the Commission's Rule will not be a simple one. For example, while some additional disclosures mandated by a state law could be helpful to consumers, a state law that mandates excessive disclosures by insulation marketers could seriously disrupt the Commission's pre-purchase disclosure provisions. This is a determination that will have to be made on a case-by-case basis, as provided in the Rule. On the other hand, less stringent testing requirements for insulation materials would clearly be preempted by § 460.23(b).

The Commission has specified in § 460.23(b) of the Rule that state or local governmental entities may petition the Commission, for good cause, to obtain an exemption for statutory or regulatory provisions that would otherwise be preempted. Any action by the Commission to grant such an exemption petition will be conducted in accordance with 5 U.S.C. section 553.(427) It should be emphasized that only state or local governmental entities may request exemptions under § 460.23(b). Insulation manufacturers and other private parties may not avail themselves of this process. Since the determination to grant an exemption will necessarily place the primary enforcement burden on the state to enforce its provision, the decision to seek an exemption should be made solely by the state entity involved.(428)

H. *Economic Impact on Small Businesses and Consumers.* The Commission's objective in fashioning a final rule in this proceeding has been wherever possible, to select the least restrictive alternative for providing essential information and protection to the insulation consumer. Based on the proposals and choices available to it, the Commission believes that it has been successful in achieving this goal. As a consequence, the Rule generally provides significant benefits to both consumers and competitors, at a minimal cost to the industry. In this regard, this section briefly sets forth the benefits and burdens likely to be associated with the Rule.

One cost associated with the Rule derives from the testing provisions. Some manufacturers are already testing at representative thickness, in conformance with the tests prescribed by the Rule. The record indicates that these tests are not unduly expensive.(429) In addition, several other manufacturers also have already been testing their R-values, but under different procedures than those required by the Rule. However, there is no reason to believe that compliance with the required tests will impose significantly higher costs than those associated with thin-sampling testing. In short, testing is an inherent burden assumed by a manufacturer who wishes to market an insulation product, and frequently is already done to meet the requirements of many existing industry and governmental specifications, such as the federal government's procurement specifications. Further, since the 60-day retesting provision originally recommended by the staff has been deleted, the Commission does not believe that the testing requirements will impose significant new costs on manufacturers. Nor are the Rule's recordkeeping requirements apparently considered burdensome by industry members; no participants commented on the recordkeeping provisions of the rule initially proposed by the Commission.

On the other hand, home insulation consumers will derive considerable benefit from the testing provisions. R-value claims will now reflect, as accurately as current technology permits, the effects of temperature, increased thickness, settling, shrinkage, and aging on the thermal performance consumers can expect. In addition, all R-values will be determined on a standardized basis, so that competing products can be compared and rationally evaluated by consumers. Without these Rule provisions, many consumers will continue to make erroneous and costly purchasing decisions, because the R-values they are comparing will not be comparable. With standardized, comparative R-value information, consumers will be better able to select the product with the optimal R-value for their needs. Further, in many cases, R-value competition also should redound to the benefit of smaller manufacturers whose products often compare well on an R-value basis with those manufactured by the dominant members of the industry. As a result, the Rule should provide real market incentives to small manufacturers and enhance competition throughout the industry.

The advertising disclosure provisions also do not impose substantial costs on industry members. The disclosures originally recommended by the staff have been pared down to their essentials, particularly in the area of savings claims. The result is a minimum intrusion on advertising space and time.

The benefits of the advertising provisions are that they eliminate unfairness and deception in the marketplace. Generally, they ensure that consumers have an opportunity to understand and evaluate claims that would otherwise lead to misguided purchasing decisions. For the reasons stated above, they also should allow smaller industry members to compete more effectively with the largest members of the industry. The R-value explanation for advertisements is somewhat different, however. Insofar as it explains the meaning of R-value to consumers, it is a subsidiary disclosure, which is needed to make the R-value disclosure itself meaningful. Insofar as it directs consumers toward fact sheets, it substitutes for a more detailed and costly scheme to ensure that home insulation purchasers get the pre-purchase information they need.

Thus, to the extent that there is a significant new cost placed on industry members under the Rule, it arises in the context of the labeling requirements, and particularly with respect to fact sheets. Most manufacturers already label their products with some information, and many of them follow the federal specification labeling requirements with which the Rule coincides. Thus, while new labels will be required initially, continuous relabeling should not be necessary. In fact, industry members gave strong support to the labeling requirement.(430)

and apparently do not view the initial relabeling cost as burdensome.

The fact sheet provision, however, imposes a new cost on manufacturers. As originally recommended by the staff, this requirement could have been very costly, for a number of reasons. First, separate fact sheets would have been required not only for each different product, but for varying sizes of the same product. Second, the coverage chart data on the fact sheets would not always have been identical to that on the product's label. As a result, many manufacturers would have been forced to generate new data in order to comply with the fact sheet requirement. Third, the staff recommended that each consumer be given at least one fact sheet, and suggested that a fact sheet might be needed with each *package* of insulation sold.(*431*)

In response to comments on the staff's recommendations, and out of its own concern to minimize any compliance costs associated with the Rule, the Commission has modified the fact sheet sections. As noted earlier, the coverage chart data on fact sheets is identical to that on the product's label so that any costs of generating new information have been eliminated. The Rule also permits consolidation of fact sheets for similar products, thus reducing the number of different fact sheets that any individual manufacturer must produce. Moreover, the Rule will not require that each individual consumer be given a fact sheet. Rather, under the modified binder system approach adopted by the Commission, a relatively small number of fact sheets would suffice for binder purposes. Indeed, for the small businesses which operate in localized areas, a handful of fact sheets may be enough. Based on its experience under the Warranty Rules,(*432*) the Commission believes that the cost of preparing and distributing fact sheets, for any individual manufacturer, will not be burdensome.

The benefits derived from fact sheets, as noted earlier, are that consumers will be provided with information which the record shows is essential in the context of a home insulation purchasing decision. Through this provision of the Rule, consumers will have available to them a tool that permits them to compare the thermal performance features of insulation materials based on full and complete information, and thereby to participate effectively in the national program of energy conservation.

I. *Readability of the Rule.* With the adoption of this Rule, the Commission again realizes its goal of writing understandable regulations.(*433*) The Commission has for some time required that disclosures to consumers be written in plain and easily understandable language. Likewise, the consumer disclosures required under this Rule for fact sheets and advertisements have been carefully written and reviewed by readability experts to ensure that the intended message will be conveyed in a clear and succinct manner.

Of even greater significance, however, is the fact that the Rule itself is written in understandable language. This reflects the Commission's commitment to the principle that regulations which apply to the actions of small businesses should be readily understood by such persons. After reviewing the language of the Rule carefully, the Commission is convinced that its provisions will be understood by the affected industry members.

Footnotes

1. 42 FR 59678 (1977).
2. 16 CFR 1.20 (1978).
3. 42 FR 59678, 59679 (1977). The most significant departure from previous rulemaking procedures was the abandonment of the two-notice procedure for the designation of disputed issues of material fact. For a discussion of this point and of the other procedures followed, see Report of the Presiding Officer on Proposed Trade Regulation Rule Concerning Thermal Insulation 1–4, 7–8 (1978) [hereinafter cited as Presiding Officer's Report].
4. *See* Presiding Officer's Report at 3–4.
5. 42 FR 59678 (1977).
6. *Id.; see* Presiding Officer's Report at 6. A transcript of the proceedings was filed in Category L of the rulemaking record, and appears in volumes 215–59–1–2–8 through 215–59–1–2–21.
7. *See* Presiding Officer's Report at 4.
8. *Id.* at 5–6.
9. The designated groups were as follows: (1) Consumer Group; (2) Environmental Group; (3) Cellulose Group; (4) User Group; (5) Mineral Wool Group; (6) Plastics Group; (7) Government Group; (8) Urea-formaldehyde Foam Group; and (9) Aluminum Group. *Id.*
10. Federal Trade Commission, Bureau of Consumer Protection, Staff Report on Labeling and Advertising of Home Insulation and Proposed Trade Regulation Rule (1978) [hereinafter cited as Staff Report]. For the sake of convenience, many of the citations in this Statement are to the Staff Report. However, the Commission notes that the Staff Report recounts and summarizes the record evidence.
11. *See generally* Presiding Officer's Report at 8–22.
12. 42 FR 59678, 59684–85 (1977).
13. 43 FR 32142 (1978).
14. 43 FR 37203 (1978).
15. These comments were filed in Category P of the rulemaking record, and appear in volumes 215–59–1–2–26 through 215–59–1–2–8.
16. 16 CFR 1.13 (1978) authorized oral presentations to the Commission in rulemaking proceedings. *See* 43 Fed. Reg. 51038 (1978). Although the oral presentation meeting was originally scheduled for November 15, 1978, several participants requested an extension of time in order to prepare for the meeting. *See* motions of Aluminum Ass'n and Borden, Inc., A–13; Environmental and Consumer Groups, A–14. To give the participants an opportunity to digest the staff's recommendations completely, the Commission postponed the meeting until November 21, 1978. *See id.*
17. With the exception of reflective foil, all of the insulations covered by the rule are "mass" insulations. Staff Report at 6.
18. *Id.* at 61.
19. *Id.* at 7 n.14.
20. *Id.* at 6–7; Final Trade Regulation Rule § 460.2 [hereinafter cited as TRR].
21. The term "retrofit" refers to applications in which insulation is added to a house that is already occupied.
22. Staff Report at 7–9.
23. *Id.* at 10–13.
24. *Id.* at 20–21.
25. *Id.* at 15–18.
26. *Id.* at 14–15.
27. *Id.* at 19.
28. *Id.* at 19–20.
29. *Id.*
30. *Id.* at 8; *see id.* at 11.
31. *See id.* at 11, 12.
32. *See id.* at 10, 15–18, 20, 21.
33. These procedures are discussed in greater detail in Section II.B, *infra.*
34. Staff Report at 26.
35. *Id.*
36. *Id.;* Tye, M/809.
37. Tye, M/809.
38. Staff Report at 27.
39. *Id.* at 34.
40. *Id.* Industry members agreed that a product's R-value can be raised 10–30% by decreasing the temperature to which the material is exposed. *Id.* n.220.
41. *Id.* at 63–64.
42. *Id.*
43. *See id.* at 194–95.
44. *Id.* at 33.
45. *Id.* at 33–34.
46. *See id.* at 33; Polycell Industries, Inc., P–69 at 5.
47. Staff Report at 34.
48. *Id.* at 33.
49. *See, e.g.,* Dow Chemical Co., P–61 at 7; Naval Construction Battalion Center, P–70 at 1; California Energy Resources Commission, P–82 at 1. Under this procedure, the test sample is aged for 90 days at 140°F, under conditions of intended use. HH–I–530A, ¶4.6.4, L/3227, 3236.
50. Staff Report at 31–32.
51. Owens-Corning Fiberglas Corp., L/222, T/123, P–96 at 39.
52. Staff Report at 37.
53. *Id.*
54. *Id.*
55. *Id.* at 63.
56. *Id.*
57. *Id.* GSA has proposed a new specification for loose-fill mineral wool, which includes a settled density test. *Id.* n. 398. Despite the absence of an accepted settling procedure for their products, the mineral wool manufacturers contend that the coverage charts on their package labels take settling into account. According to these

manufacturers, if the material is installed in accordance with the coverage chart, the represented R-value will be attained. *See* O. Richards, T/130–31; Mineral Insulation Manufacturers' Ass'n, P–79 at 7–8; Owens-Corning Fiberglas Corp., P–96 at 37–38.

58. This document is HH–I–515D, I/3131.

59. *Id.* ¶ 4.5.1, I/3135–36.

60. Staff Report at 44.

61. *Id.*

62. *Id.*

63. *Id.* at 46.

65. *Id.* at 47.

66. *Id.* at 48–49.

67. *Id.* at 49.

68. *Id.* at 49–50.

69. *Id.* at 50–52.

70. *Id.* at 50–51.

71. *Id.* at 50 nn.333–34.

72. *Id.*

73. *Id.* at 51.

73a. For example, the temperature and humidity at the time of installation, as well as the quality of the on-site formulation and application, can affect the level of shrinkage. *See id.* at 45.

74 *Id.* at 53.

75. *Id.*

76. *Id.*

77. *Id.* at 53–54.

78. *Id.* at 58.

79. *Id.* at 55, 57–58.

80 *Id.* at 57.

81. The term "derating" refers to a reduction in the tested R-value of a product.

82. *Id.* at 58.

83. *Id.*

84. *Id.* at 59.

85. *Id.* at 1.

86. *Id.*

87. Energy Tax Act of 1978, Pub. L. No. 95–618, § 101, 92 Stat. 3174 (1978). Purchasers of specified energy conservation measures are entitled to a tax credit in the amount of 15% of the first $2,000 expended.

88. National Energy Conservation Policy Act, Pub. L. No. 95–619, § 212, 92 Stat. 3211 (1978).

89. *See* Staff Report at 110–11.

90. Energy Conservation in Existing Buildings Act of 1976, 42 U.S.C. §§ 6861 *et seq.* (1976), *as amended by* National Energy Conservation Policy Act, Pub. L. No. 95–619, § 231, 92 Stat. 3224 (1978). The Farmers Home Administration is now developing a similar program for low-income families in rural areas. National Energy Conservation Policy Act, Pub. L. No. 95–619, § 232, 92 Stat. 3226 (1978).

91. *See* HUD, Interim Rule on Increases in Thermal Requirements for HUD Minimum Property Standards, 44 Fed. Reg. 22444 (1979); FMHA, Thermal Performance Standards, 42 Fed Reg. 56444 (1977).

92. Staff Report at 5.

93. *Id.*

94. *Id.* at 101.

95. *Id.*

96. *Id.*

97. *Id.* at 101–02.

98. *Id.* at 5.

99. *Id.* at 103.

100. *Id.*

101. *Id.* at 101, 113. One participant suggested that insulation purchases could cost between $400 and $1,600. California Dep't of Consumer Affairs, I/1655.

102. Staff Report at 114.

103. *Id.* at 108–09, 114–15.

104 Proposed Rule § 460.4(a), 42 FR 59678, 59680 (1977).

105. *See Id.* at 59691.

106. Staff Report at 208009.

107. *Id.* at 105–06.

108. *See generally id.* at 7–21.

109. *See* text accompanying note 137 *infra.*

110. W. R. Grace & Co., I/316; *see* Staff Report at 208–09.

111. *See* Staff Report at 116–19.

112. *Id.* at 117–18.

113. *Id.* at C–1.

114. *See* Environmental Group, M/509–14.

115. *Id.* at 511.

116. Staff Report at 106.

117. Rather than restraints, there have been pressures to disclose R-value emanating from a few trade associations and the General Services Administration. *See id.* at 155–56, 168–71. As the record shows, these pressures have been largely ineffective.

118. *See* text accompanying note 88 *supra.*

119. *See* Statement of Basis and Purpose, Trade Regulation Rule Concerning Unfair or Deceptive Advertising and Labeling of Cigarettes in Relation to Health Hazards of Smoking, 29 FR 8324, 8355 (1964); FTC v. Sperry & Hutchinson Co., 405 U.S. 233, 244–45 & n.5 (1972).

120. *See* Section III.B.1, *infra.*

121. The Commission recognized the economic injury that derives from consumer search in Pfizer, Inc., 81 F.T.C. 23, 61–62 (1972).

122. *See id.* at 62–63.

123. Staff Report at 208–09.

124. *See, e.g.*, Fair Packaging and Labeling Act, 15 U.S.C. §§ 1451 *et seq.* (1976) (label disclosures of package contents); Truth-in-Lending Act, 15 U.S.C. §§ 1601 *et seq.* (1976) (consumer credit disclosures); Interstate Land Sales Full Disclosure Act, 15 U.S.C. §§ 1701 *et seq.* (1976) (disclosure of facts regarding land offered for sale); Securities Act of 1933, 15 U.S.C. §§ 77a *et seq.* (1976); Securities Exchange Act of 1934, 15 U.S.C. § 77b (1976).

125. *See* Statement of Basis and Purpose in Trade Regulation Rule Concerning Advertising of Ophthalmic Goods and Services, 43 FR 23992, 24001 (1978).

126. This strong public policy has been articulated in many places, including the Energy Policy and Conservation Act, 42 U.S.C. §§ 6201 *et seq.* (1976); Energy Conservation and Production Act, 42 U.S.C. §§ 6801 *et seq.* (1976); Petroleum Marketing Practices Act, 15 U.S.C. 2801 *et seq.* (Supp., 1979); National Energy Conservation Policy Act, Pub. L. No. 95–619, 92 Stat. 3206 (1978).

127. It is interesting to note that Congress has, on several occasions, chosen to promote energy conservation through required informational disclosures to consumers. *See, e.g.*, Rules Governing the Certification and Posting of Octane Ratings Under Title II of the Petroleum Marketing Practices Act, 16 C.F.R. Part 306 (1979); Proposed Rules for Disclosure of Energy Cost and Consumption Information in Labeling and Advertising of Consumer Appliances Under the Energy Policy and Conservation Act, 43 FR 31806 (1978).

128. Statement of Basis and Purpose of Trade Regulation Rule for the Prevention of Unfair or Deceptive Advertising and Labeling of Cigarettes in Relation to the Health Hazards of Smoking 88–89 (1964), and cases cited herein.

129. *See* Staff Report at 26–27, 208009, 241–42; Council of Better Business Bureaus, I/1287; SAI Corp., T/2066; Cellutron Products Corp., T/2690.

130. Advertisements, H/1052; H/1071; H/1082; H/1110; H/1145; H/1148; H/1155; H/2097; M/559; M/560; M/561; M/564; M/565; M/649; M/1209; M/1210.

131. *See* text accompanying notes 114–16 *supra.*

132. *See* Environmental Group, M/509–14.

133. *See* Staff Report at 101.

134. Approximately two-thirds of the home insulation market is held by the 3 fiberglass manufacturers. *See* Staff Memorandum to Commission, dated January 11, 1979, at 1. Most of the insulation produced by these companies is in the form of batts and blankets of specified thicknesses. *See* Staff Report at 7.

135. Sources cited note 129 *supra.*

136. *See generally* Staff Report at 7–21.

137. At a cost of $100, a consumer might be able to insulate 50 square feet of space to a level of R–10, or 100 square feet to a level of R–5, or 200 square feet to a level of R–2.5.

138. Staff Report at 120–22.

139. *Id.* at 121.

140. *Id.* at 121–23.

141. *Id.* at 61–62, 122.

142. Advertisements, M/1071; M/1092; M/1105; M/1109; M/1111; M/1127; M/1185.

143. Staff Report at 122–23.

144. *Id.* at 123.

145. *Id.* at 126–28.

146. *See id.*

147. *See* text accompanying notes 111–15 *supra.*

148. Staff Report at 106.

149. *Id.* at 123.

150. The specific circumstances in which the R-value explanation must appear are discussed later in this Statement.

151. Section 18(a)(1)(B) of the FTC Act states that the Commission's rulemaking authority includes the authority to impose "requirements prescribed for the purpose of preventing" unfair or deceptive acts or practices.

152. Staff Report at 129, C–2.

153. *Id.* at 130–31.

154. *Id.*

155. *Id.*

156. *Id.* at 108.

157. *Id.* at 109, 133–35, C–2.

158. *See id.* at 133–35, C–2.

159. *Id.* at 107. Several participants suggested that, under certain circumstances, adding insulation could actually increase fuel costs. *See* National Ass'n of Home Manufacturers, T/1338–40; Brick Institute of America, P–98 at 4. Others agreed that once a minimum level of insulation is achieved, the savings that can be derived from additional insulation is negligible or non-existent. *See* Consumers Union, D/11; Chevron Study, H/1622–24; Dow Chemical Co., I/245–46; Mobay Chemical Corp., I/415; National Ass'n of Home Manufacturers, L/199; Council of Better Business Bureaus, L/1288; Environmental Group, L/1604; National Consumers League, L/1714; Consumer

Federation of America, L/5149; Arizona Consumers Council, T/1792; Cellulose Insulation Manufacturers' Ass'n, T/2748.

160. Staff Report at 140.

161. *Id.*

162. *See id.*

163. *Id.* at 142.

164. *Id.*

165. The volume of consumer complaints unearthed in this proceeding was relatively small. *See id.* at 104–05. However, home insulation is not the kind of product that can be readily evaluated even by knowledgeable consumers, and few consumers are informed concerning product attributes. *See* text accompanying notes 101–03 *supra*. As a result, state consumer protection officials generally agreed that, in this industry, the volume of consumer complaints is a poor indicator of the prevalence of consumer abuses. *See* Staff Report at 104–05.

166. The record contains a great deal of such promotional material. *See* Staff Report at App. C, App. D.

167. *Id.* at 179 nn.1167–68.

168. *See* text accompanying notes 86, 92–93 *supra*. This figure does not even include the numerous consumers who buy insulation in other ways, such as through the purchase of a new home.

169. TRR § 460.2. Several participants suggested that the Commission exclude new homes from the scope of its Rule. The Commission has decided to include new homes, for the reasons discussed in Section III.C.3, *infra*.

170. Pipe insulation, which has unique qualities and is generally installed only by professionals, is excluded from the Rule. TRR § 460.2; *see* Staff Report at 21–22, 188. Similarly, of the various kinds of duct installation, only duct wrap is used extensively in the residential setting. *See id.* at 7 n.13; Owens-Corning Fiberglas Corp., P–96 at 5–6. As a result, § 460.2 of the Rule excludes all kinds of duct insulation other than duct wrap.

171. Staff Report at 186 n.1196. For a discussion of these products, see *id.* at 22–25.

172. *See id.* at 19; 3M Company, I–14.

173. 42 F. R. 59678 (1977).

174. Section 460.3 clarifies who is covered by the Rule. In general, all members of the home insulation industry, including utility companies and trade associations, are covered by the Rule. In addition, advertising agencies, testing labs, and sellers of new homes are covered, insofar as they are engaged in activities in the home insulation area.

175. The Commission has determined, in other contexts, that one who furnishes retailers with the means of deceiving the public violates the FTC Act. *See, e.g.*, Baltimore Luggage Co. v. FTC, 296 F.2d 608 (4th Cir. 1961); Clinton Watch Co. v. FTC, 291 F.2d 838 (7th Cir. 1961); Riviera Trading Corp., 63 F.T.C. 114 (1963). The last paragraph of § 460.4 clarifies the application of this priniciple to testing labs with respect to testing services that they perform for manufacturers. They must follow the provisions of the Rule when they test home insulation materials. The assumption behind this provision is that test results supplied by a lab will be used as the basis for a manufacturer's claims. However, a manufacturer may wish to depart from the testing procedures at times, in order to observe the product's performance under specified conditions. Section 460.4 permits such activities by testing labs, as long as they have been informed in writing that promotional materials for the insulation will not be based on the test results.

176. *See* Owens-Corning Fiberglas Corp., P–96 at 7–8.

177. Staff Report at 69, 190; *see* Initial Staff Memorandum, B–1 at 4.

178. Staff Report at 190.

179. *Id.* at 34–35, 194.

180. *See id.* at 33–34, 42–43, 53–60, 63, 195, 228.

181. Staff Report at 67, 190–191.

182. Thus, the testing requirement imposed here is consistent with the Commission's position in Pfizer, Inc., 81 F.T.C. 23 (1972). There, the Commission held that it was both unfair and deceptive, within the meaning of section 5 of the FTC Act, for an advertiser to make a claim for which the advertiser did not have substantiation at the time the claim was made. *Id.* at 64. In fact, the *Pfizer* opinion emphasized that the unfairness of not having substantiation was particularly evident in the case of complex products, with respect to which consumers cannot practically ascertain the truthfulness of claims before sale. *Id.* at 61.

183. In addition to these test methods, the proposed rule also allowed the use of ASTM C653 and C687, test standards specially designed for low-density blanket and loose-fill insulations. 42 Fed. Reg. 58678, 59679 (1977). In light of the record evidence that these standards are not longer appropriate means of determining R-value, *see* Staff Report at 191, they have been deleted from the Rule. The proposed rule also specified ASTM C335 and C691 for pipe insulations. 42 Fed. Reg. 59678, 59679 (1977). Since pipe insulation have been excluded from the Rule's coverage, these tests have been deleted. *See* note 171 *supra*.

184. For a discussion of the ASTM procedures for adopting test standards, see Staff Report at 65; Tye Report, H/1916; Tye, T/215–19. Until now, the use of these test methods has been strictly voluntary. Staff Report at 66.

185. Staff Report at 66.

186. *Id.* However, the "calibrated hot box," when it becomes an ASTM standard test method, will take transient environmental factors into account. *Id.* at 84–85. Since the record indicates that this test method will provide the most accurate R-values possible, *id.*, § 460.5(a) of the Rule states that the calibrated hot box will be a permissible test method once it becomes an ASTM standard test method.

187. Staff Report at 66.

188. *Id.* at 67.

189. For a discussion of the specific levels of accurary and reproducibility for C177, C518, and C236, see *id.* at 70–71, 74–77.

190. A "systems" test is one in which an assembly of materials, such as a built-up wall section, is tested. In contrast, the C177 and C518 methods are used to test only the insulation material itself.

191. ASTM C236 is discussed in Section II.B.3, *infra*, which covers the R-value testing requirements for foil insulations.

192. *See* Sections I.C.1, II.B.1.c, *supra*.

193. Contrary to allegations made during the proceeding, the 1976 revisions to C177 and C518 were not suspended and are currently in effect. Staff Report at 61.

194. *Id.* at 62, 68.

195. "Representative thickness," as defined in the test methods and in § 460.6 of the Rule, means a thickness at which the material's R-value per unit will vary no more than ±2% with increases in thickness.

196. Staff Report at 192.

197. *See id.* at 192–93; U.S. Gypsum Co., P–41 at 3; Dow Chemical Co., P–61 at 7; Johns-Manville Sales Corp., P–64 at 2–5; Rock Wool Mfg. Co., P–89 at 2; Oren Corp., P–94 at 1; Owens-Corning Fiberglas Corp., P–98 at 8–11, 13; CertainTeed Corp., P–100 at 3–4; NAHB Research Foundation, P–105 at 2–3.

198. Staff Report at 192–93; *see* U.S. Gypsum Co., P–41 at 3; Dow Chemical Co., P–61 at 7; Johns-Manville Sales Corp., P–64 at 2–5; Rock Wool Mfg. Co., P–89 at 2; Owens-Corning Fiberglas Corp., P–98 at 13; CertainTeed Corp., P–100 at 3–4, NAHB Research Foundation, P–105 at 2–3.

199. *See* R.P. Tye, T/204, M/717.

200. *See* Staff Report at 82–83; Johns-Manville Sales Corp., P–64 at 4. This was the variation between the results achieved by Dynatech Laboratories and the National Research Council of Canada. *Id.* However, the variation between the results achieved by Dynatech and the other American labs was approximately 1.5%. *See* R.P. Tye, M/717.

201. Staff Report at 82–83.

202. *Id.*

203. *Id.* at 26–27; R.P. Tye, M/718, 809.

204. *See* Staff Report at 83–84, 193. *See generally* Section II.B.5, *infra*.

205. For example, despite the staff's earlier recommendation that representative thickness testing be implemented immediately, the representative for cellulose manufacturers commented only that a delay was needed so that manufacturers could complete their initial round of representative thickness testing. Cellulose Insulation Manufacturers' Ass'n, P–88 at 4. Manufacturers in other segments of the industry also did not question the propriety of a representative thickness testing requirement.

206. *See* ASTM C687–71, Standard Recommended Practice for Determination of the Thermal Resistance of Low-Density Fibrous Loose Fill-Type Building Insulation, H/458. Thus, the witness for Johns-Manville testified that the company's loose-fill product is normally tested at a 6-inch thickness, and that these tests form the basis for the company's R-value claims to consumers. T/476–77. Similarly, Rockwool Industries tests its loose-fill at a representative thickness. L/4657–58.

207. *See* ASTM C739–73, Standard Specification for Cellulosic Fiber (Wood-Base) Loose-Fill Thermal Insulation, L/2070; National Cellulose Corp., L/4758–59.

208. *See, e.g.*, Johns-Manville Sales Corp., T/468, 478. In fact, both ASTM C687 and C739 indicate that, if a C518 apparatus is used to test thick samples, it should be correlated

with results obtained on C177 or C236 equipment.

209. Use of Materials Bulletin No. 74, ¶6.2.7, 42 Fed. Reg. 55143, 55145 (1977), L/3109, 3111.

210. *See* note 207 *supra;* C. Shirtliffe, M/814.

211. *Id.;* R.P. Tye, M/716.

212. Staff Report at 193; *see* U.S. Gypsum Co., P-41 at 3; Dow Chemical Co., P-61 at 7; Rock Wool Mfg. Co., P-89 at 2; Oren Corp., P-94 at 1; Owens-Corning Fiberglas Corp., P-96 at 10-11; CertainTeed Corp., P-100 at 3-4.

213. Staff Report at 193.

214. *Id.*

215. *Id.*

216. For example, most cellular plastics boardstock is produced in thicknesses of only an inch or two. Urea-formaldehyde foam typically is installed at a thickness of about 3½ inches. Moreover, the effect of thickness of R-value may level off, for some products, at only a few inches. Thus, R-value tests at greater thicknesses would not be required for these products.

217. *See, e.g.,* R.P. Tye, T/250.

218. Staff Report at 199-202; *id.* at A-3, § 460.7. For further discussion of this point, see text accompanying notes 264-68 *infra.*

219. *See, e.g.,* Cellulose Insulation Manufacturers' Ass'n, P-88 at 4; CertainTeed Corp., P-100 at 6.

220. *See* Staff Memorandum of November 3, 1978, to Commission, Attachment B.

221. Staff Report at 63-64, 194; *see, e.g.,* Polymer Building Systems, P-12 at 1; SPI, P-46 at 4; Environmental Group, P-48 at 4-6; Dow Chemical Co., P-61 at 7; Jim Walter Corp., P-63 at 4; Naval Construction Battalion Center, P-70 at 1; Roy & Sons, Inc., P-87 at 1; R.P. Tye, P-92 at 3.

222. Staff Report at 194-95; *see* Warren Sales Corp., P-6 at 1; Southern Ohio Foam, P-14 at 1-2; ENFO Environmental Systems, P-43 at 1; Polycell Industries, P-69 at 1-3; BASF Wyandotte Corp., P-97 at 2-3.

223. *See* sources cited note 222 *supra.*

224. Post-record comment of Dow Chemical Co., P-61 at 7.

225. Suggested lower temperatures included 25°F, 40°F, and 45°F. *See* Warren Sales Corp., P-6 at 1; Jim Walter Corp., P-63 at 4; Dow Chemical Co., P-67 at 7. *See also* Staff Report at 195.

226. Of course, this means that R-values disclosed to consumers in labels, fact sheets, and ads must be the R-values as tested at 75°F.

227. Staff Report at 195.

228. The aging requirement initially recommended by the staff applied to all types of polystyrene insulation. However, the provision has been limited to extruded polystyrene in light of post-record comments that it is the only type that ages significantly after manufacture. *See, e.g.,* ENFO Environmental Systems, P-43 atl; SPI, P-46 at 6.

229. "Accelerated aging" involves aging the product for 90 days at 140°F in the form of intended use. *See* GSA Specification HH-I-530A, ¶ 4.6.4, L/3227, 3236; Naval Construction Battalion Center, P-70 at 1; California Energy Resources Commission, P-82 at 1; Dow Chemical Co., P-61 at 7. This accelerated aging process reflects expected performance after 5 years of use. *Id.*

230. *See* U.S. Mineral Products Co., P-11 at 1; Dow Chemical Co., P-61 at 7; Naval Construction Battalion Center, P-70 at 1; California Energy Resources Commission, P-82 at 1.

231. Oral presentation of Society of the Plastics Industry, Inc., Transcript at 55-56.

232. Staff Report at 33.

233. *Id.* at 42-43.

234. HH-I-515D, ¶ 4.5.1, L/3135-36. This specification was pending at the time of the hearings, but was published by GSA in June.

235. Staff Report at A-6, § 460.15(d); *id.* at A-9, § 460.20(f).

236. Staff Report at 63; *see* Naval Construction Battalion Center, P-70 at 2; Oren Corp., P-94 at 2.

237. *See* note 57 *supra* and accompanying text.

238. TRR § 460.5(a).

239. GSA has proposed an amendment that would incorporate a settled density test procedure into its specification for loose-fill mineral wool. HH-I-1030B, L/3272.

240. Staff Report at 76-77. For a discussion of the operation, accuracy, and reproducibility of this method, *see id.* at 77-78.

241. *Id.*

242. The test must be conducted at a mean temperature of 75°F, with a temperature differential of 30°F. TRR § 460.5(b).

243. Staff Report at 196.

244. *Id.* at 197.

245. *Id.*

246. *Id.*

247. The emissivity value of a reflective material represents its ability to retain heat. It has a significant impact on the thermal resistance that is achieved. *See id.* at 19.

248. *Id.* at A-2, § 460.5(a)(3); *see id.* at 196-97.

249. This recommendation received further support in the post-record comments. Simplex Products Group, P-5 at 1.

250. Staff Report at 196-97.

251. *See* Aluminum Ass'n, P-49 at 1; Johns-Manville Sales Corp., P-46 at 2; U.S. Fiber Corp., P-67 at 3; Insulation Contractors of America, P-77 at 3; Rockwool Industries, Inc., P-104 at 4.

252. U.S. Fiber Corp., P-67 at 3. The Aluminum Association suggested in its post-record comment that C835 might be referenced in place of C445. P-49 at 1. However, during its oral presentation to the Commission, the Association recommended that the Rule require emissivity testing under E408 or a comparable method. Transcript at 104-05.

253. The Rule also states that the R-value derived from the ASHRAE tables for a single sheet of aluminum foil must be the R-value listed at 50°F, with a temperature differential of 30°F. The ASHRAE tables do not list a single airspace R-value at 75°F, and this alternative temperature is supported by the record. *See* Staff Report at 197-98. *See also* oral presentation of Aluminum Ass'n, Transcript at 105.

One commenter pointed out that when aluminum foil insulation is installed on the exterior of a wall that already has at least R-11 insulation in it, the temperature differential is less than 30°F. While this may be true, it would be impossible to predict in advance whether the particular insulation product will be installed in such a wall. In other words, the same reasons that support a single test temperature standard, despite the fact that it does not always represent actual environmental conditions, also support the 30°F temperature differential provision.

254. Facings are often used on mineral wool batts and blankets, and on exterior sheathing insulations. *See* Staff Report at 19.

255. For example, if the material R-value of a foam board is 4.0, the system R-value provided by insulation of the board in conjunction with a one-inch airspace would be approximately 6.0 for a wall application. *See* ASHRAE Handbook, H/1272-73.

256. Materials with foil facings must be tested alone (excluding any airspaces) in accordance with § 460.5(a) of the Rule, to establish the material R-value.

257. These alternatives were suggested in the post-record comments. SPI, P-46 at 3-4; Dow Chemical Co., P-61 at 6; Jim Walter Corp., P-63 at 3.

258. SPI, P-46 at 3-4; Dow Chemical Co., P-61 at 6.

259. Staff Report at 198.

260. The ASTM consensus process gives industry members an opportunity to keep abreast of, participate in, and plan for prospective changes in the ASTM test methods. *Id.* at 199. Similarly, changes in the GSA specifications are made with the knowledge and technical assistance of the affected industry. As a result, the Commission believes that, except under unusual circumstances, 90 days will provide industry members with enough time to come into compliance with a test change.

261. Section 18(d)(2)(B) of the FTC Act states: "A substantive amendment to . . . a rule promulgated under subsection (a)(1)(B) shall be prescribed . . . in the same manner as a rule prescribed under such subsection."

262. Staff Report at 88.

263. 42 Fed. Reg. 59678, 59683 (1977) (question 3).

264. Staff Report at 199.

265. *See generally id.* at 88-100.

266. *Id.* at 199.

267. *Id.* at 202. The hearings indicated that periodic retesting is an effective way of detecting changes in R-value caused by production or product variations. *Id.* at 200. However, the staff's selection of a 60-day retesting period was a compromise between extremes of retesting periods that seemed either too lenient or too strict, and is reasonable in the absence of evidence providing a more precise basis for designating a retesting interval. *Id.* at 201.

268. *See, e.g.,* Incel Corp., P-13 at 1; Conwed Corp., P-65 at 2; Polycell Industries, Inc., P-69 at 4; Alfol, Inc., P-81 at 2.

269. Mineral Insulation Manufacturers' Ass'n, P-79 at 5; R.P. Tye, P-92 at 3; Rockwell Industries, Inc., P-104 at 4.

270. TRR § 460.8.

271. *See* Staff Report at 202.

272. Non-manufacturers, on the other hand, may rely on the R-value data provided by the manufacturer, unless they know or should know that the data is incorrect or not based on proper tests. TRR § 460.8.

273. *Id.* § 460.9; *see* Staff Report at 202-03.

274. *Cf.* Proprietary Vocational and Home Study Schools Rule § 438.3(f)(2), 43 FR 60796, 60819–20 (1978).

275. *See* Proposed Rule § 460.4(a), 42 FR 59678, 59680 (1977).

276. *See* Staff Report at 208–13.

277. *Id.* at 209.

278. *Id.* at A–4, § 406.14(b)(1). For air duct insulation, the staff recommended disclosure of the product's R-value and the dimensions of the package. *Id.* at A–5, § 406.14(b)(4).

279. *Id.* at A–4, § 460.14(b)(2). The same information was required to be disclosed at any additional thicknesses listed by the manufacturer. *Id.*

280. *Id.*

281. *Id.* at A–4, § 460.14(b)(3).

282. In particular, these commenters pointed out that the relevant information was not the "dimensions of the package" or "packaged thickness," but the dimensions of the material itself and the amount of material in the package. *See, e.g.*, SPI, P–46 at 11–12; Owens-Corning Fiberglas Corp., P–96 at 26; CertainTeed Corp., P–100 at 8.

283. *See, e.g.*, U.S. Fiber Corp., P–67 at 4; Mineral Insulation Manufacturers' Ass'n, P–88 at 4–5.

284. *See, e.g.*, Incel Corp., P–13 at 2; Conwed Corp., P–85 at 3; Cellulose Insulation Manufacturers' Ass'n, P–88 at 5. This position received further support from the cellulose group during the oral presentations to the Commission. Transcript at 17–18.

285. Dow Chemical, P–61 at 10.

286. Transcript at 57–60 (cellular plastics group); *id.* at 110–11 (aluminum group).

287. There is one exception to this approach. The federal specification for cellulose insulation requires disclosure of the number of bags needed to cover 1,000 square feet. HH–I–515D, ¶ 3.2(e).

While this information may be useful to consumers, the Commission does not deem it essential, since it adds little to the disclosure of the number of square feet covered by the package. In any event, some manufacturers already provide this information on their labels, *e.g.*, Fibertherm label, M/1212; Everguard label, M/1231; Monotherm label, M/1232, and the Commission's Rule will not prohibit them from continuing to do so.

288. *See* text accompanying note 278 *supra.*

289. TRR §§ 460.12(b) (4) & (7).

290. The R-value for one inch of loose-fill fiberglass is approximately 2.2, and the corresponding R-value for loose-fill rockwool is roughly 2.9. Staff Report at 7, 9. Similarly, the R-value for one inch of vermiculite is in the 2.2 range, while an inch of perlite has an R-value of about 2.7. Staff Report at 20–21; Perlite Institute pamphlet, H/669; *see* W. R. Grace & Co., T/557–58 (vermiculite R-value for one inch is 2.8 to 3.0).

291. *See* TRR § 460.12(b)(2).

292. *See id.* § 460.12(b)(5). There is an exception to this provision. The manufacturer may disclose the R-value for only one direction of heat flow, as long as the label clearly and conspicuously states that the product can only be used in that application. *Id.*

293. *See* Staff Report at 19; Jim Walter Corp., I/481, 482, 490.

294. TRR § 460.12(b)(6).

295. The dimensional disclosures are the length, width, and thickness of the insulation in the package, and the number of square feet covered by the package.

296. *See* Staff Report at 209–10.

297. *See id.* at 213–14.

298. *Cf.* TRR § 460.5(a).

299. *Id.* § 460.12(c).

300. *See* Section II.B.1.d, *supra.*

301. There was widespread support for the inclusion of a brief R-value explanation on insulation labels. Staff Report at 215. However, the disclosure originally proposed by the Commission was criticized because it implied that there is a direct correlation between adding insulation and saving fuel. *Id.* The R-value explanation was redrafted in light of these comments.

302. *Id.* at 216.

303. *See id.* at D–1, D–2.

304. Dr. Leland Gallup, L/1744, T/779, 786; Allan Ackerman, T/2529–31, M/30, 34.

305. *See* Staff Report at 149–51; Allan Ackerman, M/33.

306. Staff Report at 217.

307. *Id.*

308. TRR §§ 460.12(d) & (e).

309. The exceptions are discussed in the text accompanying notes 319–34 *infra.*

310. National Retail Hardware Ass'n, T/1503; David Reister, T/2498. Five of the 11 Washington, D.C. area stores surveyed by the Environmental Group keep all or most of their insulation stock in warehouses or other locations inaccessible to consumers. Environmental Group, M/511.

311. *See* Staff Report at 219.

312. Polystrene, polyurethane, and polyisocyanurate boardstock materials are often broken down at the retail level and sold as loose boards. W.R. Grace & Co., I/323; Dow Chemical, I/253.

313. Of course, the relevant labeling information could be stamped on each board individually. However, manufacturers contend that this would be difficult and expensive. *See, e.g.*, W.R. Grace & Co., I/324, T/591, 595–97.

314. The disclosure required by § 460.17 of the Rule occurs after the insulation has been installed. *See* Section II.C.4, *infra.*

315. TRR §§ 460.13(c)(1), 460.13(g) paragraphs 1 & 3. The fact sheets must also state the name and address of the manufacturer, information needed by the Commission for enforcement purposes. In addition, the manufacturer must indicate the type and form of the insulation. Consumers need this information in order to purchase the product. *Id.* §§ 460.13(a) & (b).

316. These products are "manufactured" from component materials at the site of application, and immediately installed by the contractor. *See* Staff Report at 14, 17. Prior to installation, there is never an actual insulation material that can be labeled.

317. TRR § 460.13(c)(1).

318. No coverage area disclosure is necessary with respect to these products, since the installer simply contracts to fill an entire cavity area with a certain R-value and thickness of the material.

319. TRR § 460.13(e).

320. *See* Section I.C.6, *supra.*

321. *See* text accompanying notes 79–84 *supra.*

322. Text accompanying notes 79–82 *supra.*

323. Text accompanying note 83 *supra.*

324. Text accompanying note 84 *supra.*

325. Staff Report at A–6, § 460.15(f); *see* Presiding Officer's Report at 10–12. The disclosure stated, among other things, that the Department of Housing and Urban Development "has found that the actual R-value is 28% below the marked R-value."

326. *See* Presiding Officer's Report at 11; Borden, Inc., P–60 at 24–25.

327. TRR § 460.13(e).

328. *Id.*

329. *Id.*

330. Staff Report at 231–32; Owens-Corning Fiberglas Corp., P–96 at 39.

331. *See* Staff Report at 31–32, 231; Owens-Corning Fiberglas Corp., L/222, T/123, P–96 at 39.

332. *See* Owens-Corning Fiberglas Corp., L/222.

333. Staff Report at 231. The Thermal Insulation Manufacturers Association is in the process of developing such a test for air duct wrap. *Id.*

334. TRR § 460.13(f).

335. Staff Report at A–6, § 460.15(c).

336. *Id.*, § 460.15(e).

337. *Id.*, §§ 460.15(c), (d), & (e).

338. *See* Staff Report at 227–29.

339. *See, e.g.*, Owens-Corning Fiberglas Corp., P–96 at 35 (compression); CertainTeed Corp., P–100 at 9 (compression); Aluminum Ass'n, P–49 at 2 (moisture); Mineral Insulation Manufacturers' Ass'n, P–79 at 7.

340. *Cf.* National Ass'n of Home Insulation Contractors, P–103 at 9–14.

341. *See* Staff Report at A–5, § 460.15.

342. *See id.* at 221 n.1385.

343. TRR § 460.13(c)(2).

344. Of course, different types of loose-fill, such as cellulose and rockwool, would require different fact sheets.

345. *See* Staff Report at A–5, § 460.15. The rule stated that manufacturers must give installers at least one fact sheet for each customer, and that manufacturers who install their own insulation must give each customer a fact sheet. Due to a drafting error, it stated that retailers were to be supplied one fact sheet for *each package* of insulation sold to them.

346. *See, e.g.*, United Stated Mineral Products, P–11 at 2; Johns-Manville Sales Corp., P–64 at 6; Oren Corp., P–94 at 2; CertainTeed Corp., P–100 at 9. Many comments were based on the belief that the recommended rule required one fact sheet for each package of insulation sold. *See* note 345 *supra.*

347. 16 CFR 702 (1978).

348. Owens-Corning Fiberglas Corp., P–96 at 42–44. This was also the approach recommended during the hearings by the National Retail Hardware Association. T/1503–05, 1511–14.

349. TRR § 460.14.

350. *Id.* § 460.15.

351. *See* Section II.D, *infra.*

352. 42 FR 59678, 59683 (1977) (question 4).

353. Staff Report at 145; *see id.* at 234; H & H Housing Research Report, L/2388.

354. *See* Staff Report at 145–47.

355. *Id.* at 234; *see id.*

356. *See* notes 126–27 *supra* and accompanying text.

357. Staff Report at 187, 234. It is noteworthy that the National Association of

Home Builders supported such a requirement. L/193.

358. National Ass'n of Home Manufacturers, L/201–03.

359. National Ass'n of Home Manufacturers, T/1410–11.

360. *See id.* at 1384–93; National Ass'n of Home Builders, T/1351–52. Approximately 20 to 30 states have such codes.

361. National Ass'n of Home Manufacturers, T/1397–98.

362. *See id.* at 1382–83, 1388–92; National Ass'n of Home Builders, T/1336–38, 1351–52, 1392.

363. National Ass'n of Home Manufacturers, T/1400, 1407. Indeed, the witness for NAHB noted that many new home ads simply refer to the thichness of the home's insulation and not its R-value, T/1348–49, thus encouraging consumers to believe that insulation performance can be evaluated on the basis of thickness alone.

364. Staff Report at 234–36.

365. *Id.* at A–8, § 460.18.

366. TRR § 460.16.

367. Many building contracts give the builder a right to substitute equivalent insulation material, if the type contracted for becomes unavailable. National Ass'n of Home Builders, T/1328–31.

368. TRR § 460.16.

369. Staff Report at B–4, § 460.4(c).

370. *Id.* at 237.

371. TRR § 460.15.

372. This is especially true in light of the Commission's decision to allow R-value information for more than one product to be consolidated on one fact sheet. *See* text accompanying notes 343–44 *supra.*

373. The bag count disclosure was suggested primarily by installers, but also by others. *See* Staff Report at 237–38. Since loose-fill products settle after installation, the bag count assures both the consumer and the installer that, according to the manufacturer's coverage chart data, enough insulation was installed to achieve the represented R-value. *See id.*

374. 42 FR 59678, 59680, 59683 (1977) (question 5).

375. *See* Staff Report at 241. Moreover, the Commission cannot determine the accuracy of an R-value claim without knowing the thickness to which it is alleged to correspond.

376. *See* Section II.B.1.b, *supra.*

377. 42 FR 59678, 59680, 59683 (1977) (question 5).

378. For example, at a cost of $100, a consumer might be able to insulate 50 square feet of space to a level of R–10, or 100 square feet to a level of R–5, or 200 square feet to a level of R–2.5. In short, the consumer needs to know that at the stated price and R-value, the entire attic, or half of the attic, or a corner of it, will be insulated. *See* note 143 *supra* and accompanying text.

379. TRR § 460.18(b). If the price is stated in terms of a price per square foot, the consumer can calculate the coverage area, and the coverage area disclosure is no longer required. *Id.*

380. 42 Fed. Reg. 59678, 59680 (1977).

381. E.g., Advertisements, H/1051; H/1062; H/1093; M/585–88; M/1083.

382. *See* text accompanying notes 105–07 *supra.*

383. Although the proposed rule also required a coverage area disclosure, that provision has been dropped. The comparison must be based on equal coverage areas, but the consumer does not need this information in order to evaluate the comparison. On the other hand, the last two sentences of § 460.18(d) make clear that if a comparison claim includes a price, the disclosures required by subsections (b) *and* (d) must be made.

384. 42 FR 59678, 59680 (1977).

385. *See* text accompanying notes 153–55 *supra; see also* Section II.B.1.d.; *supra.*

386. Staff Report at 106.

387. *Id.* at 244.

388. TRR § 460.18(a).

389. *See* text accompanying notes 156, 356 *supra.*

390. 42 FR 59678, 59680 (1977).

391. Staff Report at 101.

392. *See* text accompanying notes 324–29 *supra.*

393. *See* text accompanying note 333 *supra.*

394. The disclosure provision in § 460.18(e) is identical to that in § 460.13(d) on the fact sheets. If UF foam R-values are properly derated to account for shrinkage, then the disclosure is not required.

395. Although consumers should ultimately receive this disclosure via the fact sheets, the ads are nevertheless deceptive without the disclosures. *See* Resort Car Rental System, Inc. v. FTC, 518 F.2d 962 (9th Cir.), *cert. denied sub nom.* Mackenzie v. United States, 423 U.S. 827 (1975); Exposition Press, Inc. v. FTC, 295 F.2d 869 (2d Cir. 1971).

396. Staff Report at C–2.

397. *Id.*

398. *See, e.g.*, Dow Chemical Co., L/131, 132, 134; Georgia Governor's Office of Consumer Affairs, L/160. Center for Public Representation, L/616–17 (Exhibit 1).

399. Staff Report at 108–09.

400. *See id.* at 108, 129–30.

401. *See* Section II.B.2, *supra.*

402. Staff Report at A–10, § 460.21(b). The staff's disclosure requirement would have applied only to savings claims that referred to a specific percentage of fuel saved. *Id.* Nevertheless, the Commission believes that more general claims are equally deceptive, since some consumers will save little or nothing by adding insulation.

The Commission has also rejected the staff's proposed ban on "dollar" savings claims. *Id.* § 460.21(a). The distinctions between dollar claims and other types of savings claims are insufficient to warrant such drastically different treatment, and the Commission believes that the deceptive character of the claims can be cured through the Rule's disclosure provisions.

403. *See, e.g.*, Dow Chemical Co., P–61 at 12; Mineral Insulation Manufacturers' Ass'n, P–79 at 9; Rock Wool Mfg. Co., P–89 at 2; Owens-Corning Fiberglas Co., P–96 at 54–56.

404. Although a consumer could have determined that the circumstances decribed in the ad were similar to his or her own, it would not have been possible to predict the impact of one or more differences between the advertised conditions and the consumer's conditions.

405. The disclosure states: "Savings vary. Find out why in the seller's fact sheet on R-values. Higher R-values mean greater insulating power." TRR § 460.19(b).

406. TRR § 460.13(g), paragraph 2.

407. It is noteworthy that the savings claim disclosure takes precedence over the R-value explanation; that is, if a savings claim also triggers disclosures under § 460.18 of the Rule, the R-value explanation in § 460.18(a) may be omitted. *Id.* § 460.19(d).

408. Pfizer, Inc., 81 F.T.C. 23 (1972).

409. TRR § 460.19(a). However, non-manufacturers may rely on savings claim information provided by the manufacturer, unless they know or should know that the manufacturer does not have a reasonable basis for the claim. *Id.* § 460.19(e).

410. *See* Staff Report at 249–51, 258–59.

411. Georgia Governor's Office of Consumer Affairs, L/160.

412. *Id.*

413. *See* Staff Report at 257–58.

414. TRR § 460.19(c).

415. *Id.*

416. Staff Report at 261.

417. *Id.*

418. Insulation products manufactured in boardstock form are often used at a one-inch thickness. *Id.* at 262.

419. For example, the manufacturer could state the R-value per inch of the material varies between 3.0 at a one-inch thickness and 2.6 at a six-inch thickness. TRR § 460.20.

420. Staff Report at 142–43.

421. *Id.*

422. TRR § 460.21.

423. Staff Report at 140.

424. 16 CFR 14.9 (1978).

425. 2 CCH Trade Reg. Rep. ¶ 7569 (1971).

426. *Cf.* Statement of Basis and Purpose for Trade Regulation Rule Governing Proprietary Vocational and Home Study Schools, 43 Fed. Reg. 60786, 60808 (1978).

427. This exemption process is similar to that approved by the Commission in the recently-adopted Trade Regulation Rule Governing Proprietary Vocational and Home Study Schools, § 438.9 *See* 43 FR 60796, 60811 (1978).

428. The only exemption available to industry members is that available under § 18(g) of the FTC Act. Under this provision, an industry member whose peculiar circumstances warrant an exemption from the Rule may petition the Commission.

429. ASTM C177 and C518 cost, respectively, approximately $200 and $150 per test. Staff Report at 72, 75. These are the test methods that will be most widely used. The C236 test is more expensive than C177, but exact figures are not available. *See id.* at 78.

430. *See id.* at 208–09.

431. *See* notes 350–51 *supra.*

432. 16 CFR 701 *et seq.* (1978).

433. In the Vocational Schools Rule, all of the consumer notices were written in "plain English." 43 FR 60796, 60812 (1978). In addition, the recently-promulgated Octane Posting Rule marked the first instance in which an entire regulation was written in readily understandable language. 44 FR 19160 (1979).

Accordingly, the Commission amends Subchapter D, Trade Regulation Rules of 16 CFR, Chapter I, by adding a new Part 460 to read as follows:

PART 460—LABELING AND ADVERTISING OF HOME INSULATION

Sec.

460.1 What this regulation does.
460.2 What is home insulation.
460.3 Who is covered.
460.4 When the rules apply.
460.5 R-value tests.
460.6 "Representative thickness" testing.
460.7 Which test version to use.
460.8 R-value tolerances.
460.9 What test records you must keep.
460.10 How statements must be made.
460.11 Rounding off R-values.
460.12 Labels.
460.13 Fact sheets.
460.14 How retailers must handle fact sheets.
460.15 How installers must handle fact sheets.
460.16 What new home sellers must tell new home buyers.
460.17 What installers must tell their customers.
460.18 Insulation ads.
460.19 Savings claims.
460.20 R-value per inch claims.
460.21 Government claims.
460.22 Tax claims.
460.23 Other laws, rules, and orders.
460.24 Stayed or invalid parts.
Appendix A—Enforcement Policy Statement for Foreign Language Advertising.
Appendix B—Enforcement Policy Statement for Clear and Conspicuous Disclosures in Television Advertising.

Authority: 38 Stat. 717, as amended, 15 U.S.C. 41 et seq.

§ 460.1 What this regulation does.

This regulation deals with home insulation labels, fact sheets, ads, and other promotional materials in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act. If you are covered by this regulation, breaking any of its rules is an unfair and deceptive act or practice or an unfair method of competition under section 5 of that Act. You can be fined heavily (up to $10,000) each time you break a rule.

§ 460.2 What is home insulation.

Insulation is any material mainly used to slow down heat flow. It may be mineral or organic, fibrous, cellular, or reflective (aluminum foil). It may be in rigid, semirigid, flexible, or loose-fill form. Home insulation is for use in old or new homes, condominiums, cooperatives, apartments, modular homes, or mobile homes. It does not include pipe insulation. It does not include any kind of duct insulation except for duct wrap.

§ 460.3 Who is covered.

You are covered by this regulation if you are a member of the home insulation industry. This includes individuals, firms, partnerships, and corporations. It includes manufacturers, distributors, franchisors, installers, retailers, utility companies, and trade associations. Advertisers and advertising agencies are also covered. So are labs doing tests for industry members. If you sell new homes to consumers, you are covered.

§ 460.4 When the rules apply.

You must follow these rules each time you import, manufacture, distribute, sell, install, promote, or label home insulation. You must follow them each time you prepare, approve, place, or pay for home insulation labels, fact sheets, ads, or other promotional materials for consumer use. You must also follow them each time you supply anyone covered by this regulation with written information that is to be used in labels, fact sheets, ads, or other promotional materials for consumer use. Testing labs must follow the rules unless the industry members tells them, in writing, that labels, fact sheets, ads, or other promotional materials for home insulation will not be based on the test results.

§ 460.5 R-value tests.

R-values measure resistance to heat flow. R-values given in labels, fact sheets, ads, or other promotional materials must be based on tests done under the methods listed below. They were designed by the American Society of Testing and Materials (ASTM). The test methods are:

(a) All types of insulation except aluminum foil must be tested with ASTM C177, C518, or C236. If the "calibrated hot box" becomes an ASTM standard test method, it can also be used. The tests must be done on the insulation material alone (excluding any air spaces). The tests must be done at a mean temperature of 75° Fahrenheit.

(1) For polyurethane, polyisocyanurate, and extruded polystyrene, the tests must be done on samples that fully reflect the effect of aging on the product's R-value. To age the sample, follow the procedure in paragraph 4.6.4 of GSA Specification HH–I–530A, or another reliable procedure.

(2) For cellulose, the tests must be done at the settled density determined under GSA Specification HH–I–515D.

(3) For loose-fill mineral wool, the tests must be done on samples that fully reflect the effect of settling on the product's R-value. When a settled density procedure becomes part of a final GSA Specification for loose-fill mineral wool, the tests must be done at the settled density determined under the GSA Specification.

(b) Aluminum foil systems with more than one sheet must be tested with ASTM C236 (or the calibrated hot box). The tests must be done at a mean temperature of 75° Fahrenheit, with a temperature differential of 30° Fahrenheit.

(c) Single sheet systems of aluminum foil must be tested with ASTM E408 or another test method that provides comparable results. This tests the emissivity of the foil—its power to radiate heat. To get the R-value for a specific emissivity level, air space, and direction of heat flow, use the tables in the most recent edition of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers' (ASHRAE) Handbook. You must use the R-value shown for 50° Fahrenheit, with a temperature differential of 30° Fahrenheit.

(d) For insulation materials with foil facings, you must test the R-value of the material alone (excluding any air spaces) under the methods listed in subsection (a). You can also determine the R-value of the material in conjunction with an air space. You can use one of two methods to do this:

(1) You can test the system, with its air space, under ASTM C236 (or the calibrated hot box). If you do this, you must follow the rules in subsection (a) on temperature, aging, and settled density.

(2) You can add up the tested R-value of the material and the R-value of the air space. To get the R-value for the air space, you must follow the rules in subsection (c).

§ 460.6 "Representative thickness" testing.

All tests except aluminum foil tests must be done at a representative thickness for every thickness shown in a label, fact sheet, ad, or other promotional material. "Representative thickness" means a thickness at which the R-value per unit will vary no more than plus or minus 2% with increases in thickness. However, if the thickness shown in your label, fact sheet, ad, or promotional material is less than the representative thickness, then you can test the insulation at the thickness shown.

§ 460.7 Which test version to use.

Use the version of the ASTM test method that was in effect when this regulation was promulgated. If ASTM changes a test method, the new version will automatically replace the old one in these rules 90 days after ASTM first publishes the change. However, the Commission's staff or a person affected by the change can petition the

Commission during the 90-day period not to adopt the change or to reopen the proceeding to consider it further.

§ 460.8 R-value tolerances.

If you are an industry member, the R-value of any insulation you sell cannot be more than 10% below the R-value shown in a label, fact sheet, ad, or other promotional material for that insulation. However, if you are not a manufacturer, you can rely on the R-value data given to you by the manufacturer, unless you know or should know that the data is false or not based on the proper tests.

§ 460.9 What test records you must keep.

Manufacturers and testing labs must keep records of each item of information in the "Report" section of the ASTM test method that is used for a test. They must also keep the following records:

(a) The name and address of the testing lab that did each test.

(b) The date of each test.

(c) For manufacturers, the date each test report was received from a lab. For labs, the date each test report was sent to a manufacturer.

(d) For extruded polystyrene, polyurethane, and polyisocyanurate, the age (in days) of the specimen that was tested.

(e) For aluminum foil, the emissivity level that was found in the test.

Manufacturers who own their own testing labs need not keep records of the information in subsection (c).

Keep these records for at least three years. If the documents show proof for your claims, the three years will begin again each time you make the claim. Federal Trade Commission staff members can check these records at any time, but they must give you reasonable notice first.

§ 460.10 How statements must be made.

All statements called for by this regulation must be made clearly and conspicuously. Among other things, you must follow the Commission's Enforcement Policy Statement for Foreign Language Advertising (July 24, 1973) (Appendix A). For TV ads, you must follow the Commission's Enforcement Policy Statement for Clear and Conspicuous Disclosures in Television Advertising (October 21, 1970) (Appendix B). However, only the quoted statements required by §§ 460.18(a) and 460.19(b) must be made in a voice-over. Both of the above documents are in the Appendix to this regulation.

§ 460.11 Rounding off R-values.

R-values shown in labels, fact sheets, ads, or other promotional materials must be rounded to the nearest tenth. However, R-values of 10 or more may be rounded to the nearest whole number.

§ 460.12 Labels.

If you are a manufacturer, you must label all packages of your insulation. The labels must contain:

(a) The type of insulation.

(b) A chart showing these items:

(1) For mineral fiber batts and blankets: the R-value, length, width, thickness, and square feet of insulation in the package.

(2) For all loose-fill insulation except cellulose: the minimum thickness, maximum net coverage area, and minimum weight per square foot at R-values of 11, 19, and 22. You must also give this information for any additional R-values you list on the chart. Labels for these products must state the minimum net weight of the insulation in the package.

(3) For loose-fill cellulose insulation: the minimum thickness, maximum net coverage area, number of bags per 1,000 square feet, and minimum weight per square foot at R-values of 13, 19, 24, 32, and 40. You must also give this information for any additional R-values you list on the chart. Labels for this product must state the minimum net weight of the insulation in the package.

(4) For boardstock: the R-value, length, width, and thickness of the boards in the package, and the square feet of insulation in the package.

(5) For aluminum foil: the number of foil sheets; the number and thickness of the air spaces; and the R-value provided by that system when the direction of heat flow is up, down, and horizontal. You can show the R-value for only one direction of heat flow if you clearly and conspicuously state that the foil can only be used in that application.

(6) For insulation materials with foil facings, you must follow the rule that applies to the material itself. For example, if you manufacture boardstock with a foil facing, follow subsection (4). You can also show the R-value of the insulation when it is installed in conjunction with an air space. This is its "system R-value." If you do this, you must clearly and conspicuously state the conditions under which the system R-value can be attained.

(7) For air duct insulation: the R-value, length, width, thickness, and square feet of insulation in the package.

(c) The following statement: "R means resistance to heat flow. The higher the R-value, the greater the insulating power."

(d) If installation instructions are included on the label or with the package, add this statement: "To get the marked R-value, it is essential that this insulation be installed properly. If you do it yourself, follow the instructions carefully."

(e) If no instructions are included, add this statement: "To get the marked R-value, it is essential that this insulation be installed properly. If you do it yourself, get instructions and follow them carefully. Instructions do not come with this package."

§ 460.13 Fact sheets.

If you are a manufacturer, you must give retailers and installers fact sheets for the insulation products you sell to them. Each sheet must contain what is listed here. You can add any disclosures that are required by state or local laws, rules, and orders, unless they are inconsistent with the provisions of this regulation. Do not add anything else.

Each fact sheet must contain these items:

(a) The name and address of the manufacturer. It can also include a logo or other symbol that the manufacturer uses.

(b) A heading: "This is ———— insulation." Fill in the blank with the type and form of your insulation.

(c) The heading must be followed by a chart:

(1) If section 460.12(b) requires a chart for your product's label, you must use that chart. For foamed-in-place insulations, you must show the R-value of your product at 3½ inches. You can also show R-values at other thicknesses.

(2) You can put the charts for similar products on the same fact sheet. For example, if you sell insulation boards or batts in three different thicknesses, you can put the label charts for all three products on one fact sheet. If you sell loose-fill insulation in two different bag sizes, you can put both coverage charts on one fact sheet, as long as you state which coverage chart applies to each bag size.

(d) For urea-based foam insulation, the chart must be followed by this paragraph:

"Foam insulation shrinks after it is installed. This shrinkage may significantly reduce the R-value you get."

However, you can lower your product's R-value to account for shrinkage. To do this, you must have reliable scientific proof of the extent of shrinkage for your product and of its effect on R-value. If you lower your product's R-value, you need not make the above statement.

(e) For air duct insulation, the chart must be followed by this statement:

"The R-value of this insulation varies depending on how much it is compressed during installation."

(f) After the chart and any statement dealing with the specific type of insulation, ALL fact sheets must carry this statement, boxed, in 12-point type:

Read This Before You Buy

What You Should Know About R-values

The chart shows the R-value of this insulation. R means resistance to heat flow. The higher the R-value, the greater the insulating power. Compare insulation R-values before you buy.

There are other factors to consider. The amount of insulation you need depends mainly on the climate you live in. Also, your fuel savings from insulation will depend upon the climate, the type and size of your house, the amount of insulation already in your house, and your fuel use patterns and family size. If you buy too much insulation, it will cost you more than what you'll save on fuel.

To get the marked R-value, it is essential that this insulation be installed properly.

§ 460.14 How retailers must handle fact sheets.

If you sell insulation to do-it-yourself customers, you must have fact sheets for the insulation products you sell. You must make the fact sheets available to your customers. You can decide how to do this, as long as your insulation customers are likely to notice them. For example, you can put them in a display, and let customers take copies of them. You can keep them in a binder at a counter or service desk, and have a sign telling customers where the fact sheets are.

§ 460.15 How installers must handle fact sheets.

If you are an installer, you must have fact sheets for the insulation products you sell. Before customers agree to buy insulation from you, you must show them the fact sheet(s) for the type(s) of insulation they want. You can decide how to do this. For example, you can give each customer a copy of the fact sheet(s). You can keep the fact sheets in a binder, and show customers the binder before they agree to buy.

§ 460.16 What new home sellers must tell new home buyers.

If you are a new home seller, you must put the following information in every sales contract: the type, thickness, and R-value of the insulation that will be installed in each part of the house. There is an exception to this rule. If the buyer signs a sales contract before you know what type of insulation will be put in the house, or if there is a change in the contract, you can give the buyer a receipt stating this information as soon as you find out.

§ 460.17 What installers must tell their customers.

If you are an installer, you must give your customers a contract or receipt for the insulation you install. For all insulation except loose-fill and aluminum foil, the receipt must show the coverage area, thickness, and R-value of the insulation you installed. For loose-fill, the receipt must show those three items plus the number of bags used. For aluminum foil, the receipt must show the number and thickness of the air spaces, the direction of heat flow, and the R-value. The receipt must be dated and signed by the installer. To figure out the R-value of the insulation, use the data that the manufacturer gives you. Do not multiply the R-value for one inch by the number of inches you installed. If you put insulation in more than one part of the house, put the data for each part on the receipt. You can do this on one receipt, as long as you do not add up the coverage areas or R-values for different parts of the house.

§ 460.18 Insulation ads.

(a) If your ad gives an R-value, you must give the type of insulation and the thickness needed to get that R-value. Also, add this statement explaining R-values: "The higher the R-value, the greater the insulating power. Ask your seller for the fact sheet on R-values."

(b) If your ad gives a price, you must give the type of insulation, the R-value at a specific thickness, the statement explaining R-values in subsection (a), and the coverage area for that thickness. If you give the price per square foot, you do not have to give the coverage area.

(c) If your ad gives the thickness of your insulation, you must give its R-value at that thickness and the statement explaining R-values in subsection (a).

(d) If your ad compares one type of insulation to another, the comparison must be based on the same coverage areas. You must give the R-value at a specific thickness for each insulation, and the statement explaining R-values in subsection (a). If you give the price of each insulation, you must also give the coverage area for the price and thickness shown. However, if you give the price per square foot, you do not have to give the coverage area.

(e) If your ad gives the R-value of urea-based foam insulation, you must add this statement: "Foam insulation shrinks after it is installed. This shrinkage may significantly reduce the R-value you get." However, you can lower your product's R-value to account for shrinkage. To do this, you must have reliable scientific proof of the extent of shrinkage for your product and of its effect on R-value. If you lower your product's R-value, you need not make the above statement.

§ 460.19 Savings claims.

(a) If you say or imply in your ads, labels, or other promotional materials that insulation can cut fuel bills or fuel use, you must have a reasonable basis for the claim. For example, if you say that insulation can "slash" or "lower" fuel bills, or that insulation "saves money," you must have a reasonable basis for the claim. Also, if you say that insulation can "cut fuel use in half," or "lower fuel bills by 30%," you must have a reasonable basis for the claim.

(b) If you say or imply in your ads, labels, or other promotional materials that insulation can cut fuel bills or fuel use, you must make this statement about savings: "Savings vary. Find out why in the seller's fact sheet on R-values. Higher R-values mean greater insulating power."

(c) If you say or imply that a combination of products can cut fuel bills or use, you must have a reasonable basis for the claim. You must make the statement about savings in subsection (b). Also, you must list the combination of products used. They may be two or more types of insulation; one or more types of insulation and one or more other insulating products, like storm windows or siding; or insulation for two or more parts of the house, like the attic and walls. You must say how much of the savings came from each product or location. If you cannot give exact or approximate figures, you must give a ranking. For instance, if your ad says that insulation and storm doors combined to cut fuel use by 50%, you must say which one saved more.

(d) If your ad or other promotional material is covered by section 460.18(a), (b), (c), or (d), and also makes a savings claim, you must follow the rules in §§ 460.18 and 460.19. However, you need not make the statement explaining R-value in § 460.18(a).

(e) Manufacturers are liable if they do not have a reasonable basis for their savings claims before the claim is made. If you are not a manufacturer, you are liable only if you know or should know that the manufacturer does not have a reasonable basis for the claim.

(f) Keep records of all data on savings claims for at least three years. For the records showing proof for claims, the three years will begin again each time you make the claim. Federal Trade Commission staff members can check these records at any time, but they must give you reasonable notice first.

§ 460.20 R-value per inch claims.

In labels, fact sheets, ads, or other promotional materials, do not give the R-value for one inch or the "R-value per inch" of your product. There are two exceptions:

(1) You can do this if you suggest using your product at a one-inch thickness.

(2) You can do this if actual test results prove that the R-values per inch of your product does not drop as it gets thicker.

You can list a range of R-value per inch. If you do, you must say exactly how much the R-value drops with greater thickness. You must also add this statement: "The R-value per inch of this insulation varies with thickness. The thicker the insulation, the lower the R-value per inch."

§ 460.21 Government claims.

Do not say or imply that a government agency uses, certifies, recommends, or otherwise favors your product unless it is true. Do not say or imply that your insulation complies with a governmental standard or specification unless it is true.

§ 460.22 Tax claims.

Do not say or imply that your product qualifies for a tax benefit unless it is true.

§ 460.23 Other laws, rules, and orders.

(a) If an outstanding FTC Cease and Desist Order applies to you but differs from the rules given here, you can petition to amend to order.

(b) State and local laws and regulations that are inconsistent with, or frustrate the purposes of, the provisions of this regulation are preempted. However, a state or local government may petition the Commission, for good cause, to permit the enforcement of any part of a state or local law or regulation that would be preempted by this section.

(c) The Commission's three-day cooling-off rule stays in force.

§ 460.24 Stayed or invalid parts.

If any part of this regulation is stayed or held invalid, the rest of it will stay in force.

Appendix A—Enforcement Policy Statement for Foreign Language Advertising

Title 16—Commercial Practices

Chapter I—Federal Trade Commission

PART 14—ADMINISTRATIVE INTERPRETATIONS, GENERAL POLICY STATEMENTS, AND ENFORCEMENT POLICY STATEMENTS

§ 14.9 Requirements concerning clear and conspicuous disclosures in foreign language advertising and sales materials.

The Federal Trade Commission has noted that, with increasing intensity, advertisers are making special efforts to reach foreign language-speaking consumers. As part of this special effort, advertisements, brochures and sales documents are being printed in foreign languages. In recent years the Commission has issued various cease-and-desist orders as well as rules, guides and other statements, which require affirmative disclosures in connection with certain kinds of representations and business activities. Generally, these disclosures are required to be "clear and conspicuous." Because questions have arisen as to the meaning and application of the phrase "clear and conspicuous" with respect to foreign language advertisements and sales materials, the Commission deems it appropriate to set forth the following enforcement policy statement:

(a) Where cease-and-desist orders as well as rules, guides and other statements require "clear and conspicuous" disclosure of certain information, that disclosure must be in the same language as that principally used in the advertisements and sales materials involved.

(b) Any respondent who fails to comply with this requirement may be the subject of a civil penalty proceeding for violating the terms of a Commission cease-and-desist order.

(Sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

[38 FR 21494, Aug. 9, 1973]

Appendix B—Enforcement Policy Statement for Clear and Conspicuous Disclosures in Television Advertising

.09 "Clear and conspicuous" disclosure.—The FTC issued an enforcement policy statement setting forth the standards it considers in determining whether, in fact, an affirmative disclosure in a television commercial is "clear and conspicuous." The FTC explained that in recent years it has issued various opinions, orders and trade regulation rules concerned with the need for affirmative disclosures in connection with various kinds of representations. In making a determination, the FTC said that it will take into consideration all the technical factors, such as the size of letters and the duration of disclosure, used in presenting the disclosure to a television audience, as well as the substance of the individual disclosure. The following standards should be met for a television disclosure to be deemed "clear and conspicuous": (a) the disclosure should be presented simultaneously in both the audio and video portions of the television advertisement; (b) the video portion of the disclosure must contain letters of sufficient size so that it can be easily seen and read on all television sets, regardless of picture tube size; (c) the video portion of the disclosure should contain letters of a color or shade that readily contrast with the background, and the background should consist of only one color or shade; (d) no other sounds, including music, should occur during the audio portion of the disclosure; (e) the video portion of the disclosure should appear on the screen for a sufficient duration to enable it to be completely read by the viewer; and (f) the audio and video portions of the disclosure should immediately follow the specific sales representations to which they relate and should occur each time the representation is presented during the advertisement; in cases where a disclosure is required, but is not linked to a specific representation, it should appear in immediate conjunction with the major sales theme of the advertisement. Television advertisers should also consider the audience to whom the disclosure is directed in order to assure that persons (such as children) can understand the full meaning of the disclosure. If securing this understanding is impractical, then the advertisements containing such representations should not be used on television. *FTC Statement of Enforcement Policy*, October 21, 1970.

Trade Regulation Reports, Volume 2, ¶7569 at 12, 168 (1971)

By direction of the Commission dated August 10, 1979.

Loretta Johnson,

Acting Secretary.

[FR Doc. 79-25132 Filed 8-24-79; 8:45 am]

BILLING CODE 6750-01-M

Federal Register

Monday
August 27, 1979

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Community Development Block Grants; Interim Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-79-704]

Community Development Block Grants; Technical Amendments; Interim Rule

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Interim rule and request for comments.

SUMMARY: This amendment clarifies provisions of the Community Development Block Grant (CDBG) regulations (Subparts C and D) and corrects various erroneous references, typographical mistakes and other errors.

DATES:

EFFECTIVE DATE: September 26, 1979.
COMMENT DUE DATE: October 30, 1979.

EFFECTIVE DATE: September 26, 1979.

COMMENT DUE DATE: October 30, 1979.

ADDRESS: Send comments to the Rules Docket Clerk, Office of General Counsel, Room 5218, Department of HUD, 451 Seventh Street, S.W., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: James R. Broughman, Entitlement Cities Division, Office of Community Planning and Development, Department of HUD, 451 Seventh Street, S.W., Washington, D.C. 20410, (202) 755-9267. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION:

Background

On March 1, 1978, HUD published final rules (43 FR 8434) for the CDBG program covering eligible activities (Subpart C) and entitlement grants (Subpart D) to carry out Title I of the Housing and Community Development Act of 1974, as amended. Those rules contain various incorrect references, typographical mistakes and other errors and omissions. This amendment corrects these errors and makes a number of changes to conform the regulations to other statutory requirements added in 1978.

Special Assessments

Paragraph (f)(2) of § 570.200 has been revised to clarify the treatment of a special assessment, levied by an applicant with HUD authorization, for less than the total cost of a public improvement which has been funded with both block grant and local funds. Where the special assessment does not exceed the local investment, the applicant may retain the entire amount collected. Where the special assessment exceeds the local investment, the applicant shall apportion the assessment, as collected, between itself, up to the amount of the local investment, and block grant program income.

In addition, paragraph (f)(3) of § 570.200 has been revised to include the requirement that an applicant must carry out the appropriate environmental reviews and clearances for public improvements under 24 CFR 58 where it proposes to use block grant funds to pay special assessments levied against properties owned and occupied by low- and moderate-income persons for the capital costs of such improvements. Although this requirement was stated in the preamble of the March 1, 1978, regulation, it was inadvertently omitted from the text of the regulation.

Consulting Services

Section 408 of the Fiscal Year 1979 HUD and Independent Agencies Appropriations Act prohibits the use of block grant funds to pay the salary of a consultant in excess of the daily equivalent rate paid to GS-18 employees. (The Fiscal Year 1978 Act included a similar limitation.) On the basis of the legislative history for the Fiscal Year 1979 Act clarifying the intent of the provision, § 570.200(g) has been revised to apply the limitation only to individual consultant services of a purely personal nature which create an employer-employee type relationship, and not to consultant services provided under an independent contractor relationship.

Planning and Administrative Costs

The Fiscal Year 1979 HUD and Independent Agencies Appropriations Act places a 20 percent ceiling on expenditures for planning and administrative costs under §§ 570.205 and 570.206.

Accordingly, paragraph (i) has been added to § 570.200 to state that no more than 20 percent of the total block grant resources available to pay program year costs may be budgeted or expended for such costs. Paragraph (a)(5) of § 570.205 has been revised to clarify that eligible planning costs include the development of individual project plans, such as the collection of detailed data and the preparation of analyses, but exclude the engineering and design costs of carrying out an activity eligible under §§ 570.201 through 570.204. Paragraph (a) of § 570.206 has been revised to clarify that eligible administrative costs include reasonable costs of overall program management, coordination, monitoring and evaluation, and similar costs associated with carrying out multi-activity projects, but exclude direct activity delivery costs eligible as part of the cost of carrying out a specific activity under §§ 570.201 through 570.204. Paragraph (b) of § 570.201 has been revised to include reasonable costs of temporarily managing real property acquired with block grant funds or under urban renewal. Paragraph (c)(4) has been added to § 570.202, eligible rehabilitation and preservation activities, to provide for rehabilitation services, such as rehabilitation counseling, loan processing, preparation of work specifications, and other services related to assisting owners to rehabilitate their properties in conjunction with block grant funded rehabilitation financing and Section 312 rehabilitation loans.

Residential Facilities

The provisions of § 570.201(c)(1) and (3), which prohibit residential facilities from eligibility under public facilities and improvements, and the provisions of § 570.202(a)(2) and (c)(1), which permit rehabilitation of residential facilities, appear to have confused applicants. Section 570.201(c) is intended to ensure that block grant assistance is not used for new construction of residential facilities because construction of new housing is not generally permitted under the block grant program. Rehabilitation of residential facilities is, however, an eligible block grant activity and is covered under § 570.202. To clear up any misunderstandings, references to § 570.202(a)(2) and (c)(1) have been added to § 570.201(c)(1) and (3).

Public Services

Paragraph (e)(1) of § 570.201 has been revised to clarify that an area which meets the requirement for a Neighborhood Strategy Area (NSA) may be so designated by the applicant for purposes of qualifying the continuation of previously approved public services for no more than three years even though the block grant assisted physical development activities in the area have been completed or substantially completed.

In addition, paragraph (e)(1) of § 570.201 has been revised to clarify that, for the Small Cities Program, there is no requirement that an NSA be established. However, under the Small Cities Program, public services are to be provided for residents of areas where block grant assisted physical development activities are being carried out in a concentrated manner. The phrase "concentrated manner" is defined in § 570.201(e)(1)(ii).

Paragraph (e)(2) of § 570.201 has been revised to clarify language that was

misprinted. The revised paragraph indicates that, while public services must be directed toward meeting the needs of residents of NSA's in which block grant assisted physical development activities are being carried out in a concentrated manner, the services may be provided on an incidental basis to persons who are not residents of such areas. HUD recognizes that it may not be feasible to exclude persons from receipt of public services on the basis that they are not residents of an NSA. Accordingly, services may be rendered in such circumstances. However, where a frequent pattern of such presumably incidental delivery occurs, or where it is clear that the design of the public service is such that it is intended to be delivered to non-residents to a significant degree, block grant assistance will not be permitted.

Relocation

The Housing and Community Development Amendments of 1978 extend the availability of relocation payments and assistance to displaced individuals, families, businesses, nonprofit organizations, and farm operations, when determined by the applicant to be appropriate to the community development program. The previous provision limited the eligibility of relocation payments and assistance to those displaced by activities assisted with block grants. The effect of this amendment is to permit the use of block grant funds for relocation payments and assistance for those displaced by activities such as development of Section 8 housing, private development, and other activities causing displacement, so long as the payments and assistance are determined by the applicant to be appropriate to its community development program. Accordingly, paragraph (i) of § 570.201 and paragraph (d) of § 570.602 have been revised to implement the statutory amendment.

Local Development Corporations

The provisions of § 570.204(a)(2)(iv), which describe the local development corporations that are eligible to receive block grant funds, appear to have confused applicants by including the phrase "other similar entity." Accordingly, paragraph (a)(2)(iv) has been revised to clarify that an "other similar entity" means an entity that provides economic development assistance within a specified geographical area and is usually composed of and controlled by representatives of the residents of the area.

Reimbursement of Costs

Paragraph (e) of § 570.301 has been revised to include the costs for relocation and acquisition activities carried out pursuant to § 570.602 which the applicant may incur with local funds before approval of its application and may be reimbursed for with block grant funds after approval of its application. However, to be reimbursed, the applicant must carry out the appropriate environmental reviews and clearances for such activities under 24 CFR Part 58.

Program Benefit

Minor revisions have been made to paragraphs (d)(2)(iv) and (e)(1) of § 570.302. Paragraph (d)(2)(iv) has been revised to indicate that a senior center is only one example of a public facility qualifying under the block grant program. Paragraph (e)(1) has been revised to state explicitly that economic development activities under § 570.203 may be undertaken in an NSA qualifying under the category of projects designed to prevent or eliminate slums or blight.

Opportunity for Participation by, and Benefits to, the Handicapped

The 1977 amendments to the Housing and Community Development Act of 1974 contain a provision that applicants shall design their comprehensive strategies to address community development and housing needs in order that the provision of all improved community facilities and public improvements, including supporting health, social and similar services where necessary or appropriate, shall be described in a manner that provides assurance that there will be opportunity for participation by, and benefits to, the handicapped. Although this provision was contained in the proposed regulations issued for Subpart D on October 25, 1977 (42 FR 56469), it was unintentionally omitted from the final rules issued for Subpart D on March 1, 1978. Accordingly, paragraph (b) of § 570.304 has been amended to include the provisions governing opportunities for participation by, and benefits to, the handicapped under the CDBG program. The applicant should consider such opportunities for the handicapped in developing each component part of the comprehensive strategy.

Expected-to-Reside (ETR)

The interim rule revising the ETR requirement was published on August 9, 1979 (44 FR 46836). That interim rule has been incorporated in these technical amendments.

Procurement Standards

Section 570.507 has been revised to clarify that the requirements of Attachment O of OMB Circular No. A-102 apply to the procurement of materials and services by States, units of general local government, Indian Tribes, public instrumentalities, and eligible entities under § 570.204(a)(2), as subgrantees or subrecipients, as well as by direct grant recipients. In addition, the revised section states clearly that the procurement of materials and services by private homeowners who receive block grant assistance, such as rehabilitation loan financing, is not subject to such requirements.

Other Changes

A number of other minor technical changes are included to correct inaccurate references and printing errors contained in Subparts C and D.

Because this amendment is technical in nature, correcting various errors and omissions and making changes to conform the regulations to other statutory amendments, the Secretary has determined that it is unnecessary to invite public comment on this amendment before its effective date. However, interested persons are invited to participate in this rulemaking by filing data, comments and suggestions with the Rules Docket Clerk at the above address, on or before the comment due date. Each comment should include the commentor's name and address, and must refer to the docket number indicated in the heading to this document. All relevant comments will be considered before adoption of a final rule and copies of all comments received will be available for copying and inspection in the Office of the Rules Docket Clerk at the above address.

A finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability is available for public inspection in the Office of the Rules Docket Clerk at the above address.

Accordingly, the Department amends Chapter V of Title 24 of the Code of Federal Regulations as follows:

I. The Table of Contents to 24 CFR Part 570, Subpart C, is revised to read as follows:

Subpart C—Eligible Activities

Sec.

570.200 General policies.
570.201 Basic eligible activities.
570.202 Eligible rehabilitation and preservation activities.
570.203 Eligible economic development activities.

Sec.

570.204 Eligible activities by private nonprofit entities, neighborhood-based nonprofit organizations, local development corporations, and small business investment companies.
570.205 Eligible planning and urban design costs.
570.206 Eligible administrative costs.
570.207 Ineligible activities.

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301, et seq.); Title I, Housing and Community Development Act of 1977 (Pub. L. 95-128); and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

II. Subpart C, Eligible Activities is revised to read as follows:

Subpart C—Eligible Activities

§ 570.200 General policies.

(a) *Determinations of eligibility.* This subpart sets forth the variety of eligible activities that may be undertaken with assistance under this Part (block grant funds) to meet community development and housing needs and priorities principally for low- and moderate-income persons or for the prevention or elimination of slums and blight. The listing of certain eligible types of activities in this subpart does not by itself, however, render specific activities, proposed to be conducted by individual applicants, eligible for block grant assistance. There are other requirements that must also be met to qualify a specific activity for assistance. An activity may be assisted only in those instances where it complies with the eligibility criteria of this subpart, with all other applicable requirements of this Part as they may apply to applicants under Subparts D, E, F, or G, such as those relating to equal opportunity, and the basic statutory objectives of the block grant program. In particular, activities conducted by entitlement recipients under Subpart D must comply with the requirements set forth in § 570.302 regarding benefit to low- and moderate-income persons or elimination of slums and blight, and small city discretionary recipients must comply with similar requirements set forth in Subpart F. Further, there must be compliance with all applicable environmental review and clearance procedures set forth in 24 CFR Part 58.

(b) *Urban Development action grants.* Grant assistance may be provided with Urban Development Action Grants pursuant to Subpart G for:

(1) Activities eligible for assistance pursuant to this Subpart; and

(2) Such other activities, including new housing construction, as the Secretary may determine to be consistent with the statutory objectives of the Urban Development Action Grant (UDAG) program as provided for in § 570.453. The provisions of § 570.207 regarding ineligible activities apply to the UDAG program, except where an activity is determined to be consistent with the statutory objectives of the UDAG program pursuant to § 570.453, the limitations set forth in § 570.207 do not apply.

In making determinations of eligibility with regard to Urban Development Action Grants, for the purposes of §§ 570.201–207, the term "Community Development and Housing Plan" as used in this subpart shall also mean the "Urban Development Action Program."

(c) *Model cities activities.* Notwithstanding anything to the contrary in this subpart, any ongoing model cities activity being carried out in a model cities program shall be eligible for funding under this Part from that portion of the hold-harmless amount attributable to such model cities program until the applicant has received five years of funding for such activities as calculated pursuant to § 570.103(c)(2)(iii). For the purpose of this paragraph, the term "ongoing activity" means any model cities activity underway as of January 1, 1975, that was approved and funded by HUD on or before June 30, 1974. Upon expiration of the eligibility of activities under this paragraph, applicants should refer to the other requirements of this subpart which must be satisfied in order for block grant assistance to continue to be provided for model cities activities.

(d) *Special policies governing facilities.* The following special policies apply to: (1) *Facilities containing both eligible and ineligible uses.* Where a facility, otherwise eligible for assistance under the block grant program in § 570.201(c), is to be provided as a part of a multiple-use building and/or facility that also contains otherwise ineligible uses, the portion of the costs attributed to the eligible facility may be assisted with block grant funds where:

(i) The facility, which is otherwise eligible and proposed for assistance, will occupy a designated and discrete area within the larger facility; and

(ii) The applicant can determine the costs attributable to the facility proposed for assistance as separate and distinct from the overall costs of the multiple-use building and/or facility.

For example, a senior center, which is to occupy space within a building that is otherwise used for the conduct of general governmental business, may be assisted when it exclusively occupies a separate and designated area within the building (i.e, the senior center does not "float" to different locations within the building that happen to be available on a less than permanent basis) and the applicant can determine the cost associated with providing the senior center as distinct from those costs associated with all remaining ineligible portions of the building.

(2) *Facilities located on school property.* Any facility eligible for assistance pursuant to § 570.201(c), which is designed primarily for a public purpose other than education, is not considered to be a school or educational facility where, although it is to be located on a site controlled by a school district, school board or similar body responsible for public education, the facility will only be used by any adjacent school or educational facility on an incidental basis. In order to determine whether the facility is to be used on an incidental basis, the applicant shall at a minimum demonstrate that:

(i) After school hours and on weekends, the facility shall be available for use by the general public to the same extent as similar facilities operating within the applicant's jurisdiction; and

(ii) During school hours, the facility is not used for school purposes for more than four hours each day.

(e) *Activities outside an applicant's boundaries.* Applicants may conduct activities which are otherwise eligible for block grant assistance outside of their boundaries which are not inconsistent with State or local law and which are not plainly inappropriate to meet identified needs of the applicant. This may include an urban county carrying out otherwise eligible activities within a metropolitan city with block grant assistance where the activities are not plainly inappropriate to meeting identified needs of the urban county.

(f) *Special assessments under the block grant program.* The following policies relate to the use of special assessment under the block grant program:

(1) *Definition of special assessment.* The term "special assessment" means a fee or charge levied or filed as a lien against a parcel of real estate as a direct result of benefit derived from the installation of a public improvement, such as streets, curbs, and gutters. The amount of the fee represents the pro rata share of the capital costs of the public improvement levied against the benefitting properties. This term does not relate to taxes, or the establishment of the value of real estate for the purpose of levying real estate, property, or ad valorem taxes.

(2) *Special assessments to recover capital costs funded in whole or in part with block grant funds.* (i) The general

rule is that special assessments shall not be used to recover any of the capital costs of public improvements funded in whole or in part with block grant funds. Applicants may request an exception to this rule where the use of special assessments as a means to leverage private investment is necessary and appropriate to implement the applicant's strategy for economic development or neighborhood revitalization. HUD will not recover the capital costs of public improvements funded in whole or in part with block grant funds from properties owned and occupied by low- and moderate-income persons.

(ii) Where the capital cost of a public improvement is funded entirely with block grant funds, and the applicant with HUD authorization levies a special assessment, the applicant shall credit the entire amount collected to program income under § 570.506. Where the capital cost of a public improvement is funded with both block grant and local funds, and the applicant with HUD authorization levies a special assessment in an amount not exceeding its local investment, the applicant may retain the entire amount collected. Where the capital cost of a public improvement is funded with both block grant and local funds, and the applicant with HUD authorization levies a special assessment in an amount exceeding its local investment, the applicant may retain up to the entire amount of the local investment and credit the remainder of the special assessment to program income under § 570.506. However, the applicant shall apportion the special assessment, as collected, so that the portion retained as the local investment is in the ratio of the total local investment to the total amount of the special assessment. For example, if the capital cost of a public improvement is $100,000, financed with $30,000 of local funds and $70,000 of block grant funds, and a special assessment, as collected, would be 3/7 to local funds and 4/7 to program income so that when the entire special assessment has been collected, $30,000 will have been retained as the local investment and $50,000 credited to program income.

(iii) The total amount of any special assessment and the amount of funds, as collected, shall be recorded as part of the grant program transactions in accordance with Attachment G of OMB Circular No. A-102.

(3) *Special assessments paid with block grant funds.* Block grant funds may be used to pay special assessments levied against properties owned and occupied by low- and moderate-income persons for the capital costs of eligible public facilities and improvements financed from local revenue sources, other than block grant funds, which (i) are described in the Community Development Program; (ii) are initiated after March 1, 1978; and (iii) represent the pro rata share of the capital cost of the eligible facility or improvement to the benefitting property. Applicants that propose to pay special assessments with block grant funds must carry out the appropriate environmental reviews and clearances for the public improvements under 24 CFR Part 58.

(g) *Consultant Activities.* Consulting services are eligible for assistance under this Part for professional assistance in program planning, application preparation, and other general professional guidance relating to program execution. The use of consultants is governed by the following:

(1) *Employer-employee type of relationship.* No person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with block grant funds which, on a daily basis, shall not exceed the maximum daily rate of compensation for a GS-18 as established by Federal law. Such services shall be evidenced by written agreements between the parties which detail the responsibilities, standards and compensation. Adjustments of eligible costs for such services may be made where audit and monitoring reviews indicate that the rates of compensation were not reasonable, or exceeded the maximum daily rate for a GS-18.

(2) *Independent contractor relationship.* Consultant services provided under an independent contactor relationship are governed by the Procurement Standards of Attachment O of OMB Circular No. A-102 and are not subject to the GS-18 limitation.

(h) *Transition policy for fiscal year 1978.* A number of activities set forth in Subpart C contain, as a part of the criteria for eligibility for block grant assistance, requirements that activities be necessary and appropriate to the implementation of certain strategies for community development and housing described in Subpart D, or that activities take place within Neighborhood Strategy Areas (NSA).

(1) *Interim strategy statement.* For those applications submitted during fiscal year 1978 prior to the effective date for the submission of strategies, applicants may submit a brief narrative interim strategy statement for activities subject to this requirement. The interim strategy statement shall include:

(i) a brief description of the activity;

(ii) a brief description of the needs and conditions the activity is designed to address; and

(iii) a brief description of how the activity will impact upon the needs and conditions which it is designed to address.

(2) *Interim NSA designation.* For those applications submitted during fiscal year 1978, applicants may designate interim NSA's for activities subject to this requirement. An interim NSA is selected by the applicant and designated in the Community Development Program. In determining the size of the NSA, the applicant shall take into account the severity of its problems and the amount of resources to be provided to address those problems. For each area designated as an NSA, the applicant shall include a brief narrative description of its plan for stabilizing and upgrading the area which:

(i) provides for a combination of physical improvements, necessary public facilities and services, private investment and citizen self-help activities appropriate to the needs of the area; and

(ii) coordinates public and private investment efforts.

(i) *Limitation on planning and administrative costs.* No more than 20 percent of the total block grant resources available to pay program year costs may be budgeted or expended for planning and administrative costs under § 570.205 and § 570.206. Total block grant resources available to pay program year costs are calculated in the cost summary, submitted, as part of the Annual Community Development Program, under § 570.305(b).

§ 570.201 Basic eligible activities.

Grant assistance may be used for the following activities:

(a) *Acquisition.* Acquisition in whole or in part by a public agency, by purchase, lease, donation or otherwise, of real property (including air rights, water rights, rights-of-way, easements, and other interests therein) which is:

(1) Blighted, deteriorated, deteriorating, undeveloped or inappropriately developed from the standpoint of sound community development and growth, as determined by the recipient pursuant to State and local laws;

(2) Appropriate for rehabilitation or conservation activities;

(3) Appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open spaces, natural resources and scenic areas, the

provision of recreational opportunities or the guidance of urban development;

(4) To be used for the provision of public works, facilities and improvements eligible for assistance under this subpart; or

(5) To be used for other public purposes, including the conversion of land to other uses where necessary or appropriate to the community development program. Examples include an applicant purchasing land to be used for the development of housing for low- and moderate-income persons, and an applicant which is a central city of a metropolitan area using block grant funds to purchase existing houses in a non-impacted suburban jurisdiction in order to provide a wider choice of housing opportunities for central city lower-income residents.

(b) *Disposition.* Disposition, through sale, lease, donation, or otherwise, of any real property acquired with block grant funds or its retention for public purposes, including reasonable costs of temporarily managing such property or property acquired under urban renewal, provided that the proceeds from any such disposition shall be program income subject to the requirements set forth in § 570.506. Further information regarding disposition is set forth in § 570.613.

(c) *Public facilities and Improvements.* Acquisition, construction, reconstruction, rehabilitation, or installation of certain publicly owned facilities and improvements. This may include the execution of architectural design features, and similar treatments intended to enhance the esthetic quality of facilities and improvements receiving block grant assistance, such as decorative pavements, railings, sculpture, pools of water and fountains, and other works of art. Public facilities and improvements eligible for assistance under this paragraph are subject to the special policies in § 570.200(d) and the rules on ineligible facilities and improvements in § 570.207 (a), (b) and (c), and include:

(1) *Senior centers,* but excluding any facility whose primary function is to provide residential accommodations or care on a 24-hour day basis (such as a group home). Further information regarding the rehabilitation of residential facilities is set forth in § 570.202 (a)(2) and (c)(1).

(2) *Parks, playgrounds and other recreational facilities* which are designed for participation, but not spectator facilities such as stadiums.

(3) *Centers for the handicapped.* The term "center for the handicapped" means any single or multipurpose facility which seeks to assist persons with physical, mental, developmental and/or emotional impairments to become more functional members of the community by providing programs or services which may include, but are not limited to, recreation, education, health care, social development, independent living, physical rehabilitation and vocational rehabilitation; but excluding any facility whose primary function is to provide residential care on a 24-hour a day basis (such as a group home or halfway house). For example, a sheltered workshop would be a single purpose center for the handicapped, and a facility providing several services for the handicapped would be a multipurpose center for the handicapped, both of which are eligible for assistance. Further information regarding the rehabilitation of residential facilities is set forth in § 570.202 (a)(2) and (c)(1).

(4) *Neighborhood facilities.* Such facilities may be of either a single purpose or multipurpose nature and be designed to provide health, social, recreational or similiar community services primarily for residents of the neighborhood service area which is either:

(i) A geographic location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) designated in comprehensive plans, ordinances or other local documents as a neighborhood or, in a new community as defined in § 570.403(a), a neighborhood, village or similar geographical designation; or

(ii) An entire unit of general local government or a new community as defined in § 570.403(a) which is under 25,000 population, with the exception of a facility which is designed solely as a communitywide facility in a new community with a currently projected population in excess of 25,000.

(5) *Solid waste disposal facilities,* which are defined as those physical parts of solid waste management systems commencing at and including the site or sites at which publicly or privately owned collection vehicles discharge municipal solid wastes, through the point of ultimate disposal including necessary site improvements and conveying systems, including appropriate fixed and movable equipment including vehicular containers used after the first stage of disposal at transfer stations, but not including the final collections. (i) Such facilities or equipment must be located in or serve areas where other activities included in the Community Development and Housing Plan are being carried out, such as a NSA. (ii) Equipment and appurtenances used in the initial collection of solid waste are not included among those solid waste disposal facilities eligible for assistance under this Part.

(6) *Fire protection facilities and equipment.* Such facilities and equipment must be located in or serve areas where other activities included in the Community Development and Housing Plan are being carried out, such as an NSA.

(i) Fire protection facilities are defined as the land and necessary improvements thereto which are necessary for properly housing and storing fire protection equipment and personnel by a fire protection organization, but not including fire fighting schools and their appurtenances.

(ii) Fire protection equipment is defined as the appropriate equipment and apparatus which a fire protection organization requires for carrying out a program for protecting property and maintaining the safety and welfare of the public, including emergency medical aid, from the dangers of fire.

(7) *Parking facilities.* Such facilities must be located in or serve areas where other activities included in the Community Development and Housing Plan are being carried out, such as an NSA.

(8) *Public utilities,* other than water and sewer, which include:

(i) Facilities necessary for distribution of the utility (but not production or generation, such as electrical generation plants);

(ii) Buildings and improvements that are an integral part of the utility and are of such a nature that the utility will not function without them; and

(iii) The placing underground of existing or new distribution facilities. Further information regarding the eligibility of assistance to privately owned utilities is set forth in § 570.201(1).

(9) *Street improvements.* Streets, street lights, traffic signals, signs, street furniture, trees, bridges, culverts, alleys, causeways, curbs, gutters, sidewalks, and other normal appurtenances to streets and structures facilitating the passage on, or usage of, streets, but excluding expressways and other limited access ways and their appurtenances.

(10) *Water and sewer facilities,* including storm sewers, except for sewage treatment works and interceptor sewers which are described in § 570.207(a)(2)(v). The term "storm sewers" means sewers or other conduits, open or closed, or their appurtenances which collect, transport

and dispose of storm waters, surface water, street wash, other wash and ground water or drainage into an existing water course, but excluding domestic waste water and commercial and industrial wastes.

(11) *Foundations and platforms for air rights sites.*

(12) *Pedestrian malls and walkways.*

(13) *Flood and drainage facilities,* in cases where assistance for such facilities has been determined to be unavailable under other Federal laws or programs pursuant to the provisions of § 570.607. The term "flood and drainage facilities" means those undertakings designed to influence or affect the flow in a natural water course (such as a river, stream, lake, estuary, bay, ocean or intermittent stream) and excludes storm sewers.

(14) *Other public facilities and improvements,* not listed in this paragraph, except those described in § 570.207 (a)(1) and (f), which are necessary and appropriate to the implementation of the applicant's strategy for neighborhood revitalization or housing.

(i) The applicant shall provide HUD with a description of the proposed facility or improvement and the relationship to the applicant's strategy for neighborhood revitalization or housing.

(ii) Among the factors HUD will take into account in authorizing assistance under this paragraph are the amount of benefit to low- and moderate-income persons, the degree of impact on the identified needs of the applicant, and the availability of other Federal funds for the activity.

(d) *Clearance activities.* Clearance, demolition and removal of buildings and improvements, including movement of structures to other sites. Demolition of HUD assisted housing units may be undertaken only with the prior approval of HUD.

(e) *Public services.* Provision of public services (including labor, supplies and materials) which are directed toward improving the community's public services and facilities, including those concerned with employment, crime prevention, child care, health, drug abuse, education, welfare or recreational needs, and which are directed toward coordinating public and private development programs. Such services may be provided by State or local governments, quasi-public, private or nonprofit agencies, including, but not limited to, HUD-approved counseling agencies, selected by the applicant for funds provided under this Part. In order to be eligible for block grant assistance, public services must meet each of the following criteria:

(1) Public services are to be provided for residents of Neighborhood Strategy Areas in which block grant assisted physical development activities are being carried out in a concentrated manner. Physical development activities include only activities carried out under § 570.201 (other than paragraphs (i) and (j)), § 570.202 and § 570.203. Such public services may be provided with block grant funds during the period in which block grant assisted physical development activities are being carried out in a concentrated manner, and may be continued for no more than three years after the completion of such physical development activities.

(i) An area which meets the requirement for a Neighborhood Strategy Area may be so designated for purposes of qualifying the continuation of previously approved public services under this three year rule, notwithstanding the fact that such physical development activities have been completed or substantially completed.

(ii) For the Small Cities Program, there is no requirement that a Neighborhood Strategy Area be established. Rather, public services are to be provided for residents of areas where block grant assisted physical development activities are being carried out in a concentrated manner. The phrase "concentrated manner" shall mean that the block grant assisted physical development activities are being carried out within an area in a coordinated manner to serve a common objective or purpose pursuant to a locally developed plan or strategy.

(2) Such services must be directed toward meeting the needs of residents of such areas. Block grant assistance may only incidentally be used to provide public services for persons who are not residents of Neighborhood Strategy Areas.

(3) A public service must be either (i) a new service, or (ii) a quantifiable increase in the level of a service above that which has been provided by or in behalf of the applicant from local revenue sources or State funds received by the applicant in the twelve calendar months prior to submission of the block grant application. (An exception to this requirement with regard to State-funded services may be made if HUD determines that the decrease in the level of a service was the result of events not within the control of the applicant.)

(4) Federal assistance in providing or securing such public services must have been applied for and denied or not made available pursuant to the provisions of § 570.607.

(5) Public services must be determined by the applicant to be necessary or appropriate to support the physical development activities to be carried out within Neighborhood Strategy Areas or, with respect to Small Cities, pursuant to paragraph (e)(1)(ii) of this section. For example, the provision of job training for area residents working on neighborhood revitalization projects would be appropriate to support a concentration of block grant assisted physical development activities being carried out in the area. (i) The specific determination of support for each proposed public service is not required to be included in the application, but the applicant must briefly describe the relationship of the public service to its overall strategy for physical development activities within the NSA. (ii) HUD will accept the applicant's determination that a public service is necessary and appropriate to support the physical development activities unless there is substantial evidence to the contrary, in which case additional information or assurances may be requested from the applicant prior to a determination of eligibility.

(f) *Interim assistance.* Interim assistance to alleviate harmful conditions where immediate public action is determined by the applicant to be necessary.

(1) The following activities may be undertaken as a prelude to more comprehensive treatment in areas, such as NSAs, where activities included in the Community Development and Housing Plan are to be carried out to hold the area from further deterioration during the interim period:

(i) The repairing of streets, sidewalks, parks, playgrounds, publicly owned utilities and public buildings;

(ii) The improvement of private properties to the extent necessary to eliminate immediate dangers to public health, safety or welfare;

(iii) The establishment of temporary public playgrounds on vacant land; and

(iv) The execution of special garbage, trash, and debris removal, including neighborhood clean up campaigns, but not the regular curbside collection of garbage or trash in an area.

(2) The following activities may be undertaken to the extent necessary to alleviate emergency conditions threatening the public health and safety in areas where the chief executive officer of the applicant determines that an imminent threat to the public health and safety exists requiring immediate resolution of emergency conditions:

(i) the improvement of private properties;

(ii) the repair of streets, sidewalks, utilities, and other public facilities and improvements; and

(iii) the removal of trash and debris, unsafe structures, clearance of streets including snow removal, and other similar activities.

The chief executive officer, or his designee, shall notify the appropriate HUD Area Office within seven days of determining that a situation exists which poses an imminent threat to the public health and safety and that block grant funds will be used to alleviate the emergency conditions.

(g) *Payment of the non-Federal share* required in connection with a Federal grant-in-aid program undertaken as part of the block grant activities, *Provided,* That such payment shall be limited to activities otherwise eligible under this subpart.

(h) *Urban renewal completion.* Payment of the cost of completing an urban renewal project funded under Title I of the Housing Act of 1949 as amended. Further information regarding the eligibility of such costs is set forth in § 570.801.

(i) *Relocation.* Relocation payments and assistance for displaced individuals, families, businesses, nonprofit organizations, and farm operations, when determined by the applicant to be appropriate to the community development program. Further information regarding the eligibility of relocation costs is set forth in § 570.602.

(j) *Loss of rental income.* Payments to housing owners for losses of rental income incurred in holding for temporary periods housing units to be utilized for the relocation of individuals and families displaced by program activities assisted under this Part.

(k) *Removal of architectural barriers.* Special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly or handicapped persons to publicly owned and privately owned buildings, facilities, and improvements. Further information regarding the removal of architectural barriers is available in publication ANSI A117.1–1961 (R. 1971) of the American National Standards Institute, Inc.

(l) *Privately owned utilities.* Acquisition, construction, reconstruction, rehabilitiation, or installation of distribution facilities and lines of privately owned utilities where necessary and appropriate to implement the applicant's strategy for neighborhood revitalization or housing. Activities may include the placing underground of new or existing distribution facilities.

(1) The applicant shall provide HUD with a description of the proposed activity and the relationship to the applicant's strategy for neighborhood revitalization or housing.

(2) Among the factors HUD will take into account in authorizing such activities are:

(i) The degree of benefit to low- and moderate-income persons;

(ii) The degree of impact on the identified needs of the applicant; and

(iii) The availability of other Federal funds for the activity.

§ 570.202 Eligible rehabilitation and preservation activities.

Grant assistance may be used for the following activities for the rehabilitation of buildings and improvements:

(a) *Rehabilitation of public residential structures.* Rehabilitation of publicly owned or acquired properties for use or resale in the provision of housing, including:

(1) *Permanent housing units,* both single family and multifamily, for rental or sale; and

(2) *Residential facilities,* including group homes, halfway houses, and emergency shelters. For example, a group home for the handicapped or a temporary shelter for battered persons may be provided through acquisition and rehabilitation of properties for those purposes.

(b) *Public housing modernization.* Modernization and modernization planning of publicly-owned low-income housing (excluding, the new construction of office facilities for such public housing).

(N.B. block grant funds may also be provided by an applicant to a public housing agency to be used for otherwise eligible activities, e.g., public services such as security and day care meeting the requirements of § 570.201(e) and planning and policy-planning-management activities under § 570.205 related to public housing improvements.)

(c) *Rehabilitation of private properties.* Block grant assistance may be used for the rehabilitation of privately owned properties. Assistance may consist of:

(1) *Acquisition for the purpose of rehabilitation.* Block grant funds may be used to assist private entities, including those organized for profit and on a not-for-profit basis, to acquire, for the purpose of rehabilitation, and rehabilitate properties for use or resale in the provision of housing which, upon completion of rehabilitation, at a minimum will meet the Section 8 Existing Housing Quality Standards set forth in 24 CFR § 882.109, including:

(i) Permanent housing units, both single family and multifamily, for rental or sale; and

(ii) Residential facilities, including group homes, halfway houses, and emergency shelters;

(2) *Rehabilitation financing.* Block grant funds may be used to finance the rehabilitation of privately owned residential, non-residential (excluding industrial), and mixed use properties.

(i) Such financing may be provided either: (A) within areas designated in the application for comprehensive treatment, such as an NSA; (B) for persons of low- and moderate-income; or (C) to eliminate conditions detrimental to public health and safety, provided that the rehabilitation assistance is limited to the extent necessary to correct the conditions that are detrimental to public health and safety.

(ii) Block grant funds may be used directly to finance rehabilitation, including settlement costs, through the direct use of block grant funds in the provision of assistance, such as grants, loans, loan guarantees and interest supplements, for:

(A) Costs of rehabilitation of properties, including, repair directed toward cure of an accumulation of items of deferred maintenance, replacement of principal fixtures and components of existing structures, and renovation through alteration, additions to, or enhancement of existing structures, which may be undertaken singly, or in combination;

(B) Refinancing existing indebtedness secured by a property being rehabilitated if such refinancing is necessary or appropriate to the execution of the Community Development and Housing Plan;

(C) Measures to increase the efficient use of energy in structures through such means as installation of storm windows and doors, siding, wall and attic insulation, and conversion, modification or replacement of heating and cooling equipment, including the use of solar energy equipment;

(D) Financing of costs associated with the connection of residential structures to water distribution lines or local sewer collection lines; or

(E) Costs of initial homeowner warranty premiums for rehabilitation carried out with block grant assistance.

(3) *Materials.* Block grant funds may be used to provide materials, including tools, for use in the rehabilitation of properties either by the property owner or tenant, or where arrangements have been made for the provision of labor, such as through a CETA grant.

(4) *Rehabilitation services.* Block grant funds may be used to provide rehabilitation services, such as rehabilitation counseling, loan processing, preparation of work specifications, and other services related to assisting owners rehabilitate their properties, in conjunction with the provision of rehabilitation financing under paragraph (c)(2) of this section and under Section 312 of the Housing Act of 1964, as amended.

(d) *Temporary relocation assistance.* Block grant funds may be used for temporary relocation payments and assistance to individuals, families, businesses, non-profit organizations, and farm operations displaced temporarily by rehabilitation activities assisted under this part. Further information regarding the eligibility of relocation costs is set forth in § 570.602.

(e) *Code enforcement.* Code enforcement in deteriorating or deteriorated areas where activities included in the Community Development and Housing Plan are being carried out, such as an NSA, and where such enforcement together with public improvements, rehabilitation assistance, and services to be provided, may be expected to arrest the decline of the area.

(f) *Historic preservation.* Rehabilitation, preservation, restoration and acquisition of historic properties, either publicly or privately owned, which are those sites or structures that are either listed in or eligible to be listed in the National Register of Historic Places, listed in a State or local Inventory of Historic Places, or designated as a State or local landmark or historic district by appropriate law or ordinance.

Publicly owned historic properties may be assisted, including those properties which are otherwise ineligible for assistance under this subpart. However, eligibility is limited only to those costs necessary for rehabilitation, preservation or restoration of the property and not for conversion or expansion of the property for any ineligible use. For example, a city museum serving low- and moderate-income persons, and listed in the National Register may be restored, but the addition of a new wing on the museum could not normally be assisted, unless it were otherwise eligible for assistance pursuant to § 570.203(b).

§ 570.203 Eligible economic development activities.

Grant assistance may be provided for the following development activities which are not otherwise eligible for block grant assistance, which are directed toward the alleviation of physical and economic distress, or the economic development of a new community as described in § 570.403(a) through stimulation of private investment, community revitalization, and expansion of economic opportunities for low- and moderate-income persons, and handicapped persons, and which are necessary and appropriate to implement the applicant's strategy for economic development.

The applicant shall provide HUD with a description of the activity, and of the relationship to the applicant's strategy for economic development under § 570.304(b)(3). In authorizing activities, HUD will take into account the amount of long-term employment to be generated by the activity accessible to low- and moderate-income persons, the necessity of the activity to stimulate private investment, the degree of impact on the economic conditions of the applicant, and the availability of other Federal funds.

(a) *Acquisition.* Acquisition of real property for economic development purposes;

(b) *Public facilities and improvements.* Acquisition, construction, reconstruction, rehabilitation, or installation of public facilities and improvements not otherwise eligible for assistance, except buildings and facilities for the general conduct of government which are excluded by § 570.207(a)(1).

For example, in an area with an unemployment rate in excess of the national rate, a manpower training center which is designed to prepare for the work force low- and moderate-income persons who are unemployed or underemployed, may be assisted where it is determined by the applicant that such a facility is necessary and appropriate to support its economic development strategy.

(c) *Commercial and industrial facilities.* Acquisition, construction, reconstruction, rehabilitation or installation of:

(1) Commercial or industrial buildings and structures, including:

(i) Purchase of equipment and fixtures which are part of the real estate, but not personal property; and

(ii) Energy conservation improvements designed to encourage the efficient use of energy resources (including renewable energy resources or alternative energy resources);

(2) Commercial or industrial real property improvements (including railroad spurs or similar extensions).

§ 570.204 Eligible activities by private nonprofit entities, neighborhood-based nonprofit organizations, local development corporations, or small business investment companies.

(a) *General.* Grant assistance may be used by applicants to provide block grant funds for activities designed to implement the applicant's strategies for economic development and neighborhood revitalization set forth in this section to be carried out by a private nonprofit entity, a neighborhood-based nonprofit organization, local development corporation, or Small Business Investment Company (SBIC).

(1) *Applicant Responsibilities.* Applicants are nonetheless responsible for ensuring that block grant funds are utilized by such entities in a manner consistent with the requirements of this Part and other applicable Federal, State, or local law. Specific requirements governing the administration of the use of block grant funds by such entities are set forth in § 570.612. Applicants will also be responsible for the carrying out of applicable environmental review and clearance responsibilities.

(2) *Eligible Entities.* Entities eligible to receive block grant funds under this section are: (i) A private non-profit entity which is any organization, corporation, or association, duly organized to promote and undertake community development activities on a not-for-profit basis, including new community associations as defined in § 570.403(b);

(ii) A neighborhood-based nonprofit organization which is an association or corporation, duly organized to promote and undertake community development activities on a not-for-profit basis within a neighborhood as defined pursuant to § 570.201(c)(4). An organization is considered to be neighborhood-based if the majority of either its membership, clientele, or governing body are residents of the neighborhood where activities assisted with block grant funds are to be carried out;

(iii) A Small Business Investment Company (SBIC) which is an entity organized pursuant to section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)), including those which are profit making; and

(iv) A local development corporation which is an entity organized pursuant to Title VII of the Headstart, Economic Opportunity, and Community Partnership Act of 1974 (42 U.S.C. 2981); an entity eligible for assistance under section 502 of the Small Business Investment Act of 1958 (15 U.S.C. 696); a State development entity eligible for assistance under section 501 of the Small Business Investment Act of 1958

(15 U.S.C. 695); or any similar entity incorporated under State or local law for the principal purpose of providing economic development assistance in neighborhoods or local areas whose residents (including non-resident owners of businesses located in such neighborhoods or areas) represent a majority of its voting membership and control.

(b) *Activities eligible under §§ 570.201–570.203, and § 570.205 and § 570.206.* Grant assistance may be provided by an applicant to be utilized by private nonprofit entities, neighborhood-based nonprofit organizations, SBIC's, or local development corporations for activities otherwise eligible for block grant assistance pursuant to §§ 570.201–570.203, § 570.205, and § 570.206. Where such entities use block grant funds to acquire title to facilities, including those described in § 570.201(c) or § 570.203(b), they shall be operated so as to be open for use by the general public during all normal hours of operation. Reasonable fees may be charged for the use of facilities acquired by such entities, but charges, such as excessive membership fees, which will have the effect of precluding low- and moderate-income persons from using the facilities are not permitted.

(c) *Community economic development or neighborhood revitalization activities.* Grant assistance may be provided by an applicant to be used by neighborhood-based nonprofit organizations, SBIC's or local development corporations, but not private nonprofit entities as defined in § 570.204(a)(2)(i), for community economic development or neighborhood revitalization activities which are not otherwise eligible for assistance under this subpart and which are determined by the applicant to be necessary or appropriate to the accomplishment of its Community Development and Housing Plan. Such activities may include the provision of block grant assistance for use by neighborhood-based nonprofit organizations, SBICs, or local development corporations for:

(1) Assistance through grants, loans, guarantees, interest supplements, or technical assistance to new or existing small businesses, minority businesses and neighborhood nonprofit businesses for

(i) Working capital or operational funds; and

(ii) Capital for land, structures, property improvements, and fixtures;

(2) Capitalization of a SBIC or local development corporation required to qualify for assistance under other Federal programs;

(3) Assistance to minority contractors to obtain performance bonding; or

(4) Other activities, excluding those described as ineligible for block grant assistance in §§ 570.207(a)(1) and (e), appropriate for community economic development or neighborhood revitalization. Where an applicant proposes to fund such entities to undertake activities pursuant to this paragraph, the applicant shall:

(i) Provide HUD with a complete description of the proposed activity;

(ii) Provide HUD with a description of the relationship of the proposed activity to the applicant's strategy for neighborhood revitalization or economic development; and

(iii) Receive specific authorization from HUD to undertake the activity.

§ 570.205 Eligible planning and urban environmental design costs.

Grant assistance may be used for the following planning, design, and environmental costs:

(a) *Development of a Comprehensive Community Development Plan.* For the purpose of this section, the term "Comprehensive Community Development Plan" means a statement or statements (in words, maps, illustrations or other methods of communication) which identify the present conditions, needs and major problems of the applicant's jurisdiction relating to the specific objectives of the Community Development Program as set forth in § 570.2(a) and set forth objectives, policies and standards to guide the development and implementation of such Community Development Program. Activities necessary to develop a Comprehensive Community Development Plan may include:

(1) *Data gathering and studies* necessary for the development of the Plan or its components, including the production of base mapping and aerial photography in coordination with the U.S. Geological Survey, and gathering information from citizens, but excluding the gathering of detailed data and preparing of analyses necessary for the engineering and design of facilities or activities ineligible for block grant assistance pursuant to § 570.207;

(2) *Development of statements of objectives,* policies and standards regarding proposed or forseeable changes in the present conditions or problems affecting the applicant's jurisdiction that are to be addressed by the Community Development Program, including policies which will affirmatively further fair housing;

(3) *Development of a three-year Community Development and Housing Plan and an Annual Community Development Program* which identify the community development, housing, and economic conditions and needs, demonstrate a comprehensive strategy for meeting those needs, specify both short- and long-term objectives and identify specific activities to carry out those objectives;

(4) *Related planning and urban environmental design acitivities including* the preparation of communitywide plans for land use, housing, open space, recreation, utilities, historic preservation, including surveys of historic properties, economic development, neighborhood preservation, removal of architectural barriers to the elderly and handicapped, and environmental assessment;

(5) *Development of individual project plans,* including collection of detailed data and preparation of analyses, but excluding the engineering and design costs of carrying out an activity eligible under § 570.201 through § 570.204; and

(6) *Development of codes, ordinances and regulations,* necessary for the implementation of the plan, including local fair housing ordinances.

(b) *Development of a policy-planning-management capacity* so that the applicant may:

(1) Set long-term and short-term objectives related to the community development and housing needs of its jurisdiction;

(2) Devise programs and activities to meet these goals and objectives;

(3) Establish an urban environmental design administrative capacity to use a systematic, interdisciplinary approach to the integrated use of natural and social sciences and environmental design arts in planning and decision making;

(4) Evaluate the progress of such programs and activities and the extent to which the goals and objectives have been accomplished; and

(5) Carry out the management, coordination and monitoring of the activities and programs that are a part of the applicant's Community Development Program.

(c) *Comprehensive planning activities.* In addition to the planning activities otherwise eligible for assistance under this section, assistance may be also provided for comprehensive planning activities eligible for assistance under the section 701 planning assistance program pursuant to 24 CFR Part 600 provided that such additional planning activities are necessary or appropriate to meeting the needs and objectives of the applicants' Community Development Program. The applicant shall submit a description of the activity to HUD.

Among the factors HUD will take into account in authorizing activities will be the impact of the activity on the needs and objectives identified by the applicant, and the availability of other Federal funds.

§ 570.206 Eligible Administrative Costs.

Payment of reasonable administrative costs and carrying charges related to the planning and execution of community development activities financed, in whole or in part, with funds provided under this Part and housing activities covered in the applicant's Housing Assistance Plan (HAP). Costs incurred in carrying out the program, whether charged to the program on a direct or an indirect basis, must be in conformance with the requirements of Federal Management Circular (FMC) 74-4, "Cost Principles Applicable to Grants and Contracts with State and Local Governments." All items of cost listed in Attachment B, Section C of that Circular (except Item 6, preagreement cost, which are eligible only to the extent authorized in § 570.301(d) and (e) are allowable without prior approval to the extent they constitute reasonable costs and are otherwise eligible under this subpart.

(a) *General management, oversight and coordination.* Reasonable costs of overall program management, coordination, monitoring and evaluation, and similar costs associated with carrying out multi-activity projects, but excluding activity delivery costs eligible as costs of carrying out the activity under § 570.201 through § 570.204. Such costs include, but are not limited to, necessary expenditures for the following:

(1) Salaries, wages and related costs of the applicant's staff and the staff of local public agencies engaged in general management, coordination, monitoring and evaluation; Travel costs incurred for official business in carrying out the program;

(3) Administrative services performed under third-party contracts or agreements, including such services as general legal services, accounting services and audit services; and

(4) Other costs for goods and services required for administration of the program, including such goods and services as rental and maintenance of office space, insurance, utilities, office supplies and rental or purchase of office equipment;

(b) *The provision of information and other resources to residents* and citizen organizations participating in the planning, implementation, or assessment of activities being carried out with block grant funds. This may include assistance to neighborhood organizations in areas of concentrated activities or to city-wide organizations conducting training or other activities designed to increase the capability of low- and moderate-income persons to be involved effectively in the development and planning and design of a community development program consistent with the applicable citizen participation requirements set forth in this Part.

(c) *Provision of fair housing counseling services* and other activities designed to further the fair housing provisions of § 570.307(1) and the housing objective of promoting greater choice of housing opportunities and avoiding undue concentrations of assisted persons in areas containing a high proportion of lower-income persons. For example, activities may include informing members of minority groups, and the handicapped, of housing opportunities in non-traditional neighborhoods and providing information about such areas, and assisting members of minority groups, and the handicapped, through provision of escort services to brokers offices in non-traditional neighborhoods.

(d) *Provision of assistance to facilitate performance and payment bonding* necessary for contractors carrying out activities assisted with block grant funds including payment of bond premiums in behalf of contractors.

(e) *Administrative costs of urban homesteading program.* Reasonable costs relating to the administration of an urban homesteading program carried out under Section 810 of the Housing and Community Development Act of 1974, as amended, in accordance with a three-year Community Development and Housing Plan.

(f) *Applications for Federal programs,* including the block grant program and UDAG program, may be prepared with block grant funds where necessary and appropriate to implement the applicant's comprehensive strategy for community development. Special provisions regarding letter to proceed for small city applicants are contained in Subpart F.

(g) *Activities to facilitate the implementation of a housing assistance plan* for necessary expenses, prior to construction, in planning and obtaining financing for the new construction or substantial rehabilitation of housing for lower-income persons. Activities may include:

(1) The costs of conducting preliminary surveys and analyses of market needs;

(2) Site and utility plans, narrative descriptions of the proposed construction, preliminary cost estimates, urban design documentation, and "sketch drawings," but excluding architectural, engineering, and other details ordinarily required for construction purposes, such as structural, electrical, plumbing, and mechanical details;

(3) Reasonable costs associated with development of applications for mortgage and insured loan commitments, including commitment fees, and of applications and proposals under the Section 8 housing assistance payments program pursuant to 24 CFR Parts 880-883; and

(4) Fees associated with processing of applications for mortgage and insured loan commitments under programs including those administered by HUD, Farmers Home Administration (FmHA), Federal National Mortgage Association (FNMA), and the Government National Mortgage Association (GNMA).

The new construction or direct financing of new construction of housing is not eligible for assistance under this Part, except as described in § 570.207(f).

(h) *Environmental Studies.* The reasonable costs of environmental studies, including historic preservation clearances, necessary to comply with 24 CFR Part 58, including project specific environmental assessments and clearances for activities eligible for assistance under this Part.

§ 570.207 Ineligible activities.

The following is a list of activities which are ineligible for block grant assistance under most circumstances and serves as a general guide regarding ineligible activities. There are several authorities set forth in Subpart C which would permit activities cited in this section to be undertaken with block grant funds. When an activity used as an example in this section meets the requirements for eligibility pursuant to Subpart C, such an activity may be assisted with block grant funds even though it is used as an example of an ineligible activity. The list of examples of ineligible activities is merely illustrative and does not constitute a list of all ineligible activities:

(a) *Public works, facilities and site or other improvements.* The general rule is that public works, facilities and site or other improvements are ineligible to be acquired, constructed, reconstructed, rehabilitated or installed unless they are eligible pursuant to § 570.201(c) or § 570.203(b), or were previously eligible under any of the programs consolidated by the Act (except the public facilities loan program, the model cities program, and as an urban renewal local grant-in-aid eligible under section 110(d)(3) of Housing Act of 1949) and cited in § 570.1(b). Activities undertaken to

make facilities and improvements otherwise ineligible for development with block grant assistance accessible to the elderly and handicapped through removal of architectural barriers, or for the purposes of historic preservation pursuant to §§ 570.201(k) and 570.202(f), respectively, are eligible for assistance with block grant funds and are not precluded by this section. Where acquisition of real property includes an existing improvement which is to be utilized in the provision of an ineligible public facility, the portion of the acquisition cost attributable to such improvement, as well as the cost of any rehabilitation or conversion undertaken to adapt or make the property suitable for such use, shall be ineligible. Examples include the following:

(1) *Buildings and facilities for the general conduct of government,* cannot be provided with block grant assistance, such as city halls and other headquarters of government where the governing body of the recipient meets regularly and which are predominantly used for municipal purposes, courthouses, police stations and other municipal office buildings;

(2) *Other facilities and improvements,* which may not be provided with block grant funds unless they are determined by HUD to be necessary and appropriate to the implementation of an applicant's strategy for community development and housing in accordance with §§ 570.201(c)(14) or 570.203(b), include:

(i) *Facilities used for exhibitions, spectator events and cultural purposes,* including stadiums, sports arenas, auditoriums, concert halls, cultural and art centers, convention centers and exhibition halls, museums, central libraries, and similar facilities. For the purpose of this paragraph, libraries (including central libraries in units of general local government under 25,000 population where the criteria set forth in § 570.201(c)(4)(ii) are satisfied), cultural, art and museum facilities which meet the requirements for neighborhood facilities set forth in § 570.201(c)(4) are considered neighborhood facilities and are therefore eligible for assistance.

(ii) *Schools and educational facilities,* (including elementary, secondary, college, and university facilities). For the purpose of this paragraph, a neighborhood facility, senior center or center for the handicapped in which classes in practical and vocational activities (such as first aid, homemaking, crafts, independent living, etc.) are among the services provided is not considered as a school or educational facility. Further information regarding facilities located on school property is set forth in § 570.200(d)(2);

(iii) *Airports, subways, trolley lines, bus or other transit terminals,* or stations, and other transportation facilities, (excluding railroad spurs assisted pursuant to § 570.203(c)).

(iv) *Hospitals, nursing homes and other medical facilities.* For the purpose of this paragraph, a neighborhood facility, senior center, or center for the handicapped, which provides general health services is not considered to be a medical facility.

(v) *Treatment works for sewage or industrial wastes of a liquid nature,* consisting of the various devices used in the treatment of sewage and commercial and industrial wastes of a liquid nature, including the necessary interceptor sewers, outfall sewers, actual treatment facilities, pumping stations, power and other equipment, and their appurtenances. The term "interceptor sewer" means a line which has as its primary purpose the diversion or transmission of sewage from a collection system to a treatment facility, and applies to the following:

(A) In those situations where raw or inadequately treated sewage is being discharged from an existing public sewer, those sewer lines, whether gravity or force, and any pumping stations or other appurtenances thereto which are necessary to prevent or eliminate the discharge into any waterway of raw or inadequately treated sewage from an existing point or points of discharge in a public system are not eligible. This includes any necessary pumping stations, force mains or other appurtenances thereto; and

(B) In all other situations, the line or lines which divert the flow to the treatment facility from the point of natural discharge of a collection system, where no treatment is to be provided, including any necessary pumping stations, force mains or other appurtenances are not eligible.

(b) *Purchase of equipment.* The purchase of equipment with block grant funds is generally ineligible.

(1) *Construction equipment.* The purchase of construction equipment is ineligible, but compensation for the use of such equipment through leasing, depreciation or use allowances pursuant to Attachment B of Federal Management Circular 74-4 for an otherwise eligible activity is an eligible use of block grant funds. An exception is the purchase of construction equipment which is used as a part of a solid waste disposal facility which is eligible for block grant assistance pursuant to § 570.201(c)(5), such as a bulldozer used at a sanitary landfill.

(2) *Furnishings and personal property.* The purchase of equipment, fixtures, motor vehicles, or furnishings or other personalty not an integral structural fixture is ineligible, except when necessary for use by a recipient or its subgrantees in the administration of its Community Development Program pursuant to § 570.206(a), or as a part of a public service pursuant to § 570.201(e).

(c) *Operating and maintenance expenses.* The general rule is that any expense associated with operating, maintaining or repairing public facilities and works or any expense associated with providing public services not assisted with block grant funds is ineligible for assistance. However, operating and maintenance expenses associated with providing public services or interim assistance otherwise eligible for assistance under this Part may be assisted. For example, the cost of a public service being operated with block grant funds in a neighborhood facility may include reasonable expenses associated with operating the public service within the facility, including costs of rent, utilities and maintenance.

Examples of activities which are not eligible for block grant assistance are:

(1) Maintenance and repair of streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for the handicapped, parking and similar public facilities. Examples of maintenance and repair activities for which block grant funds may not be used include the filling of pot holes in streets, repairing of cracks in sidewalks, the mowing of recreational areas, and the replacement of expended street light bulbs.

(2) Payment of salaries for staff, utility costs and similar expenses necessary for the operation of public works and facilities; and

(3) Expenses associated with provision of any public service which is not eligible for assistance pursuant to § 570.201(e).

(d) *General government expenses.* Except as otherwise specifically authorized in this Subpart or under Federal Management Circular 74-4, expenses required to carry out the regular responsibilities of the unit of general local government are not eligible for assistance under this part.

(e) *Political activities.* No expenditure may be made for the use of equipment or premises for political purposes, sponsoring or conducting candidates' meetings, engaging in voter registration activity or voter transportation or other partisan political activities.

(f) *New housing construction.* Assistance may not be used for the

construction of new permanent residential structures or for any program to subsidize or finance such new construction, except as provided under the last resort housing provisions set forth in 24 CFR Part 42, or pursuant to § 570.204(c)(4). For the purpose of this paragraph, activities in support of the development of low- or moderate-income housing in accordance with an approved Housing Assistance Plan including clearance, site assemblage, provision of site improvements and provision of public improvements and certain housing preconstruction costs set forth in § 570.206(g), are not considered as programs to subsidize or finance new residential construction.

(g) *Income payments.* The general rule is that assistance shall not be used for income payments for housing or any other purpose. Examples of ineligible income payments include the following: payments for income maintenance, housing allowances, down payments and mortgage subsidies.

(Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*); Title I, Housing and Community Development Act of 1977 (Pub. L. 95-128); and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).)

III. The table of contents to Subpart D is revised to read as follows:

Subpart D—Entitlement Grants

Sec.

570.300 Outline of application requirements.
570.301 Planning considerations.
570.302 Program benefit to low- and moderate-income persons.
570.303 Citizen participation requirements.
570.304 Community development and housing plan.
570.305 Annual community development program.
570.306 Housing assistance plan.
570.307 Certifications.
570.308 Timing of application submission.
570.309 [Reserved].
570.310 A-95 clearinghouse review and comment.
570.311 HUD review and approval of application.
570.312 Amendments.

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301, et seq.); Title I, Housing and Community Development Act of 1977 (Pub. L. 95-128); and Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

IV. Subpart D is revised to read as follows:

Subpart D—Entitlement Grants

§ 570.300 Outline of application requirements.

This section briefly outlines the requirements which must be met by the applicant when applying for an entitlement grant and references other sections containing more detailed information on these requirements.

(a) *Planning requirements.* Requirements that the applicant must meet in planning its community development program are covered in the following sections.

(1) Section 570.301 describes general planning considerations;

(2) Section 570.302 describes the requirement that the applicant's community development program must be planned and carried out so as to principally benefit persons having low- and moderate-income; and

(3) Section 570.303 describes the requirement that the applicant must prepare and implement a written citizen participation plan, part of which provides for citizen involvement in the planning process.

(b) *Triennial submission requirements.* Every third year, beginning with the first application submitted on or after August 1, 1978, the applicant must submit an application consisting of the following:

(1) Standard Form 424, Federal Assistance, prescribed by OMB Circular No. A-102;

(2) Community Development and Housing Plan as described in § 570.304;

(3) Annual Community Development Program as described in § 570.305;

(4) Housing Assistance Plan as described in § 570.306; and

(5) Certifications as described in § 570.307.

(c) *Annual submission requirements.* For each of the other years in a three year period the applicant must submit an application consisting of the following:

(1) Standard Form 424;

(2) Annual Community Development Program as described in § 570.305;

(3) Annual Housing Action Program as described in § 570.306(b)(4); and

(4) Certifications as described in § 570.307.

(d) *Other application requirements.* The applicant must also comply with the following requirements when applying for an entitlement grant:

(1) Requirements on the timing of applications as set forth in § 570.308; and

(2) Requirements on notifying State and areawide clearinghouses of the applicant's intent to apply for Federal assistance, on submitting the application to clearinghouse for comment, and on taking actions following clearinghouse reviews, as described in § 570.310.

§ 570.301 Planning considerations.

(a) *Comprehensive strategies.* The Act requires that applicants have a three-year plan for the use of block grant funds which demonstrates a comprehensive strategy for meeting identified community development and housing needs. The Act provides discretion to local governments to develop strategies appropriate to local conditions and permits a wide choice of projects and activities to carry out those strategies. However, a comprehensive strategy shall include: (1) a systematic assessment of the locality's community development and housing needs and the resources available to meet those needs; (2) determination of the applicant's long- and short-term objectives and priorities for the use of funds; (3) development of a three-year plan of activities designed to meet the needs and objectives identified. This plan shall provide for undertaking housing and community development activities in a coordinated and mutually supportive manner consistent with local and areawide development planning and national urban growth policies. The requirements for the summary of the three-year plan are stated in § 570.304.

(b) *Coordination of programs.* It is recognized that different strategies may be appropriate and effective in dealing with different local needs and conditions. However, the Act limits certain activities to areas in which block grant assisted physical development programs are being carried out in a concentrated manner, for example, public services pursuant to § 570.201(e). Moreover, certain other HUD programs are designed to focus on areas of concentrated community development activity, for example, Urban Homesteading, and Section 8 Substantial Rehabilitation Special Procedures pursuant to 24 CFR Part 881. Applicants are therefore encouraged to designate appropriate areas in which various programs can be carried out in a concentrated and coordinated manner. For purposes of these regulations such areas shall be designated as Neighborhood Strategy Areas as defined in paragraph (c).

(c) *Neighborhood strategy area.* This is an area which is selected by the applicant and designated in its three-year Community Development and Housing Plan for a program of concentrated community development activities. For each Neighborhood Strategy Area the applicant shall include in its Plan a comprehensive strategy for stabilizing and upgrading the area which:

(1) Provides for a combination of physical improvements, necessary public facilities and services, housing programs, private investment and

citizen self-help activities appropriate to the needs of the area;

(2) Coordinates public and private development efforts;

(3) Provides sufficient resources to produce substantial long-term improvements in the area within a reasonable period of time; in determining the size of the area the applicant shall take into account the severity of its problems and the amount of resources to be provided so that this requirement can be met.

(4) Examples of Neighborhood Strategy Area programs include: a residential rehabilitation program which provides loans and grants to property owners in a designated area in which street improvements, playgrounds, and public services are also being provided; and a redevelopment program which includes systematic demolition of substandard structures and assemblage of sites for new construction in a particular area in conjunction with site improvements and facilities necessary to attract new development.

(5) In order for a program to qualify as a Neighborhood Strategy Area program, the activities which an applicant includes in such program (including activities to be funded and implemented in more than one action year) shall be grouped and deemed by the applicant to be a project, as defined in 24 CFR § 58.3. The environmental review of such project should take into account the relationship between component activities, and the cumulative environmental effects of activities.

(d) *Planning and implementing multiyear projects.* (1) An applicant may allocate funds in an application for the payment of part of the cost of a multiyear project to be financed in increments with funds becoming available in succeeding program years, provided the full scope and estimated cost of the total project is described in the first application in which grant funds are allocated for the project. This does not preclude use of subsequent-year entitlement funds to complete a project which was designed as a single year project and whose cost exceeds initial estimates.

(2) The environmental assessment of a multiyear project, performed under 24 CFR Part 58, should encompass the entire multiyear scope of activities. Upon certification that the applicant has completed the environmental requirements for a multiyear project, HUD may issue its release of funds for the entire multiyear project. Such release of funds shall be subject to the provisions of paragraphs (3) and (4) of this subsection.

(3) Approval of each increment of a multiyear project is subject to the general availability of grant funds, adequate performance, and the submission of an acceptable application in each year in which grant funds are to be applied toward payment of project cost. In those instances where the applicant exhausts previously approved grant funds before the next increment is approved, the applicant may obligate and spend local funds to continue the work and be reimbursed with funds approved for the next increment, provided the locally funded work was undertaken in compliance with the requirements of this Part.

(4) The continued authority of an applicant to commit Title I funds to a multiyear project or to be reimbursed for the expenditure of local funds for costs of such project, after completion of environmental requirements and HUD release of funds, shall be subject to the continued relevance and completeness of the environmental assessment performed. In the event of any significant or substantial change in the nature, magnitude or extent of the project, or any significant or substantial change in the environment affecting the project, the applicant shall, prior to any further commitment of Title I funds to the project, complete the requirements of 24 CFR Part 58 relating to the updating of environmental clearances.

(5) The applicant may also obligate and spend local funds prior to approval of its application for the purpose of completing activities previously approved and assisted under the urban renewal program, the water and sewer facilities program, the neighborhood facilities program, or the open space land program, described in § 570.1(b) (1), (3), (4), and (6), respectively. After approval of its application, the applicant will be reimbursed with funds programmed in the application to cover those costs, provided such locally funded work was undertaken in compliance with the requirements of this Part. The environmental review requirements of 24 CFR Part 58, except the provisions of Subpart C of Part 58, must be complied with prior to the incurring of any such costs to be reimbursed by HUD; however, the provisions of Subpart C of Part 58 must be complied with prior to the release of funds by HUD.

(e) *Reimbursement for costs of planning and environmental studies.* Prior to approval of its application, an applicant may obligate and spend local funds for the purpose of environmental assessments required by 24 CFR Part 58, for the planning and capacity building purposes authorized by § 570.205 (a) and (b), for engineering and design costs associated with an activity eligible under § 570.201 through § 570.204, for the provision of information and resources to citizens pursuant to § 570.206(b), and for relocation and/or acquisition activities carried out pursuant to § 570.602. After approval of its application, the applicant will be reimbursed with funds programmed in the application to cover those costs, provided such locally funded activities were undertaken in compliance with the requirements of this Part and Part 58.

§ 570.302 Program benefit to low- and moderate-income persons.

(a) *Statutory Provisions.* The Housing and Community Development Act states as its primary objective the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low- and moderate-income. The Act also requires the applicant to certify that its community development program has been developed so as to give maximum feasible priority to activities which will benefit low- and moderate-income families, or aid in the prevention or elimination of slums or blight. It also permits approval of activities which the applicant certifies and the Secretary determines are designed to meet other community development needs having a particular urgency. Consistent with the statutory objectives, the following rules govern the expenditure of program funds to insure that the program principally benefits low- and moderate-income persons.

(b) *General Requirements.*

(1) All projects and activities must either principally benefit low- and moderate-income persons, or aid in the prevention or elimination of slums and blight, or meet other community development needs having a particular urgency.

(2) Each annual application for funds under this subpart must provide that the applicant's program as a whole shall principally benefit low- and moderate-income persons.

(3) An application shall be presumed to principally benefit low- and moderate-income persons, absent substantial evidence to the contrary, where not less than 75 percent of the program funds to be available during the three year period covered by the applicant's Community Development and Housing Plan shall be used for projects and activities which principally benefit low- and moderate-income persons under the standards in

paragraph (d) of this section. Applications submitted between May 1, 1978 and July 15, 1978, shall be presumed to principally benefit low- and moderate-income persons if at least 75 percent of the program funds applied for shall be used for projects and activities which meet the standards in paragraph (d).

(4) The applicant shall maintain in its files the documentation on which basis it determines that projects principally benefit low- and moderate-income persons. Such documentation may include 701 planning studies, welfare and unemployment records, local surveys, and similar generally available information. HUD will monitor the applicant's performance to ensure that the applicant's community development program principally benefits low- and moderate-income persons.

(5) In designing projects and selecting areas in which to carry out activities, the applicant shall address the needs of low- as well as moderate-income persons, given the nature and relative severity of their needs, and shall include projects suitable to meeting those needs.

(c) *Review Guidelines.*

(1) An application which meets the standard in paragraph (b)(3) will not be subject to further examination by HUD prior to funding with respect to benefit to low- and moderate-income persons.

(2) An application which does not meet the standard in paragraph (b)(3) shall be subject to an examination by HUD prior to funding to determine whether the activities proposed are plainly inappropriate to meeting the needs of the applicant because of the nature and severity of the needs of low- and moderate-income persons in relation to the general needs and conditions of the applicant, and whether taken as a whole, the proposed program principally benefits low- and moderate-income persons. In making this review, HUD shall consider the information in the applicant's three year Community Development and Housing Plan, its Annual Community Development Program, past expenditure patterns in areas having concentrations of lower income persons, and other generally available data.

(d) *Projects which principally benefit low- and moderate-income persons.* A project or activity will be considered to principally benefit low- and moderate-income persons if it is designed to meet identified needs of low- and moderate-income persons as described in the applicant's Community Development and Housing Plan and it meets one of the following standards:

(1) The project has income eligibility requirements that limit the benefits of the project to low- and moderate-income persons.

(2) The project does not have income eligibility requirements but the majority of the beneficiaries are low- and moderate-income persons. The following are examples of projects which meet this standard:

(i) A neighborhood strategy area program or a public improvement activity which serves an area, delineated by the applicant, where the majority of the residents are low- and moderate-income persons. Such an area may consist of a locally defined neighborhood or planning district, one or more census tracts, enumeration districts, or parts thereof; it need not be coterminous with census boundaries.

(ii) A project designed to attract or retain neighborhood commercial facilities which provide essential services to residential areas which have a majority of low- and moderate-income residents.

(iii) Economic development projects which are designed to provide direct employment opportunities for permanent jobs, the majority of which will be for low- and moderate-income persons if the persons expected to be employed are defined as low- and moderate-income prior to employment; it is not necessary that the incomes of persons employed by economic development projects be low or moderate after the project is completed.

(iv) A facility, such as a senior center, which is used principally by persons of low- and moderate-income.

(3) Removal of architectural barriers pursuant to § 570.201(k); such projects may be assumed to principally benefit low- and moderate-income persons in the absence of substantial evidence to the contrary.

(4) A project which must be carried out prior to or as an integral part of a project which will principally benefit low- and moderate-income persons. An example is the extension of water and sewer lines to permit construction of low-income housing. The cost of such projects must not be unreasonable in relation to the low- and moderate-income benefits to be provided. The housing or other facilities on which basis the project is justified must be included in the applicant's Community Development and Housing Plan and there must be evidence acceptable to HUD that construction of the housing or other facilities will in fact be commenced within the three-year period covered by the Plan.

(5) A project which serves an area with less than a majority of low- and moderate-income persons where: (i) the applicant has no areas within its jurisdiction where low- and moderate-income persons constitute a majority, or (ii) the applicant has so few such areas that it is inappropriate to limit the grant to projects in those areas; provided that: (A) the project serves areas having the largest proportion of low- and moderate-income residents in the locality; (B) the project is clearly designed to meet identified needs of lower income persons in those areas; and (C) the project benefits such persons at least in proportion to their share of the population of the areas served.

(e) *Projects which prevent or eliminate slums or blight.* The following projects and activities will be considered to prevent or eliminate slums or blight:

(1) A project in an area which is a slum, or a blighted, deteriorated, or deteriorating area, as defined by State or local law, and in which the applicant undertakes a Neighborhood Strategy Area program, as defined in § 570.301(c), to remedy the conditions which qualify the area as an urban renewal or similar area. In such cases the applicant may undertake any otherwise eligible activity, including economic development under § 570.203, necessary to accomplish its strategy for upgrading the area. Because State laws vary, HUD will recognize those State or local laws which authorize public actions for the purpose of slum and blight prevention and elimination. It is not necessary that an area be formally designated an urban renewal or similar area, but evidence supporting a local determination that an area meets criteria for slums and blight must be maintained in the locality's records.

(2) A project designed to eliminate detrimental conditions which are scattered or located outside slum or blighted areas. Authorized activities are only those necessary to eliminate the specific conditions of blight or physical decay, by acquisition of blighted structures, demolition, historic preservation, relocation, and rehabilitation to the extent necessary to eliminate conditions detrimental to public health and safety under § 570.202(c)(2)(i)(C).

(3) Activities necessary to complete Federally assisted urban renewal projects which do not principally benefit low- and moderate-income persons.

(f) *Projects designed to meet needs having a particular urgency.* These are projects which the applicant certifies and the Secretary determines are designed to alleviate a serious and immediate threat to the health or welfare of the community which is of recent origin where the applicant is unable to finance the projects on its

own, and other sources of funding are not available. A condition will generally be considered to be of recent origin if it developed or became critical within 18 months preceding the application for funds.

(g) *Determining benefits to low- and moderate-income persons.*

(1) In determining the amount of program funds which principally benefit low- and moderate-income persons, the costs of administration and planning cited in § 570.205 and § 570.206 may be excluded as they will generally be assumed to benefit low- and moderate-income persons in the same proportion as the remainder of the grant.

(2) The amount of any program funds to be applied to the repayment of urban renewal temporary loans may also be excluded.

(3) Funds budgeted for contingencies and/or local option activities may also be excluded; such funds shall be expended in such a manner that the program will continue to meet the requirements of this section.

(4) If a project or activity meets the definition in paragraph (d) of principally benefitting low- and moderate-income persons, the entire cost of the project or activity may be determined to benefit low- and moderate-income persons. This includes projects to prevent or eliminate slums and blight and projects designed to meet a need having a particular urgency where such projects principally benefit low- and moderate-income persons under paragraph (d).

(5) If a project is designed to prevent or eliminate slums or blight or to meet needs having a particular urgency and does not also principally benefit low- and moderate-income persons under the provisions in paragraph (d), a particular activity (such as a rehabilitation loan program with income limits) within that project may nevertheless be counted in determining the amount of program funds which benefit low- and moderate-income persons.

(6) In determining whether a proposed project will actually benefit low- and moderate-income persons, the nature of the needs identified, the relationship of the project to meeting those needs, and the net effect of the completed project shall be considered. Thus, mere location of an activity in a low- or moderate-income area does not conclusively demonstrate that a project or activity benefits lower income persons. A neighborhood revitalization effort which creates improved housing and better living environment, principally for low- and moderate-income persons, would be counted as such. Where such a program results in a change in the income characteristics of the area so that a majority of the ultimate beneficiaries are higher income persons, the program would not be counted as principally benefitting low- and moderate-income persons.

(h) *Mitigating adverse effects.* Where the program will result in direct or indirect displacement or other hardships to low- and moderate-income persons, the applicant shall take appropriate steps to minimize such displacement or hardships. Section 570.304(b)(2) requires the applicant to include in its Community Development and Housing Plan the actions it will take to assist low- and moderate-income persons to remain in existing locations when they prefer to do so, and to mitigate adverse effects on such persons as a result of neighborhood revitalization activities.

§ 570.303 Citizen participation requirements.

(a) *General.* The applicant shall provide citizens with an adequate opportunity to participate in an advisory role in planning, implementing, and assessing the program. In so doing, the applicant shall also provide adequate information to citizens, hold public hearings to obtain views of citizens, and provide citizens an opportunity to comment on the applicant's community development performance. Nothing in these requirements, however, shall be construed to restrict the responsibility and authority of the applicant for the development of the application and the execution of its Community Development Program.

(b) *Written citizen participation plan.* The applicant shall prepare a written citizen participation plan that provides procedures by which each of the requirements set forth in the following paragraphs will be implemented. The plan shall go into effect no later than August 1, 1978. The provisions concerning citizen involvement in implementing and assessing the program apply to activities that are ongoing as of that date, as well as to all future activities. The plan shall remain in effect until all activities assisted under this Part are completed, or until it is superseded by a new plan. Upon request by HUD, the plan shall be submitted to HUD to aid in the handling of complaints and to facilitate monitoring and evaluation.

(c) *Standards of participation.* The applicant shall provide a process of citizen participation at the communitywide level with regard to the overall application and program. Applicants with populations of 50,000 or more shall also provide a process of citizen participation at the neighborhood level in areas where a significant amount of activity is proposed or ongoing. These processes shall meet the following standards:

(1) All aspects of citizen participation shall be conducted in an open manner, with freedom of access for all interested persons;

(2) There shall be involvement of low- and moderate-income persons, members of minority groups, residents of areas where a significant amount of activity is proposed or ongoing, the elderly, the handicapped, the business community, and civic groups who are concerned about the program. Where the applicant chooses to establish, or has established, a general communitywide citizen advisory committee, there shall be substantial representation of low- and moderate-income citizens and members of minority groups. Similarly, where the applicant chooses to establish or recognize neighborhood advisory committees in areas where low- and moderate-income persons or members of minority groups reside, there shall be substantial representation of such persons;

(3) The applicant shall make reasonable efforts to ensure continuity of involvement of citizens or citizen organizations throughout all stages of the program;

(4) Citizens shall be provided adequate and timely information, so as to enable them to be meaningfully involved in important decisions at various stages of the program;

(5) Citizens, particularly low- and moderate-income persons and residents of blighted neighborhoods, shall be encouraged to submit their views and proposals regarding the Community Development Program;

(d) *Scope of participation.* The applicant shall provide for the continuity of citizen participation throughout all stages of the program. This includes citizen involvement in the development of the citizen participation plan, as well as involvement in the following areas:

(1) *Application development.* Citizens shall be involved in development of the annual application, including:

(i) The three-year Community Development and Housing Plan, including the identification of commmunity development and housing needs, and the setting of priorities;

(ii) The Housing Assistance Plan, including the Annual Housing Action Program;

(iii) The annual Community Development Program; and

(iv) Subsequent amendments and other changes to the above, in accordance with § 570.312.

(2) *Program implementation.* The roles citizens will play in program implementation shall be indicated in the citizen participation plan. At a minimum, this shall include involvement of citizens in an advisory role in policy decisions regarding program implementation. It may also include self-help activities carried out by citizen groups and direct program operations conducted by neighborhood-based organizations and other eligible nonprofit entities.

(3) *Assessment of performance.* Citizens and citizen organizations shall be given the opportunity to assess and submit comments on all aspects of the applicant's *community development performance, including the performance of the applicant's subrecipients and contractors.* They shall also be given the opportunity to assess projects and activities to determine whether objectives are achieved. The methods by which such opportunities shall be made available shall be indicated in the citizen participation plan. The applicant shall include in its annual performance report: (i) Copies of comments submitted by citizens regarding the applicant's community development performance; (ii) the applicant's assessment of such comments; and (iii) a summary of any actions taken in response to the comments received.

(e) *Submission of views and proposals.* The applicant shall provide for and encourage the submission of views and proposals regarding the Community Development Program by citizens, particularly low- and moderate-income persons and residents of blighted neighborhoods. This includes submission of such views:

(1) Directly to the applicant during the planning period prior to public hearings on the application;

(2) To recognized neighborhood, project area, and communitywide citizen organizations;

(3) At neighborhood and other meetings, if scheduled by the applicant prior to formal public hearings; and

(4) At formal public hearings.

The applicant shall provide timely responses to all proposals submitted to it, including written responses to written proposals stating the reasons for the action taken by the applicant on the proposal. The citizen participation plan shall state the number of days within which responses will be provided. Whenever practicable, responses should be provided prior to the final hearing on the application.

(f) *Consideration of objections to applications.* Persons wishing to object to approval of an application by HUD may make such objection known to the appropriate HUD Area Office. HUD will consider objections made only on the following grounds: The applicant's description of needs and objectives is plainly inconsistent with available facts and data; or the activities to be undertaken are plainly inappropriate to meeting the needs and objectives identified by the applicant; or the application does not comply with the requirements of this Part or other applicable law; or the application proposes activities which are otherwise ineligible under this Part.

Such objections should include both an identification of the requirements not met and, in the case of objections made on the grounds that the description of needs and objectives is plainly inconsistent with significant, generally available facts and data, the data upon which the persons rely. Although HUD will consider objections submitted at any time, such objections should be submitted within 30 days of the publication of the notice that the application has been submitted to HUD, as described in paragraph (i)(3) below. In order to ensure that objections submitted will be considered during the review process, HUD will not approve an application until at least 45 days after receipt of an application.

(g) *Complaints.* The plan shall provide for answering complaints in a timely and responsive manner. The applicant shall make every reasonable effort to provide written responses within 15 working days.

(h) *Technical assistance.* To facilitate citizen participation, the plan shall provide for technical assistance. The level and type of assistance determined appropriate by the applicant shall be provided to: (1) Citizen organizations, so that they may adequately participate in planning, implementing, and assessing the program; and (2) groups of low- and moderate-income persons and groups of residents of blighted neighborhoods which request assistance in developing proposals and statements of views.

It may also be directed toward assisting citizens in organizing and operating neighborhood and project area organizations and in carrying out Community Development Program activities. Technical assistance should be provided by specialists jointly selected by the applicant and the organizations and groups to be assisted. It may be provided either by the applicant directly or through arrangements with public or private entities.

(i) *Adequate information.* The applicant shall provide for full public access to program information and affirmative efforts to make adequate information available to citizens, especially to those of low- and moderate-income and to those residing in lower-income or blighted neighborhoods.

(1) At the time the applicant begins planning for the next program year, the following program information shall be provided to citizens:

(i) The total amount of community development block grant funds available to the applicant for community development and housing activities, including planning and administrative activities,

(ii) The range of activities that may be undertaken with these funds and the kind of activities previously funded in the community,

(iii) The processes to be followed in drawing up and approving the local application and the schedule of meetings and hearings,

(iv) The role of citizens in the program, as provided under this section,

(v) A summary of other important program requirements.

(2) The applicant shall provide for full and timely disclosure of its program records and information consistent with applicable State and local laws regarding personal privacy and obligations of confidentiality. Documents relevant to the program shall be made available at the applicant's office during normal working hours for citizen review upon request (either written or oral). Such documents include the following:

(i) All mailings and promotional material,

(ii) Records of hearings,

(iii) All key documents, including all prior applications, letters of approval, grant agreements, the citizen participation plan, performance reports, evaluation reports, other reports required by HUD, and the proposed and approved application for the current year,

(iv) Copies of the regulations and issuances governing the program, and

(v) Documents regarding other important program requirements, such as contracting procedures, environmental policies, fair housing and other equal opportunity requirements, relocation provisions, and the A-95 review process.

(3) When the application is submitted to HUD upon completion of clearinghouse reviews, the applicant shall publish a notice in a newspaper of general circulation stating that the application has been submitted and is available to interested parties upon request and describing the requirements on citizen objections to applications contained in paragraph (f), above.

(4) The applicant shall make copies of the citizen participation plan, the proposed and approved application, and the annual performance report available at locations conveniently located for persons affected by the program and accessible to the handicapped.

(j) *Public hearing.* The plan shall provide for a sufficient number of hearings to obtain citizen views and to respond to citizen proposals and questions at different stages of the program. Such hearings shall be held at convenient times and locations which permit broad participation, particularly by low- and moderate-income persons and by residents of blighted neighborhoods. Hearing arrangements should make possible the full participation of handicapped citizens.

(1) *Presubmission hearings.* The applicant shall hold at least two kinds of public hearings prior to the submission of the application:

(i) To obtain views and proposals of citizens at the initial stage of application development on community development and housing needs and priorities, and to obtain comments on the applicant's community development performance;

(ii) To obtain views of citizens on the proposed application prior to submission of the application to A–95 clearinghouses.

(2) *Performance hearings.* In order to review program progress and performance, the applicant shall hold an additional public hearing or hearings thirty to sixty days prior to the start of planning for the next program year.

(3) *Notices.* In order to give adequate notice of public hearings:

(i) The applicant shall, 10 days prior to each public hearing, publish a notice in easily readable type in the nonlegal section of newspapers of general circulation, including minority and non-English language newspapers of general circulation where they exist. Such notices shall indicate the date, time, place and procedures of the hearing and topics to be considered. The applicant also shall make reasonable efforts to provide the notices, in the form of press releases, the neighborhood newspapers or periodicals serving low- and moderate-income neighborhoods.

(ii) The applicant is encouraged to take other actions to widely publicize the hearings, such as arranging for public service radio and television announcements.

(k) *Bilingual.* Wherever a significant number of low- and moderate-income persons and residents of blighted neighborhoods speak and read a primary language other than English, the plan shall provide that all notices of public hearings and summaries of basic information be produced in such language or languages and that bilingual opportunities shall be offered at required public hearings.

(l) *Contingency and local option activities.* The plan shall provide that if the applicant sets aside funds in its application for contingencies and/or local option activities, or if it chooses to identify in its application activities that could replace any activities disapproved by HUD during its application review, the citizen participation process shall be involved in the selection of such contingency or local option activities.

(m) *Program amendments.* The plan shall provide for citizen participation in any amendments to an approved application, except those for disaster activities. If the nature of the amendment is such that prior HUD approval is required, as specified in § 570.312, the applicant shall hold public hearings on the amendment. If the amendment does not require prior HUD approval, the plan shall describe how the citizen participation process shall be involved in the amendment.

§ 570.304 Community Development and Housing Plan.

An entitlement application shall include a summary of a Community Development and Housing Plan. This document shall be submitted every third year as part of the annual application for funds beginning with the first application submitted on or after August 1, 1978. It shall summarize the community development and housing needs of the applicant, it's comprehensive strategy for meeting those needs, including its long- and short-term objectives, and the projects and activities planned for the next three years.

(a) *Summary of community development and housing needs.* This shall include the following:

(1) *A community profile* on a form to be prescribed by HUD, which provides data regarding population and income characteristics of the community, the condition of the housing stock, and the economic condition of the community as a whole.

(2) *A narrative summary* of the applicant's community development and housing needs, particularly those of low- and moderate-income households and any special needs of identifiable segments of the total group of lower income persons. The narrative shall include a brief description of the major needs for neighborhood revitalization, for community facilities and public improvements, and for housing.

(b) *Comprehensive strategy.* The applicant shall describe how it proposes to meet its identified community development and housing needs, particularly those of low- and moderate-income households residing in or expected to reside in the community and any special needs of identifiable segments of the lower income population. The provision of all improved community facilities and public improvements, including supporting health, social and similar services where necessary or appropriate, shall be described in a manner that fully insures opportunity for participation by, and benefits to, the handicapped. The strategy shall include a communitywide component which describes the development strategy of the applicant, the major objectives the applicant seeks to accomplish, the priorities it has established for the use of block grant funds, and the factors it has taken into account in selecting areas for treatment and designing programs to meet identified needs. In addition, it shall include the following component strategies:

(1) *Neighborhood revitalization.* The applicant shall describe its strategy for maintaining and preserving viable neighborhoods and for upgrading neighborhoods affected by blight and deterioration.

This shall emphasize the actions to be taken that will improve conditions for low- and moderate-income persons residing in or expected to reside in the community.

(i) Areas targeted for concentrated action as Neighborhood Strategy Areas pursuant to § 570.301(c) shall be identified. For each such area the applicant shall describe:

(A) The objectives, both long-term and short-term, to be achieved, quantified wherever possible;

(B) The physical improvement programs to be carried out with block grant funds, such as code enforcement, rehabilitation, acquisition, demolition, or public improvements;

(C) Related programs proposed such as Urban Homesteading and section 8 Substantial Rehabilitation Special Procedures;

(D) Public services to be carried out in support of the physical improvement programs;

(E) An implementation schedule showing the anticipated timing of activities and the coordination of block grant funded activities and other local actions;

(F) The anticipated resources, including block grant funds, other Federal, State, or local funds, and private investment;

(G) The role of any neighborhood organizations;

(H) How the housing assistance goals and general locations in the Housing Assistance Plan, particularly the rehabilitation goals, support the applicant's neighborhood revitalization strategy.

(ii) Other neighborhood improvement efforts shall be described. This shall include specific actions designed to prevent and eliminate slums and blight where such actions are not carried out in a concentrated manner; it shall also include actions to provide improved community facilities and public improvements where they will principally benefit persons of low- and moderate-income. The strategy shall describe the activities to be carried out, the objectives to be accomplished, the anticipated timing, and the block grant and other funds to be provided.

(2) *Housing.* The applicant shall describe a communitywide strategy to improve housing conditions and to meet the housing assistance needs that have been identified. The strategy shall consist of a Housing Assistance Plan as described in § 570.306 as well as the following:

(i) A strategy for any programs to be carried out on a communitywide basis, such as provision of rehabilitation financing for low- and moderate-income persons or elimination of detrimental conditions; the strategy shall include the goals to be accomplished, a timetable of actions to be taken, and the amount of block grant and other funds to be provided;

(ii) Any regulatory and other actions proposed to foster housing maintenance and improvements. This may include: actions to eliminate redlining with respect to property insurance and the availability of credit for the purchase and rehabilitation of housing; and actions such as provision of tax incentives to promote investment in restoration of deteriorated or abandoned housing;

(iii) The applicant's strategy for increasing the choice of housing opportunities for low- and moderate-income persons, including members of minority groups and female-headed households, including efforts to achieve spatial deconcentration of such housing opportunities and actions to affirmatively further fair housing;

(iv) Any community facilities and improvements to be provided in furtherance of the applicant's housing strategy and to assure accomplishment of goals for assisted housing; and

(v) Where the community development program will result in direct or indirect displacement or other hardships to low- and moderate-income persons, the strategy shall describe the actions the applicant will take to assist such persons to remain in their present neighborhoods when they prefer and to mitigate any adverse effects resulting from block grant funded activities.

(3) *Economic development.* A description of the applicant's strategy for economic development is required from applicants that propose block grant funded economic development activities: The strategy shall include:

(i) A description of the major needs for economic development in the locality; this shall include discussion of the needs of identifiable population groups experiencing significant unemployment or underemployment, as well as general economic needs of the applicant experiencing a stagnating or declining tax base or loss of population;

(ii) A description of the activities proposed to further economic development and to attract private investment, including the coordination of block grant funded activities with other local actions and a timetable for provision of other Federal and State resources;

(iii) The number and types of permanent jobs expected to result from economic development projects, particularly jobs for unemployed or underemployed population groups and low- and moderate-income persons and the types and extent of any job training which will be provided to such residents; and

(iv) Evidence of commitments or interest by developers of new or expanded employment facilities.

(c) *Three-year project summary.* This shall consist of a tabular summary of the projects proposed to be carried out with block grant funds during the next three years to implement the applicant's comprehensive strategy, grouped by location, the anticipated timing, the goals to be accomplished, the population benefitting, and the estimated block grant and other funds to be provided, and indicating whether the project or activity principally benefits low- and moderate-income persons, aids in the prevention or elimination of slums and blight, or meets other community development needs having a particular urgency. The requirements of this paragraph shall not apply to:

(1) Hold harmless applicants whose entitlement ends and who do not apply for small cities comprehensive grants involving multiyear funding commitments pursuant to § 570.423(b) during the same year; and (2) any applicant for a small cities grant who does not request a multiyear funding commitment.

(d) *Maps.* The plan shall include maps showing the following information. The maps shall be on a census tract or enumeration district base, but the information need not be displayed according to the tract or enumeration district boundaries.

(1) The extent and location of low- and moderate-income persons;

(2) The extent and location of minority group residents;

(3) The extent and location of substandard and deteriorated housing;

(4) The locations of block grant funded projects included in the three-year project summary.

(5) Neighborhood Strategy Areas, if any. Maps shall be clearly legible, and all required maps submitted shall be of the same scale and cover the same areas. The applicant may submit supplementary maps of a different scale, at its discretion, where this will increase clarity. More than one type of information may be combined on one map if the information is clearly legible when combined.

(e) *Interim provisions.* Applications submitted prior to August 1, 1978, shall conform to the Community Development Plan Summary requirements published in the Federal Register (41 FR 4134) on January 28, 1976. However, applicants proposing to undertake activities whose eligiblity under the rules in Subpart C depends on the activities being consistent with a strategy for community development shall supplement the plan summary with a brief narrative statement containing the information required by § 570.200(h).

§ 570.305 Annual Community Development Program.

Each annual application shall contain a Community Development Program describing the projects and activities to be carried out with program year funds. Such projects and activities shall be consistent with the previously submitted three-year Community Development and Housing Plan, or an amended plan shall be submitted with the application as required by § 570.312(a). The Community Development Program shall consist of the following:

(a) *Project summary.* The following information shall be provided for each project and activity to be commenced during the program year:

(1) The name of the project or activity;

(2) A description of the project which states its purpose, the sequence of activities, duration of the project, and the entity responsible for carrying it out;

(3) The location and service area, including the census tract(s) or enumeration district(s) of the project;

(4) Whether the project or activity principally benefits low- and moderate-income persons, aids in the prevention or elimination of slums and blight, or meets other community needs having a particular urgency;

(5) A description of the activities which comprise each project, and the estimated costs and timing;

(6) The amounts and sources of other public funds and private investments anticipated to be provided;

(7) The environmental review status;

(8) Anticipated accomplishments.

(b) *Cost summary.* This will consist of a tabular summary, on a form to be prescribed, of proposed block grant expenditures in specific categories and the anticipated resources available.

(c) *A map or maps* of the applicant's jurisdiction showing the locations of proposed activities, on a base map census tracts or enumeration districts, and any designated neighborhood strategy areas. The maps shall be consistent with the requirements of scale and legibility in § 570.304(d).

§ 570.306 Housing Assistance Plan.

(a) *General Provisions.* This section contains policies, procedures, requirements and standards governing the Housing Assistance Plan (HAP).

(1) *Purpose.* The HAP is required as part of the application for assistance under this Part. The HAP serves as a measure of the conditions of the applicant's housing stock and the needs of lower (low and moderate) income persons for housing assistance. Further, the HAP serves to establish goals for assistance best suited to meet the needs of lower income persons and to further the revitalization of the community, including the restoration and rehabilitation of stable neighborhoods to the maximum extent possible, and the reclamation of the housing stock where feasible through the use of a broad range of techniques for housing restoration by local government, the private sector, or community organizations, including provisions of a reasonable opportunity for tenants displaced as a result of such activities to relocate in their immediate neighborhood. The HAP must propose general locations for assisted housing which promote greater choice of housing opportunities and avoid undue concentrations of assisted persons in areas containing a high proportion of lower-income persons, and which further fair housing and assure the availability of public facilities and services adequate to support housing facilities. In addition, all communities are expected to share in providing expanded housing opportunities for lower-income persons and to participate in areawide solutions of housing problems through promotion of spatial deconcentration of housing opportunities for lower-income persons.

(2) *Use.* The HAP is not only a requirement for assistance under this Part, but it serves as the means for HUD to distribute assisted housing resources to applicants. The HAP offers applicants a means to implement strategies to conserve and expand its housing stock in order to provide a decent home in a suitable living environment for all persons, but principally those of lower income. The HAP should facilitate the reduction of the isolation of income groups within communities and geographic areas, affirmatively further fair housing and promote the diversity and vitality of neighborhoods.

(3) *Responsibility of applicant.* Applicants are responsible for implementation of the housing assistance plan in an expeditious manner. This includes the timely achievement of all goals for assisted housing and particularly those which address the needs of families and large families requiring rental assistance. Applicants are expected to take all actions within their control to facilitate the implementation of an approved housing assistance plan including those actions specified in §§ 570.306(b)(3)(iii) and (b)(4)(ii), as well as the development of Section 8 housing when notifications of funding availability are not responded to by private developers.

(4) *Period covered by HAP.* The HAP shall be submitted and be effective for time periods as follows:

(i) Housing Assistance Plans submitted to HUD after the publication date of these regulations but prior to August 1, 1978 shall be designed to complete the requirement that housing assistance provided pursuant to the three-year goals set forth in the HAP approved during 1976 shall have been provided in the same proportion as those goals by household type (elderly and handicapped, families and non-elderly individuals, and large families). Accordingly, applicants shall submit an Annual Housing Action Program pursuant to § 570.306(b)(4) which will propose goals for housing assistance to be provided in Federal Fiscal Year 1979 which, when combined with all housing assistance provided in FFY 1977 and 1978 will result in the provision of housing assistance in the same proportion as the three year goals, by household type, set forth in the HAP submitted in 1976. For the purposes of 24 CFR 891, the three-year goal for HAP's submitted prior to August 1, 1978 is the three-year goal submitted in the 1976 HAP including any amendments thereto. For example, an applicant which has provided housing assistance primarily for elderly households during FFY 1977 and 1978 is expected to establish goals this year in the annual housing action program for families and large families so that assistance provided during FFY 1977, 1978 and 1979 will be in the same proportion, by household type, as the 1976 three-year goal. In addition, the applicant shall identify general locations for new construction and substantial rehabilitation units or projects. For HAP's submitted prior to August 1, 1978, general locations shall be applicable to the housing assistance goals as described above in this paragraph; however, the requirements for identifying such locations are set forth in § 570.306(b)(3)(ii). Unless there have been substantial changes in the housing conditions and housing assistance needs, an applicant is required to submit only an annual goal and the general locations for proposed new construction and substantial rehabilitation.

(ii) Housing Assistance Plans submitted after August 1, 1978 shall be submitted once every three years as described in § 570.306(b) and shall cover a three year period. However, each annual application shall include an Annual housing Action program. Although some revision and updating may be necessary during this period because of the availability of new data sources or significant changes in local conditions or needs, the HAP shall be in effect for three program years. A new HAP shall be submitted every third program year thereafter.

(iii) A Hold Harmless Entitlement applicant submitting a HAP after August 1, 1978, but not proposing to apply for a grant under Subpart F of these regulations during its phase out year, is subject to this section except that the establishment of a three-year numerical goal as described in § 570.306(b)(3)(i) is not applicable.

(5) *Relationship to previously approved HAP's.* (Effective August 1, 1978.) Applicants are not relieved of their responsibilities to continue to address goals established to meet the needs for assisted housing identified in prior program years. Accordingly, applicants who had approved component goals designed to address the needs of a particular tenure type (owner or renter), household type, (elderly and handicapped, family and non-elderly individuals, or large family), or housing type (existing, substantial rehabilitation, or new construction), or any combination of the above, which have not been substantially met, shall

include goals to meet such needs prior to providing further assistance for tenure, household, or housing types for which established goals have been substantially met. For example, an applicant which has identified a substantial need, and established goals for families and large families, but nonetheless has met only the goals or a substantial portion of the goals, established for elderly households shall meet the goals established for families and large families before providing additional assistance to elderly households.

(b) *Housing Assistance Plan Content.* The application shall contain a housing assistance plan which includes:

(1) *Housing Conditions.* The applicant shall describe the condition of the existing housing stock in the community by providing a statistical profile by tenure type (owner and renter), which describes housing conditions by number of units in standard and in substandard condition. If a housing rehabilitation program is proposed as part of the applicant's strategy statement as set forth in § 570.304(b), the number of units which are suitable for rehabilitation shall be stated. Estimates shall be made of vacancy rates for non-seasonal available units in standard condition, using the best estimate at the time the application is prepared, but in no case including units to be vacant at a future date.

(2) *Housing Assistance Needs.* The applicant shall describe the housing assistance needs of lower income persons.

The data for such description generally shall be derived from Federal census data; except that the applicant may also utilize other more recent data generally available from public or private sources, including areawide, regional, or State planning agencies; provided that the deviations from estimates derived from the Federal census data or from areawide, regional, or State planning agency assessments are explained. All applicants which are within the jurisdiction of an areawide planning organization having an approved Areawide Housing Opportunity Plan (AHOP) must use the data presented in the Plan. Applicants which are within the jurisdiction of an areawide planning organization which does not have an approved AHOP should use the same census, areawide, or State data unless more recent, generally available data exist for an individual applicant.

(i) The applicant shall provide estimates of housing assistance needs of lower-income persons currently residing in the community, by tenure type and by household type (lower-income households which are elderly and handicapped, families and non-elderly individuals, and large families), for all households, including those households to be displaced by public action and, where information is available, by private action during the three year program. Such estimates shall also be provided for any identifiable segment of the total group of lower-income households in the community.

(ii) the applicant shall assess the housing assistance needs of lower-income households, by household type, who could reasonably be expected to reside in the community, based on existing or projected employment. The applicant shall also assess the housing assistance needs of elderly households who could reasonably be expected to reside in the community because they are seeking housing in the community or use services, such as health facilities, in the community. The following rules shall be followed in developing estimates of needs for households who could be expected to reside.

(A) If the applicant is a participant in a State or Areawide Housing Opportunity Plan approved by the Secretary, the expected to reside estimates in the applicant's Housing Assistance Plan and those in the approved Housing Opportunity Plan shall be consistent.

(B) For all other applicants, the expected to reside estimates should be based on the following:

(*1*) *Expected to reside as a result of planned employment:* Estimate the total number of lower-income families with workers expected to be employed in the community in the next three years as a result of known commercial, industrial, governmental, or service employment to be generated by new or expanded development. Such estimates shall be derived from generally available data. Sources of information may include approved development plans, building permits, and awards of significant contracts. Of this total, estimate the number of these jobs which will likely be filled by persons not currently residing within the applicant's jurisdiction, but who would move into the jurisdiction as a result of the planned employment.

(*2*) *Expected to reside who are currently working, but not residing in the applicant's jurisdiction:* An applicant community should utilize the following methodology to derive the minimum estimate of the number of lower-income families with workers employed in the community, but living elsewhere, who can be expected to reside in the applicant community: First, estimate the number of lower-income families with workers employed in the applicant community, but living elsewhere. Second, estimate the number of lower-income families with workers employed in the community who also live in the community. The sum of these two figures is the estimated total number of lower-income families with workers employed in the applicant community. Third, for applicants in a metropolitan area, determine an overall metropolitan area percentage of lower-income families with workers who live in the same community in which they work, based on those communities in the metropolitan area for which data are available. This percentage is calculated by dividing the total number of lower-income families with workers who work and live in all such communities, by the total number of lower-income families with workers employed in all such communities. Nonmetropolitan applicants located in a county which is contiguous to a metropolitan area should use the metropolitan area percentage described above. Other nonmetropolitan applicants should use the statewide nonmetropolitan area average. (These figures will be made available by HUD.) Fourth, multiply the overall applicable percentage by the following percentage: the number of lower-income families with workers employed in the applicant community, but living elsewhere, divided by the total number of lower-income families, both resident and non-resident, with workers employed in the applicant community. Fifth, multiply the resulting percentage by the number of lower-income families with workers employed in the applicant community, but living elsewhere, to produce the estimate of the number of such families which may be expected to reside in the applicant community.

Example. As an example, an applicant who estimates that it has 1,000 lower-income families with workers employed in the applicant community but living elsewhere, estimates that it has 2,200 lower-income families, both resident and non-resident, with workers employed in the community, and estimates the overall metropolitan percentage to be forty percent, would compute the number of families expected to reside based on workers already employed as follows:

40%×(1,000 divided by 2,200)×1,000=182

Note.—For most applicants who had a 1970 population in excess of 25,000, the HUD Area Office has data for this computation. For all other communities, estimates should be developed based on the most recent applicable data available from such other

sources as State Employment Services, local planning departments, major employers in the area, or local surveys. (Documentation of any such data and the basis for estimate must be submitted to HUD.)

(3) *Expected to reside elderly households:* Where the community has assisted housing already available for the elderly, the estimate for the elderly expected to reside may be obtained from the number of qualified non-resident elderly households on the most current waiting lists for such assisted housing. Where there is either no elderly assisted housing in the community or if there is insufficient data on non-resident elderly households on waiting lists for assisted housing that is available, the estimate for this paragraph may be based on the following: Of the total number of non-resident, elderly, lower-income households known to currently use health facilities within the applicant's jurisdiction, the number which the applicant believes would move into the community if adequate housing were available at a reasonable cost.

(C)(1) Applicants shall not be required to include an estimated number of lower-income households who could be expected to reside in the community to the extent that such estimated number, together with lower-income households already residing in the community, would result in a ratio of lower-income households to total households in the community which is greater than the applicable area percentage of lower-income households to total households. In such case, applicants may reduce their estimated number of households expected to reside in the community, proportionately by household type, to the point where the resultant ratio of lower-income households to total households in the community is equal to, but not less than, the applicable area percentage.

(2) Applicants in a metropolitan area or in counties contiguous to a metropolitan area shall use data for that metropolitan area. Applicants in a county which is neither within nor contiguous to a metropolitan area shall use data for the statewide nonmetropolitan area. (These figures will be supplied by HUD.)

(D) Applicants who wish to use an alternative methodology for developing estimates of the current employment portion of the expected to reside component (§ 570.306(b)(2)(ii)(B)(2)) should contact the HUD Area Office in advance of preparing such estimates to discuss such methodologies and secure HUD approval of their usage for this purpose. Alternative methodologies must address the following statutory requirements: (1) Estimate the number of lower-income households with workers currently employed but not residing in the jurisdiction; (2) estimate the number of these who could reasonably be expected to reside; and (3) adjust estimates to avoid impactions of lower-income households.

(E) The requirements of paragraph (b)(2)(ii) of this section are not intended to preempt a State or judicial requirement that a community undertake a greater share of the responsibility in meeting the housing needs of lower-income families.

(iii) *Use of alternative methodologies for determining estimates of lower-income households expected to reside developed by State or areawide planning organizations;* (Effective August 1, 1978.) HUD may, at its option, determine that a State or an areawide planning organization has developed an alternative methodology for one or both of these elements which evidences compliance with the objectives of this Part and is a more precise means to measure such needs within the specific geographic area of its jurisdiction. The basis for such determinations are set forth in 24 CFR Part 891, Subpart E. Having so determined, HUD may, at its option, authorize the use of such methodology, in lieu of the methodology set forth in § 570.306(b)(2)(ii), by all applicants within the jurisdiction of such areawide planning organizations.

(A) HUD shall inform all affected applicants, by publication of a Notice in the Federal Register, of those State or areawide planning organizations where an alternative methodology has been approved by HUD and whether such methodology will be used in lieu of the methodology set forth in § 570.306(b)(2)(ii).

(B) In determining whether an alternative methodology developed by a State or an areawide planning organization is to be used in lieu of a methodology set forth in this Part, HUD will consider whether such alternate methodology provides the estimates required to meet the standards of acceptability set forth in paragraphs (b) and (c) of this section and is statistically and mathematically sound.

(C) HUD shall monitor the estimates developed through an approved State or areawide planning organization alternative methodology. Although areawide organizations are encouraged to develop methodologies which are innovative in scope and suited to the circumstances of the jurisdiction of the areawide planning organizations, HUD may withdraw approval of or require modification of an alternative methodology which is determined to produce estimates which are plainly inconsistent with the objectives of this Part.

(iv) In addition, the applicant shall provide a narrative statement which summarizes any special housing conditions in the community and special housing needs found to exist in the total group of lower-income households in the community. Such summary shall include but need not be limited to, discussion of:

(A) Female heads of households;

(B) Individual minority groups;

(C) Handicapped persons;

(D) Special housing conditions such as concentrations of mobile homes; and

(E) Special housing needs related to a community's economic base such as military housing, migrant workers, and retirement centers.

(3) *Three Year Housing Program.* (Effective August 1, 1978 except as provided in § 570.306(a)(4)(iii).) The applicant shall describe a three year housing program for implementation of its community development and housing strategy:

(i) *Goals.* The program shall specify, by tenure type, household type, and housing type, a realistic three year goal for the number of dwelling units or persons to be assisted. The statement of the three year goal for assisted dwelling units also shall take into consideration housing conditions with respect to the availability of existing units of standard quality and units suitable for rehabilitation and shall meet the standards set forth in § 570.306(c)(1).

(ii) *General Locations.* The program shall identify the general locations of proposed new construction housing units or projects, and substantial rehabilitation units or projects, for the programs subject to 24 CFR 891 and, to the extent feasible, other assisted housing programs identified in the goals for lower-income persons on maps as called for in § 570.304(d). The locations shall be identified by census tract (or enumeration districts or geographic quadrants in those jurisdictions where a census tract includes a substantial area, such as an entire community). General locations for housing projects shall contain at least one site which conforms to the site and neighborhood standards established for the appropriate HUD assisted housing program. Where an applicant proposes assisted housing resources in areas of concentration of minorities or federally assisted housing, general locations outside of such areas also shall be proposed in order to ensure the provision of assisted housing in a balanced manner.

(iii) *Actions to be taken.* The program shall describe those actions which will be necessary for the applicant to take to

address any special housing needs and conditions cited in § 570.306(b)(2)(iv), as well as any actions determined necessary, on the basis of findings of past performance reviews pursuant to Subpart O of these regulations, to achieve the housing assistance goals, and shall set forth a timetable for such actions. In addition, applicants anticipating difficulty in achieving goals in newly prepared HAPs shall set forth actions required to achieve those goals. The actions may include, but are not limited to: (A) acquisition of sites and provision of site improvements for the development of assisted housing; (B) adoption or modification of local ordinances and land use measures to facilitate the development of assisted housing including institution of local referendum actions, where necessary; (C) issuance of appropriate zoning changes, building permits, utility connections and similar administrative requirements; (D) formation of a public housing agency or execution of an agreement with a public housing agency having powers to provide assisted housing within the jurisdiction of the applicant; (E) removal of local residency preferences for assisted housing; (F) promotional and assistance activities to encourage developers to initiate assisted housing or to allocate a portion of their planned unsubsidized developments for assisted housing, and to encourage owners to make units available for Section 8 existing housing programs; and (G) measures to reduce the cost of housing development, such as tax abatement, waiver of fees and other administrative costs.

(4) *Annual Housing Action Program.* For each program year as part of the annual submission, the applicant shall describe a program of actions to carry out each program year increment in order to achieve the three year housing program. The annual action program shall:

(i) Specify, by tenure type, household type, and housing type, a realistic annual goal for the number of dwelling units or persons to be assisted, including the relative proportion of new, rehabilitated, and existing units best suited to the needs of lower-income persons indentified by the applicant; and

(ii) Set forth specific actions, if any, to be undertaken during the program year to assure the implementation of the three-year housing program including those actions described in paragraph (b)(3)(iii) of this section.

(c) *Standards and criteria for approval of HAPs.* The following standards and criteria shall apply to the reviews and determinations of acceptability of housing assistance plans and shall be effective as of the date of publication of these regulations except as otherwise noted:

(1) *Goals for assisted housing*—(i) *Proportionality.* The three year housing assistance goals shall address the needs of the three household types (elderly and handicapped, families and non-elderly individuals, and large families) within each tenure type (owner and renter) in the same proportion as the total lower-income housing needs identified in the HAP, of those household types, by tenure type. Certain adjustments to this requirement are permitted as follows:

(A) HUD may grant an exception from this requirement when an applicant documents special needs arising from displacement of significant numbers of households of a particular size; natural disasters; meeting the housing requirements of section 105 (f) and (h) of the U.S. Housing Act of 1949, as amended; accommodating proposals for projects of feasible size which could not otherwise be developed; or implementing the goals of a HUD-approved AHOP; or

(B) (Effective August 1, 1978.) Applicants required to emphasize a particular household type or types pursuant to § 570.306(a)(5) shall make no downward adjustment in the percentage represented by such household type, but the percentage represented by other household types may be adjusted downward as necessary. For example, an applicant which has disproportionately met the needs of elderly households in prior years would not be permitted to make any downward adjustment to the percentages represented by family and large family households, but may be required to reduce the percentage represented by elderly households to zero.

(ii) *Tenure types.* The types and quantities of housing assistance proposed by tenure type (owner and renter), shall be appropriate to meeting indentified needs of both renters and owners. In this regard, unless a community can demonstrate that it can meet the needs of households expected to reside through assistance programs for homeowners, such needs shall be assumed to represent needs for rental units.

(iii) (Effective August 1, 1978.) *Minimal goals.* The goals must directly address known needs for housing assistance and contain a sufficient number of units to permit practical and economically feasible housing development. For applicants which are within the jurisidiction of a HUD-approved AHOP, HUD will accept the goals included therein. All other applicants shall propose a three-year housing assistance goal which represents assistance for at least 15 percent of the total need unless the applicant can demonstrate to the satisfaction of HUD that such a goal would be infeasible. The standard that housing assistance plans with only minimal housing assistance goals are plainly inappropriate recognizes that communities with very substantial housing assistance needs have a responsibility to propose substantial housing assistance goals and that goals should reflect the desirability of meeting a significant percentage of identified needs at an early date.

(iv) *Vacancy rates.* In establishing goals for assisted housing, the applicant shall consider the vacancy rate established pursuant to § 570.306(b)(1) and shall estimate the number of such vacant units which would be adequate to meet the needs of lower-income households.

(A) In those cases where there exists a less than adequate vacancy rate (as determined by HUD) in housing units resulting in an insufficient number of vacant, standard, available units of appropriate size, cost, and type to meet the identified housing assistance needs for rental units for lower-income households, goals for housing assistance shall emphasize a program of new construction of rental units for households of lower-income. For example, an applicant with a significant number of lower-income households expected to reside in the community and a less than adequate rental vacancy rate, would be expected to emphasize a program of new construction of rental units to address this need. However, this does not preclude the use of a vehicle such as the Section 8 Existing Housing program to address the needs of households currently residing in the community, provided that the existing program is used in concert, during the three year program, with new construction and/or substantial rehabilitation so that the housing market will not be further imbalanced.

(B) In those cases where there exists an adequate vacancy rate as determined by HUD in standard housing units creating a sufficient number of vacant, available units of appropriate size, cost, and type to meet the identified housing assistance needs of lower-income persons for rental units, goals for housing assistance shall emphasize a program of existing housing for persons of lower-income.

(v) *Urban renewal completion.* Applicants engaged in the completion of

Urban Renewal projects and having to meet requirements of Sections 105 (f) and (h) of the U.S. Housing Act of 1949 as amended, or applicants obligated to meet such requirements under close-out agreements pursuant to § 570.804 for projects which have been settled financially, shall establish goals large enough to meet such obligations.

(vi) *Adequacy of rehabilitation.* In order to be included as goals in a Housing Assistance Plan any units proposed to be rehabilitated for either owners or renters must be units which are determined by the applicant to be substandard, and upon completion of rehabilitation, will meet, at a minimum, Section 8 Existing Housing Quality Standards pursuant to 24 CFR § 882.109, and be occupied by lower-income households. Any units proposed for rehabilitation using Federal assistance, shall upon completion meet the standards of the applicable Federal program where they exceed Section 8 Existing Housing Quality Standards.

(vii) (Effective August 1, 1978.) *Relationship to previously approved goals.* Where an applicant does not provide goals to meet unfulfilled needs in accordance with § 570.306(a)(5), such housing assistance goals will be determined to be plainly inappropriate.

(viii) *Local actions to implement goals.* An applicant shall make all efforts to meet the goals in its three year housing program. When actions such as acquisition of land, formation of a public housing agency or rezoning are necessary for the development of housing, such actions should be accomplished by the second year of the three year housing program. HUD shall consider an applicant's past performance in providing assisted housing pursuant to the performance standards for implementing housing assistance plans set forth in § 570.909 in determining whether the housing assistance goals are appropriate. In those instances where an applicant's performance in the past indicates that local actions are required to facilitate delivery of housing resources, but the applicant does not provide that such actions will be undertaken on a timely basis, the goals will be determined to be plainly inappropriate.

(ix) *Consistency with areawide housing opportunity plans.* A housing assistance plan of a community which is within the jurisdiction of an areawide planning organization, shall be consistent with the approved Areawide Housing Opportunity Plan prepared by the areawide planning organization pursuant to 24 CFR Part 891.

(2) *General locations.* The applicant shall demonstrate by its selection of general locations that its HAP will promote greater spatial deconcentration of housing opportunities for lower-income persons, particularly minorities.

§ 570.307 Certifications.

The applicant shall submit certifications each year providing assurances that:

(a) It possesses legal authority to apply for the grant, and to execute the proposed program.

(b) Its governing body has duly adopted or passed as an official act a resolution, motion or similar action authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

(c) It has complied with all the requirements of OMB Circular No. A-95 as modified by this Part and that either:

(1) Any comments and recommendations made by or through clearinghouses are attached and have been considered prior to submission of the application; or

(2) The required procedures have been followed and no comments or recommendations have been received.

(d) Prior to submission of its application, the applicant has:

(1) Prepared a written citizen participation plan, which:

(i) Provides an opportunity for citizens to participate in the development of the application, encourages the submission of views and proposals, particularly by residents of blighted neighborhoods and citizens of low- and moderate-income, provides for timely responses to the proposals submitted, and schedules hearing at times and locations which permit broad participation;

(ii) Provides citizens with adequate information concerning the amount of funds available for proposed community development and housing activities, the range of activities that may be undertaken, and other important program requirements;

(iii) Provides for public hearings to obtain the views of citizens on community development and housing needs; and

(iv) Provides citizens with an opportunity to submit comments concerning the community development performance of the applicant:

(2) Followed this plan in a manner to achieve full participation of citizens in development of the application. The applicant shall also follow this plan to achieve full citizen participation in all other stages of the program.

Note.—The above certification on citizen participation is effective August 1, 1978. For applications submitted to HUD prior to August 1, 1978, the certification requirement of § 570.303(e)(4) published in the Federal Register (41 FR 4135) on January 28, 1976, shall apply.

(e) Its chief executive officer or other officer of applicant approved by HUD:

(1) Consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 insofar as the provisions of such Act apply to this Part;

(2) Is authorized and consents on behalf of the applicant and himself to accept the jurisdiction of the Federal courts for the purpose of enforcement of his responsibilities as such an official.

(f) The Community Development Program has been developed so as to give maximum feasible priority to activities which will benefit low- and moderate-income families or aid in the prevention or elimination of slums or blight.

[The requirement for this certification will not preclude the Secretary from approving an application where the applicant certifies, and the Secretary determines, that all or part of the Community Development Program activities are designed to meet other community development needs having a particular urgency as specifically explained in the application in accordance with § 570.302(f).]

(g) It will comply with the regulations, policies, guidelines and requirements of OMB Circular No. A-102, Revised, and Federal Management Circular 74-4 as they relate to the application, acceptance, and use of Federal funds under this Part.

(h) It will administer and enforce the labor standards requirements set forth in § 570.605 and HUD regulations issued to implement such requirements.

(i) It will comply with all requirements imposed by HUD concerning special requirements of law, program requirements, and other administrative requirements, approved in accordance with OMB Circular No. A-102 Revised.

(j) It will comply with the provisions of Executive Order 11296, relating to evaluation of flood hazards and Executive Order 11288 relating to the prevention, control, and abatement of water pollution.

(k) It will require every building or facility (other than a privately owned residential structure) designed, constructed, or altered with funds provided under this Part to comply with the "American Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the

Physically Handicapped," Number A-117.1-R 1971, subject to the exceptions contained in 41 CFR 101-19.604. The applicant will be responsible for conducting inspections to insure compliance with these specifications by the contractor.

(*l*) It will comply with:

(1) Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352), and the regulations issued pursuant thereto (24 CFR Part 1), which provides that no person in the United States shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives Federal financial assistance and will immediately take any measures necessary to effectuate this assurance. If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the applicant, this assurance shall obligate the applicant, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits.

(2) Title VIII of the Civil Rights Act of 1968 (Pub. L. 90-284), as amended, administering all programs and activities relating to housing and community development in a manner to affirmatively further fair housing; and will take action to affirmatively further fair housing in the sale or rental of housing, the financing of housing, and the provision of brokerage services.

(3) Section 109 of the Housing and Community Development Act of 1974, and the regulations issued pursuant thereto (24 CFR Part 570.601), which provides that no person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds provided under this Part.

(4) Executive Order 11063 on equal opportunity in housing and nondiscrimination in the sale or rental of housing built with Federal assistance.

(5) Executive Order 11246, and the regulations issued pursuant thereto (24 CFR Part 130 and 41 CFR Chapter 60), and Section 4(b) of the Grant Agreement, which provides that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of Federal or federally assisted construction contracts. Contractors and subcontractors on Federal and federally assisted construction contracts shall take affirmative action to insure fair treatment in employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination, rates of pay or other forms of compensation and selection for training and apprenticeship.

(m) It will comply with Section 3 of the Housing and Urban Development Act of 1968, as amended, requiring that to the greatest extent feasible opportunities for training and employment be given to lower-income residents of the project area and contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part by, persons residing in the area of the project.

(n) It will:

(1) To the greatest extent practicable under State law, comply with Sections 301 and 302 of Title III (Uniform Real Property Acquisition Policy) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and will comply with Sections 303 and 304 of Title III, and HUD implementing instructions at 24 CFR Part 42; and

(2) Inform affected persons of their rights and of the acquisition policies and procedures set forth in the regulations at 24 CFR Part 42 and § 570.602(b).

(o) It will:

(1) Comply with Title II (Uniform Relocation Assistance) of the Uniform Relocation Assistance and Real Property Acquistion Policies Act of 1970 and HUD implementing regulations at 24 CFR Part 42 and § 570.602(a);

(2) Provide relocation payments and offer relocation assistance as described in Section 205 of the Uniform Relocation Assistance Act to all persons displaced as a result of acquisition of real property for an activity assisted under the Community Development Block Grant Program. Such payments and assistance shall be provided in a fair and consistent and equitable manner that insures that the relocation process does not result in different or separate treatment of such persons on account of race, color, religion, national origin, sex, or source of income;

(3) Assure that, within a reasonable period of time prior to displacement, comparable decent, safe and sanitary replacement dwellings will be available to all displaced families and individuals and that the range of choices available to such persons will not vary on account of their race, color, religion, national origin, sex, or source of income; and

(4) Inform affected persons of the relocation assistance, policies and procedures set forth in the regulations at 24 CFR Part 42 and § 570.602(a).

(p) It will establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

(q) It will comply with the provisions of the Hatch Act which limits the political activity of employees.

(r) It will give HUD and the Comptroller General through any authorized representatives access to and the right to examine all records, books, papers, or documents related to the grant.

(s) It will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the program are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify HUD of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

(t) It will comply with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973. Pub. L. 93-234, 87 Stat. 975, approved December 31, 1973. Section 103(a) required, on and after March 2, 1974, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any Federal financial assistance for construction or acquisition purposes for use in any area, that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards. The phrase "Federal financial assistance" includes any form of loan, grant, guaranty, insurance payment, rebate, subsidy, disaster assistance loan or grant, or any other form of direct or indirect Federal assistance.

(u) It will, in connection with its performance of environmental assessments under the National Environment Policy Act of 1969, comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470), Executive Order 11593, and the Preservation of Archeological and Historical Data Act of 1966 (16 U.S.C. 469a-1, et. seq.) by (a) consulting with the State Historic Preservation Officer to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to

adverse effects (See 36 CFR Part 800.8) by the proposed activity, and (b) complying with all requirements established by HUD to avoid or mitigate adverse effects upon such properties.

§ 570.308 Timing of application submissions.

(a) *Submission of applications.* (1) In order to receive an entitlement grant under this Part, each applicant is required to submit an application at least 75 days, but no more than 120 days, prior to the end of its program year.

(2) An applicant which did not receive an entitlement grant in the previous fiscal year must apply no later than April 30.

(3) Notwithstanding other provisions of this section, no application will be accepted between July 15 and October 1, in any year.

(b) *Program year.* A program year shall run for a twelve month period. An applicant may, however, either shorten or lengthen its program year by as much as three calendar months, provided:

(1) It is for the purpose of conforming the program year to State or local or fiscal budgeting requirements; and

(2) HUD receives written notice of a shortened program year at least six months prior to the date the program year would have ended if it had not been shortened, or in the case of a lengthened program year, at least three months prior to the date the program year would have ended if it had not been lengthened. An applicant may not however, receive more than one entitlement grant from a single Federal fiscal year appropriation.

§ 570.309 [Reserved]

§ 570.310 A-95 clearinghouse review and comment.

Applicants must comply with the procedures set forth in Part I of OMB Circular No. A-95 except as modified below. In addition to rules governing applications, these procedures also require that program amendments submitted to HUD in accordance with § 570.312 shall be submitted to appropriate clearinghouses for a 30-day review and comment period.

(a) *Clearinghouse notification.* The A-95 requirement that clearinghouses be notified of an applicant's intent to apply for Federal assistance will be satisfied by HUD. Each fiscal year HUD will advise the appropriate State and areawide clearinghouses, with a copy to the applicant, of those communities entitled to receive grants under this Part. This notification will be provided at least 60 days prior to the date by which the applicant must submit the completed application to HUD. Upon receipt of its copy of the HUD notification to the clearinghouses, the applicant shall make arrangements with the clearinghouses regarding early transmittal of information describing the contents of the application. An applicant wishing to submit its application to HUD before February 1 of each year shall provide its own notice of intent to file with the appropriate clearinghouses in accordance with the usual A-95 procedures.

(b) *Clearinghouse review of application.* Unless the requirement is waived by a clearinghouse, the applicant shall provide the clearinghouses a period of 45 calendar days to review the completed application and transmit to the applicant any comments or recommendations. Clearinghouses will be of assistance to both the applicant and HUD if their reviews address the application approval criteria contained in § 570.311(c), as well as the "subject matter of comments and recommendations" in Part I, Attachment A of OMB Circular No. A-95, item 5. Emphasis should be placed on consistency among State, areawide and local plans and strategies. Compliance with environmental and civil rights laws should also be emphasized.

(c) *Applicant actions after clearinghouse review.* The applicant shall include with its application to HUD all clearinghouse comments, or when no comments are received, a statement that no comments or recommendations have been received from the clearinghouses. Where activities are determined by the areawide planning agency to be inconsistent with areawide plans, the applicant shall provide in the application to HUD an explanation of the reasons for the inconsistencies.

(d) *Application modification during clearinghouse or HUD review.* An applicant which revises its application while it is under review by a clearinghouse or by HUD shall inform the clearinghouses of the revisions and, if the application has been submitted to HUD, the number of days remaining within the 75-day review period described in § 570.311(d), for HUD to complete its review of the application.

§ 570.311 HUD review and approval of application.

(a) *Acceptance of application.* (1) Upon receipt of an application, the HUD Area Office will accept it for review, provided that:

(i) It has been received before the deadline for receipt of applications established in § 570.308(a);

(ii) All of the required component parts of the application are submitted and are properly completed;

(iii) The funds requested do not exceed the entitlement amount;

(iv) Any comments and recommendations received from clearinghouses, or a statement that no comments were received, are attached to the application; and

(v) Any additional assurances previously required as a result of monitoring, inadequate local performance, or audit findings, are included.

(2) If the application is accepted in accordance with the preceding paragraph, the date of acceptance of the application will be the date of receipt of the application in the HUD field office, and the applicant will be so notified in writing. If the application is not accepted for review, the applicant will be so notified in writing, and will be advised of the specific reasons for nonacceptance.

(b) *Scope of review.* (1) HUD will normally base its review upon the applicant's certifications, statements of facts and data, and other information. The Secretary reserves the right, however, to consider relevant evidence which challenges the certifications, and information submitted by the applicant, and to require additional information or assurances from the applicant as warranted by such evidence.

(2) The review will include, but need not be limited to, the following matters contained in the application and the grantee performance report, or derived from monitoring:

(i) Eligibility of proposed activities;

(ii) Program benefit to low- and moderate-income persons in accordance with the provisions of § 570.302;

(iii) Housing Assistance Plan conformity to the requirements of § 570.306;

(iv) Coordination of housing assistance and community development activities;

(v) Consistency of the needs stated in the plan with generally available data;

(vi) Appropriateness of proposed plans and programs to meeting the applicant's needs and objectives;

(vii) Compliance with previous contract conditions or other corrective and remedial actions required by HUD;

(viii) Experience regarding the effectiveness of the proposed activities in meeting the community development needs in the locality;

(ix) Applicant's capacity to carry out the program proposed as evidenced by its previous performance record; and

(x) Compliance with the requirements of this Part and other applicable laws and regulations.

(c) *Criteria for disapproval.* The Secretary will approve the application unless:

(1) On the basis of significant facts and data, generally available, and pertaining to community and housing needs and objectives, the Secretary determines that the applicant's description of such needs and objectives is plainly inconsistent with such facts and data. The data to be considered may be published data accessible to both the applicant and the Secretary, such as census data, or other data available to both the applicant and the Secretary, such as recent local, areawide or State comprehensive planning data.

(2) On the basis of the application, the Secretary determines that the activities to be undertaken are plainly inappropriate to meeting the needs and objectives identified by the applicant. The following are examples of situations in which activities may be determined to be "plainly inappropriate" to meeting the identified needs of the applicant:

(i) Experience over a period of time has demonstrated that the types of activities proposed have not been or are unlikely to be effective in alleviating the conditions they were designed to affect;

(ii) The applicant has identified areas containing significant concentrations of deteriorated housing and blight and does not propose to undertake a concentrated program of activities in any such areas;

(iii) The application does not meet the requirements of § 570.302(b)(2) with respect to the extent of funding proposed to principally benefit low- and moderate-income persons;

(iv) Proposed activities will have a detrimental effect on low- and moderate-income persons or members of minority groups and adequate measures to mitigate such effects are not proposed;

(v) Housing goals, locations, and strategy do not meet the criteria of § 570.306(c);

(vi) Actions essential to accomplish housing assistance goals, including supportive community development activities, are not proposed;

(vii) The proposed program does not reflect previous requirements of the Secretary for corrective or remedial actions, or activities proposed have previously been the basis of such requirements.

(3) The Secretary determines that the application does not comply with the requirements of this Part with specific regard to the primary purposes of principally benefitting persons of low- and moderate-income or aiding in the prevention or elimination of slums or blight, or other applicable law, or proposes activities which are ineligible under this Part.

(d) *Timing.* The Secretary will notify the applicant in writing within 75 days, but not less than 45 days, of the date of receipt of the application, that the application has been either approved or disapproved. In the event the Secretary has not mailed a notification to the applicant within 75 days from the date of acceptance of a completed application the application shall be deemed to be approved. If the application is disapproved the applicant shall be informed of the specific reasons for disapproval.

(e) *Reduction of grant.* The Secretary may approve an application for an amount less than the full entitlement for the following reasons:

(1) Activities are not eligible under Subpart C and funds are not reprogrammed to eligible activities within the 75-day review period;

(2) Activities do not meet other program requirements, such as benefits to low- and moderate-income persons described in § 570.302; or

(3) The recipient's performance does not meet the standards prescribed in § 570.909 and a reduction is appropriate pursuant to § 570.911.

(f) *Conditional approval.* The Secretary may make a conditional approval, in which case the full entitlement amount will be approved but the obligation and utilization of funds for affected activities will be restricted. Conditional approvals may be made where:

(1) Local environmental reviews under § 570.603 have not yet been completed;

(2) The requirements of § 570.607 regarding the provision of public services and flood or drainage facilities have not yet been satisfied; or

(3) There is substantial evidence that there has been, or there will be, a lack of substantial progress, nonconformance, noncompliance, or a lack of continuing capacity, as described in § 570.909. In such case, the reason for the conditional approval and the actions necessary to remove the condition shall be specified. Failure to satisfy the condition may result in a reduction in the annual grant amounts pursuant to § 570.910(b)(10).

§ 570.312 Amendments.

(a) *Community Development Program amendments.* A recipient shall submit an amended application to the HUD Area Office when:

(1) The recipient proposes to use more than 10 percent of the entitlement amount approved for the affected program year to undertake one or more new activities, other than local option activities pursuant to § 570.600 and emergency interim assistance activities pursuant to § 570.201(f)(2).

(2) The recipient proposes to alter the stated purpose, location, or class of beneficiaries of previously approved activities whose cost exceeds 10 percent of the entitlement amount approved for the affected program year.

(3) The combination of proposed new activities (other than local option activities and disaster activities) and changes in the purpose, location, or class of beneficiaries of previously approved activities involves more than 10 percent of the entitlement amount approved for the affected program year.

(4) The cumulative effect of a number of smaller changes involving new activities (other than local option activities and disaster activities) or changes in the purpose, location, or class of beneficiaries of approved activities exceeds 10 percent of the entitlement amount approved for the affected program year. In such instances, the recipient shall include in its request for amendment documentation describing the smaller changes previously made, as well as those being proposed. After the amendment is approved by HUD, the accrual of smaller changes begins again.

(5) The recipient proposes to reduce the amount of funds previously approved for completion of urban renewal projects.

When the recipient proposes to undertake activities which are not consistent with the three-year project summary included in its Community Development and Housing Plan, it shall submit an amended summary to HUD at the same time the proposed program amendment is submitted.

(b) *Housing Assistance Plan Amendments.* The recipient shall request prior HUD approval of Housing Assistance Plan amendments when any of the following conditions exist:

(1) The recipient proposes a reduction of any goal for housing assistance pursuant to § 570.306 (b)(3)(i) or § 570.306(b)(4)(i);

(2) The recipient proposes the inclusion of a goal by household type or housing type, not previously specified pursuant to § 570.306(b)(3)(i) or (b)(4)(i);

(3) The recipient proposes to exceed any three year goal by housing type or household type by the percentage cited in 24 CFR Part 891;

(4) The recipient proposes a revision of the general locations for assisted

housing established pursuant to § 570.306(b)(3)(ii); or

(5) There is a significant change in, or new data available regarding, the conditions of the housing stock or the housing needs of lower-income persons.

(c) *Scope of submission.* Only the following documentation must be submitted in support of a request for an amendment to an approved application:

(1) The elements of the approved application to be changed, such as the affected portions of the annual Community Development Program;

(2) The certifications described in § 570.307; and

(3) Documentation regarding A-95 clearinghouse reviews as described in § 570.310(c).

(d) *Response to requested amendments.* Within 30 days of the date of receipt of the proposed amendment, HUD will notify the recipient in writing that the amendment has been approved, disapproved, or conditionally approved pursuant to § 570.311(f), or, if a final decision on the amendment has not as yet been made, the date by which the recipient will be notified of the final decision. In the event HUD has not mailed a notification to the recipient within that 30-day period, the amendment shall be deemed approved. If the proposed amendment is disapproved, the recipient shall be informed of the specific reasons for disapproval.

(e) *Other changes.* Changes not covered in paragraphs (a) or (b) of this section including local option and disaster activities, do not require prior HUD approval, but shall be reported to HUD as part of the annual performance report described in § 570.906.

(f) *Citizen participation.* All amendments and other changes to the Annual Community Development Program, the Community Development and Housing Plan, and the Housing Assistance Plan require citizen participation. Formal public hearings, however, are required only when prior HUD approval of application amendments is required. Citizen participation requirements do not apply, however, to disaster activities.

(g) *A-95 review.* The recipient shall provide the State and areawide clearinghouses with 30 days for review and comment prior to submission of an application amendment for prior HUD approval.

(h) *Environment.* The recipient shall comply with applicable provisions of 24 CFR Part 58 respecting all amendments.

V. Section 570.507 is revised to read as follows:

§ 570.507 Procurement standards.

(a) The requirements of Attachment O of OMB Circular No. A-102 shall apply to the procurement of materials and services, funded in whole or in part with block grant funds, by:

(1) Direct grant recipients; and

(2) States, units of general local government, Indian Tribes, public agencies or instrumentalities, and eligible entities under § 570.204(a)(2), as subgrantees or subrecipients.

(b) Except as provided in paragraph (a) of this section, the requirements of Attachment O of OMB Circular No. A-102 do not apply. For example, the procurement of materials and services by private homeowners who receive block grant assistance, such as rehabilitation loan financing, is not subject to such requirements.

VI. Section 570.602(d) is revised to read as follows:

§ 570.602 Relocation and acquisition.

* * * * *

(d) The recipient may provide relocation payments and assistance for individuals, families, businesses, nonprofit organizations and farm operations displaced by an activity that is not subject to § 570.602(a). The recipient also may provide relocation payments and other assistance at levels above those established under the Uniform Act. All such relocation assistance not required by the Uniform Act must be determined by the recipient to be appropriate to its community development program. Unless such payments and assistance are made pursuant to State or local law, the recipient shall adopt a written policy available to the public setting forth the relocation payments and assistance it elects to provide and providing for equal payments and assistance within each class of displacees.

VII. Section 570.906 is revised to read as follows:

§ 570.906 Performance report.

(a) *Submission requirements.* (1) Each entitlement recipient shall submit a performance report to HUD no later than the end of the eighth month of each program year. The report shall cover a twelve month period ending with the sixth month of the program year.

(2) A copy of the performance report shall be submitted to the appropriate A-95 State and areawide clearinghouses for informational purposes at the time it is submitted to HUD.

(3) The recipient shall make the report available to citizens at no charge and shall make public notice of the availability of the report at the time it is submitted.

(4) The requirements for submission of performance reports by discretionary grant recipients are set forth in § 570.400(h).

(b) *Content of report.* The report shall include the following components in a format to be prescribed:

(1) *Progress on planned activities.* The report shall describe progress on each project and activity that was to be carried out under approved applications since the inception of the applicant's block grant program, excluding projects or activities reported as completed in a previous report. The report shall list each project and activity by the program year in which it was approved and provide cumulative information on the following:

(i) Amount of funds obligated and expended;

(ii) Environmental status including the date of HUD release of funds;

(iii) The administrative unit having lead responsibility;

(iv) The steps taken to carry out the project, such as advertisement for bids, completion of a specified percentage of construction, etc.

(2) *Recipient assessment.* The report shall include the recipient's assessment of the effectiveness of the program of community development activities conducted under this Part in meeting local needs and objectives and national objectives of the block grant program.

(3) *Persons benefitting.* The report shall include an analysis of the persons actually benefitting from activities carried out under the program.

(4) *Housing assistance.* The applicant shall describe progress in carrying out the Housing Assistance Plan, including actions taken to further fair housing.

(5) *Citizen participation.* The applicant shall describe the actions it has taken to comply with the requirements of § 570.303, and include (i) copies of comments submitted by citizens regarding the applicant's community development performance; (ii) the applicant's assessment of such comments; and (iii) a summary of any actions taken in response to the comments received.

(6) *Equal opportunity.* The applicant shall present evidence of compliance with the certifications required by § 570.307(*l*).

[Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.); Title I, Housing and Community Development Act of 1977 (Pub. L. 95-128); and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d).)]

The legislative review provisions of Section 7(o) of the Department of Housing and Urban Development Act have been complied with.

Issued at Washington, D.C.

Robert C. Embry, Jr.,

Assistant Secretary for Community Planning and Development.

[FR Doc. 79-26593 Filed 8-24-79; 8:45 am]

BILLING CODE 4210-01-M

Federal Register

Monday
August 27, 1979

Part V

Federal Emergency Management Agency

Standards of Conduct; Production or Disclosure of Information; Implementation of Privacy Act of 1974; Rulemaking Policies and Procedures

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 0-10

Table of Contents for Subchapter A—General

AGENCY: Federal Emergency Management Agency.

ACTION: Designation of parts.

SUMMARY: The Federal Emergency Management Agency (FEMA) has established Title 44 of the Code of Federal Regulations entitled "Emergency Management and Assistance," and has established Chapter 1, thereof titled "Federal Emergency Management Agency" and Subchapter A, *General.* This action lists several of the parts within Subchapter A. It has been determined that publication of this rule as a proposal for public comment is unnecessary as it deals only with the establishment and arrangement of Subchapter A.

EFFECTIVE DATE: August 27, 1979.

ADDRESS: Federal Emergency Management Agency, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: George W. Jett, General Counsel, Federal Emergency Management Agency, Washington, DC 20472, (202) 254-9521.

SUPPLEMENTARY INFORMATION: In the May 2, 1979 Federal Register (44 FR 25797) FEMA established Title 44 of the Code of Federal Regulations, Chapter 1, Federal Emergency Management Agency and a number of Subchapters. One of these is Subchapter A entitled "General" and this Subchapter will include a number of parts dealing with matters of general applicability to all FEMA components. This document lists some of these parts. FEMA, shortly, will issue regulations on these subjects, except for part 0. Part 0 will be reserved for publication of general policy statements pursuant to 5 USC 552(a).

Accordingly, Subchapter A, General of Chapter 1 of Title 44 shall have the following parts:

Subchapter A—General

Part 0 General Statements of Policy
Part 1 Rulemaking; policy, and procedures
Part 2 Organization, functions & delegations of authority
Part 3 Standards of conduct
Part 4 Security
Part 5 Production or disclosure of information
Part 6 Implementation of the Privacy Act of 1974
Part 7 Non Discrimination in Federally-assisted programs
Part 8 Equal Employment Opportunity
Part 9 Floodplain management
Part 10 Environmental considerations

(Reorganization Plan No. 3 of 1978 (43 FR 41943). Executive Order 12127 dated March 31, 1979 (44 FR 19367).)

Dated: August 9, 1979.

John W. Macy, Jr.,

Director.

[FR Doc. 79-26620 Filed 8-24-79; 8:45 am]

BILLING CODE 4210-23-M

44 CFR Part 3

[Docket No. FEMA-Gen 3]

Standards of Conduct

AGENCY: Federal Emergency Management Agency.

ACTION: Interim Regulations and Request for Comments.

SUMMARY: These interim rules establish (1) Standards of Conduct for employees, special government employees, and former employees of the Federal Emergency Management Agency (FEMA). They are issued to implement the Ethics in Government Act of 1978 (Pub. L. 95-521), Executive Order 11222 of May 8, 1965 (3 CFR 1964-1965 Comp., p. 306), 5 CFR Part 735, Employees Responsibilities and Conduct, and other laws and regulations dealing with Federal employee Standards of Conduct. In addition, the Federal Emergency Management Agency requests public comment on these interim regulations. It is necessary for FEMA to begin its operations under these regulations immediately. Thus, FEMA is issuing a regulation which serves as an operating rule and, at the same time, affords opportunity for public comment.

DATES: Effective Date August 27, 1979. Written comments should be submitted on or before October 26, 1979.

ADDRESS: Federal Emergency Management Agency, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: George W. Jett, General Counsel, (202) 254-9521.

SUPPLEMENTARY INFORMATION: Reorganization Plan No. 3 of 1978 established the Federal Emergency Management Agency (FEMA). The plan was activated effective April 1, 1979 by Executive Order 12127 44 FR 19367.

"Federal Emergency Management Agency." The plan and Executive Order 12148 44 FR 43239, effective July 15, 1979 transferred to the new agency functions of five existing agencies in four departments or parent agencies. Under the plan, and pursuant to the order the regulations of the predecessor agencies remain in full force and effect in FEMA until those regulations are superseded.

Accordingly, to provide a single regulation on Standards of Conduct and Ethics in Government for all FEMA employees, it is necessary to adopt regulations which are interim operating rules but which also afford an opportunity for public comment.

In general, these regulations are consistent with the previous employee conduct standards of the agencies the functions of which have been transferred to FEMA, with certain additions which implement portions of the recently adopted Ethics in Government Act of 1978 and amendments thereto. The regulations in this part will hereafter be further amended to cover such matters as the exemption from scientific and technological information and the administrative enforcement proceedings for post employment restrictions.

Interested parties may participate by submitting their views, in writing, on this interim regulation to FEMA. Each comment should include the name and address of the person or organization submitting the comment and should make reference to the above-cited docket number. All comments received on or before the date set out above will be considered in promulgating final regulations on the matters addressed here. All written comments received will be docketed and made available for public inspection at FEMA.

It has been determined that the April 1, 1979 effective date of Reorganization Plan No. 3 of 1978 and the July 15 effective date for Executive Order 12148 established good cause for immediate publication of these regulations for interim effect.

Accordingly, Chapter 1 of Title 44 Code of Federal Regulation is amended by adding a new Part 3 as follows.

PART 3—STANDARDS OF CONDUCT

Subpart A—General

Sec.
3.1 Purpose.
3.2 Applicability and scope.
3.3 Definitions.
3.4 Notification to employees and special Government employees.
3.5 Interpretation and advisory service.
3.6 Employee responsibilities.
3.7 Sanction for violation.
3.8 Disqualification procedure.

Subpart B—Conduct and Responsibilities of Employees

3.10 Administrative extension of statutory limitations.
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Sec.
3.12 Financial interests.
3.13 Outside employment and other activities.
3.14 Gifts and gratuities.
3.15 Use of Government property, vehicles, and communications systems.
3.16 Misuse of information.
3.17 Gambling, betting and lotteries.
3.18 Indebtedness.
3.19 General conduct prejudicial to the Government.
3.20 Intermediaries and product recommendation.
3.21 Membership in organizations.
3.22 Use of intoxicants.
3.23 False statements.
3.24 Care of official records and documents.
3.25 Disclosure of information about an individual.

Subpart C—Conduct and Responsibilities of Special Government Employees

3.40 Applicability of Subpart B.
3.41 Use of Government employment.
3.42 Use of inside information.
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Subpart D—Disclosure of Financial Interests

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3.51 Information not required.
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Financial Disclosure Under Ethics in Government Act of 1978

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3.80 Who must file.
3.81 Form used to file.
3.82 When to file.
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3.85 Action on report.
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3.87 Employees' complaint on filing requirement.
3.88 Employees not required to submit statements.
3.89 Information not known to employees.

Subpart E—Post Employment Conflicts of Interest [Reserved]

Appendix A Statutes Governing Conduct of Federal Employees

Authority: Title II of Ethics in Government Act of 1978, Pub. L. 95–521, 92 Stat. 1836 (5 U.S.C. app); 5 CFR Parts 735, 737; EO 11222, 30 FR 6469, 3 CFR, 1964–1965 Comp., p. 306.

Subpart A—General

§ 3.1 Purpose.

(a) The purpose of this part is to set forth Federal Emergency Management Agency (FEMA) policy and procedure relating to employee responsibilities and conduct.

(b) 5 CFR 735.101 states in part: "The maintenance of unusually high standards of honesty, integrity, impartiality, and conduct by Government employees and special Government employees is essential to assure the proper performance of the Government business and the maintenance of confidence by citizens in their Government. The avoidance of misconduct and conflicts of interest on the part of Government employees and special Government employees through informed judgment is indispensable to the maintenance of these standards".

(c) This part effectuates the requirements in Subpart A of 5 CFR 735 that FEMA issue regulations covering FEMA employees and special Government employees which (1) implement Executive Order 11222 of May 8, 1965, and 5 CFR Part 735 and (2) prescribe additional standards of ethical and other conduct appropriate to the particular functions of FEMA. This Part also effectuates the requirements placed on FEMA by the Ethics in Government Act of 1978, and implementing regulations of OPM.

§ 3.2 Applicability and scope.

(a) This part applies to all persons included within the terms "employee" and "special government employee" as defined in § 3.3. This part also applies to all former employees and special government employees of FEMA.

(b) This part prescribes general standards of conduct for FEMA employees. It is not, however, inclusive. Other FEMA regulations, instructions and issuances may include standards of ethical behavior. Employees must consult these. Among these instructions are those related to (1) the Freedom of Information Act, (2) The FEMA Employee Security Program, and (3) The FEMA Acquisition Process.

(c) This part does not apply unless there is specific provision to that effect to standards of ethical conduct required by law or regulation of FEMA contractors or grantees, nor does it apply to organizational conflicts of interest.

§ 3.3 Definitions.

For purposes of this part

(a) "FEMA" means the Federal Emergency Management Agency.

(b) "Director" means the Director, FEMA.

(c) "Employee" includes every employee of FEMA, headquarters and field, but does not include a special Government employee nor does it include a member of the Executive Reserve except during such time as the member is serving as an employee of FEMA.

(d) "Special Government employee" includes an employee of FEMA who is retained, designated, appointed, or employed to perform, with or without compensation, and for not to exceed 130 days during any period of 365 consecutive days, temporary duty on either a full time or intermittent basis. See 18 U.S.C. 202.

(e) "Person" includes an individual, corporation, company, association, firm, partnership, society, joint stock company, or other organization or institution.

(f) "Ethics Counselor" means the FEMA officer designated to administer for FEMA Titles II and V of the Ethics in Government Act of 1978 (Pub. L. 95–521), and it also means the FEMA official who serves as the Agency's designee to OPM on matters covered by Parts 735 and 737 of Title 5 of the Code of Federal Regulations and who coordinates and directs the FEMA ethics counseling service. In FEMA this is the General Counsel.

(g) "OPM" means the Office of Personnel Management.

(h) "Head of Unit" as used herein includes Deputy Director, Associate Directors, Regional Directors, Federal Insurance Administrator, and the United States Fire Administrator. For purposes of this part, the Deputy Director is "Head of unit" for any organizational component of FEMA not included in the above listing of final publication.

§ 3.4 Notification to employees and special Government employees.

(a) The provisions of this part as it is revised, shall be brought to the attention of, and made available to, each employee and special Government employee by furnishing a copy at the time of final publication. The provisions of this part shall further be brought to the attention of such employees at least annually thereafter.

(b) The provisions of this part shall be brought to the attention of each new employee and new special Government employee by furnishing a copy at the time of entrance of duty, and by such other methods of information and education as the Director may prescribe.

§ 3.5 Interpretation and advisory service.

(a) The Ethics Counselor serves as FEMA's designee to OPM on matters covered by this Part and by CFR Parts 735 and 737. The Ethics Counselor is responsible for coordinating FEMA's counseling services and for assuring that counseling and interpretations on questions of conflicts of interest and other matters covered by this part are available.

(b) Such deputy counselors as may be required shall be designated by the General Counsel from among the staff of the Office of the General Counsel to give authoritative advice and guidance to current, former and prospective employees and special Government employees who seek advice and guidance on questions of conflicts of interest and on other matters covered by this Part.

(c) To assist in avoiding situations of noncompliance the Ethics Counselor shall, in accordance with section 206 (b)(7) of the Ethics in Government Act of 1978 (Pub. L. 95-521), maintain a list of those circumstances or situations which have resulted or may result in noncompliance with laws or regulations concerning conflicts of interest and shall furnish a published list to employees subject to Title II of the Ethics in Government Act of 1978.

(d) The Ethics Counselor shall provide advice promptly to former FEMA employees and special Government employees who make inquiry on any matter arising under the post employment conflict of interest regulations of OPM (5 CFR Part 737) and this Part.

§ 3.6 Employee responsibilities.

(a) Each employee and special Government employee has a positive duty to become acquainted with the numerous statutes relating to the ethical and other conduct of employees and special Government employees of FEMA and of the Government. Appendix A of this Part contains a listing of many of the more important statutory provisions of general applicability. In case of doubt on any question of statutory application to fact situations that may arise, an individual should consult the text of the statutes, Executive Orders or regulations and may consult the Ethics Counselor or Deputy Counselor. These will be made available to the employee by the Ethics Counselor or Deputy Counselor, who have available for review copies of laws, Executive Orders, agency regulations, and pertinent issuances by OPM on this subject.

(b) In any case where any employee or special Government employee, regardless of grade or position, finds that participation in a particular matter or transaction might be considered to involve a direct or indirect financial interest, such individual shall promptly submit a request for disqualification to act in the matter or for other proposed remedial action in writing to the appropriate supervisor. This request will be acted on in accordance with § 3.8 of this Subpart.

§ 3.7 Sanction for violation.

A violation of this Part by an employee or special government employee may be cause for appropriate disciplinary action, or remedial action, which may be in addition to any penalty prescribed by law.

§ 3.8 Disqualification procedure.

(a) This section applies whether or not the conflict or apparent conflict of interest appears on any disclosure form and it applies to any employee or special government employee, regardless of grade or position. It applies to a request for disqualification to act made pursuant to paragraph (b) of this section.

(b) All disqualification or remedial action requests are referred to the Ethics Counselor. If the Ethics Counselor reaches an opinion, based on information submitted to him, that an employee or special government employee is not in compliance with applicable laws and regulations, then the Ethics Counselor shall so notify the individual of this opinion. The Ethics Counselor shall act on requests by individuals but is not required to approve the specific remedial action proposed. The individual shall be given a reasonable opportunity for an oral or written response. The Ethics Counselor may also ask for additional information.

(c) The Ethics Counselor shall consider the individual's response, and reach an opinion as to whether or not the individual is in compliance. If the opinion is that the individual is not in compliance with applicable laws and regulations, he shall notify the individual, and after consultation with the individual (if practical) determine and notify the individual of what steps if any, and the date for completion, would be appropriate for assuring compliance with the laws and regulations.

(d) These steps may include:

(1) Divestiture,

(2) Restitution,

(3) The establishment of a blind trust,

(4) Request for an exemption under section 208(b) of Title 18, United States Code, or

(5) Voluntary request for transfer, reassignment, disqualification for a particular assignment, or limitation of duties.

(e) If any of the remedial actions indicated in paragraph (d)(5) of this section is contemplated, appropriate personnel officers of FEMA shall be notified and shall participate in the determination of the action proposed to be effected.

(f) If steps for assuring compliance with applicable laws and regulations are not taken by the date set under paragraph (c) the matter shall be referred to the Director.

Subpart B—Conduct and Responsibilities of Employees

§ 3.10 Administrative extension of statutory limitations.

The provisions of the statutes identified in this Part, including those in Appendix A, which relate to the ethical and other conduct of Federal employees are adopted and will be enforced as administrative regulations, violations of which may, in appropriate cases be the basis for disciplinary action, including removal. The fact that a statute which may relate to employee conduct is not identified in this Part does not mean that it may not be the basis for disciplinary action against an employee.

§ 3.11 Proscribed actions.

An employee shall avoid any action whether or not specifically prohibited by this Subpart which might result in, or create the appearance of:

(a) Using public office for private gain;

(b) Giving preferential treatment to any person;

(c) Impeding Government efficiency or economy;

(d) Losing complete independence or impartiality;

(e) Making a Government decision outside official channels;

(f) Affecting adversely the confidence of the public in the integrity of the Government;

(g) Discriminating contrary to any law, rule or regulation, against any other employee, or applicant for employment, on the grounds of race, color, religion, national origin, sex, age, handicapping condition, marital status, or political affiliation.

(h) Excluding contrary to any law, rule or regulation, any person from participating in, or denying to any person the benefits of, any program or activity administered by FEMA on the grounds of race, color, religion, national origin, handicapping condition, age, sex; marital status or political affiliation;

(i) Knowingly participating, while conducting official business, in or attending any segregated meetings, or

meetings held in segregated facilities, from which persons are excluded because of race, color, religion, sex or national origin, etc.

§ 3.12 Financial interests.

(a) An employee shall not:

(1) Have a direct or indirect financial interest that conflicts substantially, or appears to conflict substantially, with the employee's Government duties and responsibilities as a Federal Employee; or

(2) Engage in, directly or indirectly, a financial transaction as a result of, or primarily relying on, information obtained through Government employment.

(b) No employee shall participate in any manner, on behalf of the United States, in the negotiation of contracts, the making of loans, and grants, the granting of subsidies, the fixing of rates, or the issuance of valuable permits or certificates, or in any investigation or prosecution, or in the transaction of any other official business which affects chiefly a person:

(1) By whom the individual has been employed or with whom the individual has had any economic interest within the preceding two years, or

(2) With whom the individual has any economic interest or any pending negotiations concerning a prospective economic interest, except with express prior authorization in writing by the Director.

(c) Contracts shall not knowingly be entered into between the Government and employees of the Government or business concerns or organizations which are substantially owned or controlled by Government employees, except for the most compelling reasons, such as cases where the needs of the Government cannot reasonably be otherwise supplied.

(d) This section does not preclude an employee from having a financial interest or engaging in financial transactions to the same extent as a private citizen not employed by the Government so long as it is not prohibited by law, Executive Order, OPM regulations (5 CFR Parts 735 and 737) or the regulation in this Part.

(e)(1) The financial (or economic) interests described below are, unless otherwise determined by the Ethics Counselor in specific cases, too remote or too inconsequential to affect the integrity of an employee's services, and are thereby exempted from the prohibitions of 18 U.S.C. 208(a), and the holding of such an interest does not exclude such employee's participation in the transaction of any official business involving such financial or economic interests:

(i) Deposits in a bank, savings and loan association, building association, credit union or similar financial institution; or policies held with an insurance company;

(ii) Any holding in a widely held mutual fund, or regulated investment company which does not specialize in any particular industry;

(iii) Continued participation in a bona fide pension, retirement, group life, health, or accident insurance plan or other employee welfare or benefit plan that is maintained by a business or nonprofit organization by which the employee was formerly employed, to the extent that the employee's rights in the plan are vested and require no additional services by the employee or further payments to the plan by the organization with respect to the services of the employee. To the extent that such plans are profit sharing or stock bonus plans, this exemption shall not apply.

(2) These exempted financial interests should, however, be reported by employees on disclosure forms to the extent prescribed in Subpart D of this Part.

(3) For purposes of this Part unless otherwise provided in law, regulation, or on any form requesting disclosure, the interest of a spouse, dependent child, or other member of an employee's immediate household is considered to be an interest of the employee. For the purpose of this section, "member of an employee's immediate household" means those relations who are residents of the employee's household.

(f) Paragraph (b) of this section does not apply if the officer or employee first advises the Ethics Counselor in writing of the nature and circumstances of the matter, makes full disclosure of the financial interest, and receives in advance a written determination by such Ethics Counselor or Deputy Counselor that such interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such employee.

(g) The provisions of this section do not limit or add to the provisions of any disclosure requirements under Subpart D of this Part.

§ 3.13 Outside employment and other activities.

(a) An employee shall not engage in outside employment or other outside activity not compatible with the full and proper discharge of the duties and responsibilities of his or her Government employment, and which might result in a conflict or apparent conflict between the private interests of the employee and the official Government duties and responsibilities. Incompatible activities include but are not limited to:

(1) Acceptance of a fee, compensation, gift, payment of expense, or any other thing of monetary value in circumstances where acceptance may result in, or create the appearance of, conflicts of interest;

(2) Outside employment which tends to impair the mental or physical capacity to perform Government duties and responsibilities in an acceptable manner;

(3) Outside activities that may be construed by the public to be the official acts of FEMA;

(4) Activities that establish relationships or property interests that may result in a conflict between one's private interests and official duties;

(b) Full-time employees and part-time employees with a regularly scheduled tour of duty must obtain the prior approval of the Ethics Counselor or Deputy Counselor before engaging in outside employment in the same professional field as that of the individual's official position.

(c) Although teaching, lecturing, and writing are outside employment, employees are encouraged to engage in such activities so long as they are not prohibited by law, Executive Order, OPM regulations or this Part.

(d) An employee shall not receive any salary or anything of monetary value from a private source as compensation for services to the Government.

(e) Any full-time employee mentioned in § 3.60 of this Part, whose appointment is required to be made by and with the advice and consent of the Senate, may not have earned income in any calendar year attributable to such year in excess of 15% of his or her salary.

(f) No employee, including the Director, shall receive outside compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance, the subject matter of which is devoted substantially to the responsibilities, programs, or operations of FEMA, or which draws substantially on official data or ideas which have not become part of the body of public information.

(g) The use of an employee's name and title in connection with articles for publication which bear upon work in FEMA is permissible only if approval is obtained from the Ethics Counselor or Deputy Counselor.

(h) This section does not preclude an employee from:

(1) Participation in the activities of National or State political parties not proscribed by law.

(2) Participation in the affairs of or acceptance of an award for a meritorious public contribution or achievement given by a charitable, religious, professional, social, fraternal, nonprofit educational and recreational, public service, or civic organization.

§ 3.14 Gifts and gratuities.

(a) Except as otherwise provided in this section, an employee shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value, from a person who:

(1) Has, or is seeking to obtain, contractual or other business or financial relations with FEMA;

(2) Conducts operations or activities that are regulated by FEMA; or

(3) Has interests that may be substantially affected by the performance or nonperformance of the employee's official duty.

(b) The prohibitions of paragraph (a) of this section do not apply in the following cases:

(1) Obvious family or personal relationships, such as those between the parents, children, or spouse of the employee and the employee, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors;

(2) Acceptance of food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon or dinner meeting or other meeting or on an inspection tour where an employee may properly be in attendance;

(3) Acceptance of loans from banks or other financial institutions on customary terms to finance proper and usual activities of employees, such as home mortgage loans; and

(4) Acceptance of unsolicited advertising or promotional materials, such as pens, pencils, note pads, calendars, and other items of nominal intrinsic value.

(5) Acceptance of a gift, gratuity, favor, entertainment, loan, payment of expenses, fees, compensation, or other thing of monetary value when such acceptance is determined in writing by the Director, to be necessary and appropriate in view of the work FEMA and the duties and responsibilities of the employee. A copy of each such determination shall be sent to the Ethics Counselor.

(c) An employee shall not solicit a contribution from another employee for a gift to an official superior, make a donation as a gift to an official superior, or accept a gift from an employee receiving less pay than himself (5 U.S.C. 7351). However, this paragraph does not prohibit a voluntary gift of nominal value or donation in a nominal amount made on a special occasion such as marriage, illness or retirement.

(d) An employee shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342.

(e) Neither this section nor § 3.13 of this Part precludes an employee from receipt of bona fide reimbursement, unless prohibited by law, for actual expenses for travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made. However, this paragraph does not allow an employee to be reimbursed, or payment to be made on his behalf, for excessive personal living expenses, gifts, entertainment, or other personal benefits, nor does it allow an employee to be reimbursed by a person for travel on official business under FEMA orders when reimbursement is proscribed by decisions of the Comptroller General for such reasons as reimbursement by the person to the Agency directly.

§ 3.15 Use of Government, property, vehicles and communications systems.

(a) An employee shall not directly or indirectly use, or allow the use of, Government property of any kind, including property leased to the Government, for other than officially approved activities.

(b) Each employee shall protect and conserve Government property, including equipment, supplies, and other property entrusted or issued to the employee.

(c) An employee shall not use, or authorize the use of, Government owned or leased motor vehicles or aircraft for other than official purposes (31 U.S.C. 638a[c]).

(d) An employee shall not use the Federal Telecommunications System or similar system, or commercial telephone facilities for official long-distance calls unless specifically authorized to do so. Use of these facilities for purposes other than the conduct of official business is also prohibited.

§ 3.16 Misuse of information.

(a) *Use of inside information.* For the purpose of furthering a private interest, an employee shall not, except as provided in § 3.13 of this Part, directly, or indirectly use, or allow the use of, information which has been or has the appearance of having been obtained through or in connection with Government employment and which has not been made available to the general public.

(b) *Coercion.* An employee shall not use Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to self or another person, particularly one with whom the employee has family, business, or financial ties.

(c) *Disclosure of restricted information.* Except as authorized by law, or FEMA regulation, including that related to the Freedom of Information Act, no employee shall divulge restricted commercial or economic information, or restricted information concerning the personnel or operations including procurement actions of any Government agency, or release any such information in advance of the time prescribed for its authorized release.

§ 3.17 Gambling, betting and lotteries.

An employee shall not, except as otherwise lawfully authorized, participate, while on Government-owned or leased property or while on duty for the Government, in any gambling activity, including the operation of a gambling device; in conducting a lottery or pool; in a game for money or property; or in selling or purchasing a numbers slip or ticket.

§ 3.18 Indebtedness.

(a) An employee shall pay each just financial obligation in a proper and timely manner, especially one imposed by law such as Federal, State, or local taxes. For purposes of this section, "a just financial obligation" means one acknowledged by the employee or reduced to judgment by a court, and "in a proper and timely manner" means in a manner which, in the view of FEMA, does not under the cirsumstances, reflect adversely on the Government as employer.

(b) In the event of dispute between an employee and an alleged creditor, this section does not require FEMA to determine the validity or amount of the disputed debt.

§ 3.19 General conduct prejudicial to the Government.

(a) Officers and employees of the Federal government are servants of the people. Because of this, their conduct must, in many instances, be subject to more restrictions and to higher standards than may be the case in certain private employments. They are expected to conduct themselves in a manner which will reflect favorably upon their employer. Although the Government is not particularly

interested in the private lives of its employees, it does expect them to be honest, reliable, trustworthy, and of good character and reputation. They are expected to be loyal to the Government, and to the department or agency in which they are employed.

(b) An employee shall not engage in criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct, or other conduct prejudicial to the Government.

(c) Each employee shall act in a manner that facilitates the effective accomplishment of the work of FEMA, observing at all times the requirements of courtesy, consideration, and promptness in dealing with the public and with persons or organizations having business with FEMA.

§ 3.20 Intermediaries and product recommendation.

Except as authorized in connection with the performance of official duties, no employee shall recommend or suggest the use of any particular or identified nongovernmental intermediary to deal with FEMA nor shall an employee recommend any device or product tested by or for, or used by FEMA, or for which FEMA provides financial assistance.

§ 3.21 Membership in organizations.

(a) An employee may not, in his or her official capacity as an employee of FEMA, serve as a member of a non-Federal or private organization except where statutory authority exists, or where the Director has determined, in writing, that such service would be beneficial to FEMA and consistent with such employee's service as a FEMA employee.

(b) The foregoing is subject to the following. An employee may, and is encouraged to serve in an individual capacity as a member of a non-Federal or private organization, particularly those engaged in civic or community affairs on a non-political, non-profit basis, provided that:

(1) Membership does not violate any restriction, law, or regulation, including this Part, and

(2) The employee's official title or organization connection is not shown on any listing or presented in any activity of the organization in such a manner as to imply that the employee is acting in an official capacity.

(c) An employee may be designated in writing to serve as a liaison representative of FEMA to a non-Federal or private organization when the Director, an Associate Director, or a Regional Director, as appropriate, has determined that such service would be beneficial to FEMA and provided that:

(1) The activity relates to the work of FEMA;

(2) The employee does not participate by vote in the policy determinations of the organization;

(3) FEMA is in no way bound by any vote or action taken by the organization.

§ 3.22 Use of intoxicants.

An employee shall not use intoxicants habitually, to excess (5 U.S.C. 7352). Intoxicants shall not be consumed on Government-owned or leased premises. An employee found using, or under the influence of, intoxicants while at work will be subject to disciplinary action.

§ 3.23 False statements.

An employee shall not, knowingly and willfully, conceal or cover up a material fact, or make any false, or fictitious statement in connection with any official matter, document, or record (18 U.S.C. 1001, 2073).

§ 3.24 Care of official records and documents.

An employee shall not, willfully and unlawfully, conceal, remove, mutilate, falsify, or destroy any Government document or record (18 U.S.C. 285, 2071).

§ 3.25 Disclosure of information about an individual.

(a) Every employee who is involved in the design, development, operation, or maintenance of a system of records or who has access to a system of records shall familiarize himself with the requirements of the Privacy Act of 1974 (5 U.S.C. 552a) and FEMA (32 CFR Part 6) and FEMA directives issued thereunder and apply these requirements to all systems of records.

(b) No officer or employee shall disclose any record which is contained in a system of records by any means of communication to any person or to another agency, except pursuant to a written request by, or with the prior written consent of the individual to whom the record pertains, unless the disclosure is to a recipient specified in paragraph (c) of this section. The term "record", for purposes of this section, means any item, collection, or grouping of information about an individual that is maintained by an agency, including but not limited to education, financial transactions, medical history, and criminal or employment history and that contains name or the identifying number, symbol, or other identifying particular assigned to the individual, such as a fingerprint, voice-print, or photograph. The term "system of records" means a group of any records under the control of FEMA 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. The term "routine use" means, with respect to the disclosure of a record, the use of that record for a purpose which is compatible with the purpose for which it was collected. The term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence. The term "agency" is defined in 5 U.S.C. 552(e).

(c) An employee may disclose any record which is contained in a system of records without a written request by and without the prior written consent of the individual to whom the record pertains if the disclosure is:

(1) To those employees of the agency which maintains the record who have a need for the record in the performance of their duties.

(2) Pursuant to section 552 of Title 5 U.S.C. (Freedom of Information Act);

(3) For a routine use as defined in section (a)(7) of the Privacy Act of 1974 (described in paragraph (b) of this section);

(4) 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 U.S.C.;

(5) To a recipient who has provided the agency with advance adequate written assurance that the record will be used solely as a statistical research or reporting record and that the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(7) 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;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of the individual;

(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress, or a subcommittee of any such joint committee;

(10) To the Comptroller General or any authorized representatives, in the course of the performance of the duties of the Genral Accounting Office; or

(11) Pursuant to the order of a court of competent jurisdiction.

(d) No employee shall maintain a record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity.

(e) No employee shall sell or rent an individual's name and address unless such action is specifically authorized by law.

(f) An employee—(1) Who by virtue of such employment or official position has possession of or access to agency records which contain individually identifiable information the disclosure of which is prohibited by paragraph (a) of this section or by any other rules, regulations, or directives of FEMA established under the Privacy Act of 1974, and who:

(i) Knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, or

(ii) Willfully maintains a system of records without meeting the notice requirements of the Privacy Act of 1974, or

(iii) Knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses, is subject to criminal penalties and administrative sanctions; or (2) who—

(i) Makes a determination not to amend an individual's record in accordance with the Privacy Act of 1974; or

(ii) Refuses to comply with an individual's request to gain access to review and to obtain a copy of any information pertaining to him; or

(iii) Fails to maintain any record concerning any individual with such accuracy, relevance, timeliness, and completeness as is necessary to ensure fairness in any determination relating to the qualifications, character, rights, or opportunities of or benefits to the individual that may be made on the basis of such record and consequently a determination is made which is adverse to the individual; or

(iv) Fails to comply with any provision of the Privacy Act of 1974 or any FEMA regulation or directive implementing it, subjects to FEMA to civil penalties and self to administrative sanctions (5 U.S.C. 552a(g)(4)).

Subpart C—Conduct and Responsibilities of Special Government Employees

§ 3.40 Applicability of Subpart B.

Except as specifically provided in § 3.41–§ 3.45. Each special Government employee is subject to the provisions of Subpart B as if such individual were an employee, with the following exceptions:

(a) § 3.13 Outside employment and other outside activities;

(b) § 3.14 Gifts and gratuities;

(c) § 3.21 Membership in organizations.

§ 3.41 Use of Government employment.

A special Government employee shall not use FEMA employment for a purpose that is, or gives the appearance of being, motivated by the desire for private gain for the individual or another person, particularly one with whom the employee has family, business, or financial ties.

§ 3.42 Use of inside information.

(a) A special Government employee shall not use information obtained as a result of FEMA employment which has not become part of the body of public information for private gain for the employee or another person either by direction on the employee's part or by counsel, recommendation, or suggestion to another person, particularly one with whom the employee has family, business, or financial ties.

(b) Special Government employees may teach, lecture, or write in a manner consistent with the provisions of § 3.13.

§ 3.43 Coercion.

A special Government employee shall not use Government employment to coerce, or give the appearance of coercing, a person to provide financial benefit to the employee or another person, particularly one with whom the employee has family, business, or financial ties.

§ 3.44 Gifts, entertainment and favors.

(a) Except as provided in paragraph (b) of this section, a special Government employee, while so employed or in connection with employment, shall not receive or solicit from a person having business with FEMA anything of monetary value as a gift, gratuity, loan, entertainment, or favor for the employee or another person, particularly one with whom the employee has family, business, or financial ties.

(b) The exceptions of § 3.14, which are applicable to employees, are also applicable to special Government employees.

§ 3.45 Applicability of other provisions.

(a) Each special Government employee shall acquaint himself with each statute, Executive Order, regulation, or similar provision listed in Appendix A to this part.

(b) A special Government employee engaged on irregular or occasional basis is bound by the political activity restrictions of the Former Hatch Act cited in Appendix A only while in an active duty status and for the entire 24 hours of any day during which the special government employee is actually employed.

Subpart D—Disclosure of Financial Interests

General Provisions

§ 3.50 General.

(a) Title II of the Ethics in Government Act of 1978 (Pub. L. 95–521), which became effective January 1, 1979, requires that certain officers and employees of the executive branch make specified financial disclosures in accordance with procedures for filing, review and public availability established by the office of Personnel Management.

(b) Section 402 of Executive Order 11222 of May 8, 1965 authorizes the Office of Personnel Management to prescribe regulations requiring submission by certain officers and employees of the executive branch of statements of employment and financial interest.

(c) This Subpart D describes for FEMA, the procedures required to implement the laws, Executive orders, and Office of Personnel Management Regulations concerning disclosure of financial and employment interests.

(d) An individual required to file a disclosure statement by virtue of the Ethics in Government Act of 1978 will not file a disclosure statement required by virtue of E.O. 11222 and Subpart D of 5 CFR Part 735.

§ 3.51 Information not required.

Subpart D does not require an employee to report information relating to a connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civic, or political organization or a similar organization not conducted as a business enterprise. For the purpose of this section,

educational and other institutions doing research and development or related work involving grants of money from or contracts with the Government are deemed "business enterprises" and are required to be included in disclosure statements.

§ 3.52 Effect of employees' statements on other requirements.

The statements and supplementary statements required of employees pursuant to this part are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of a statement or supplementary statement by an employee does not permit the employee or any other person to participate in a matter in which the employee's or the other person's participation is prohibited by law, order, or regulation, including this Part.

§ 3.53–§ 3.59 [Reserved]

Financial Disclosure Under Ethics in Government Act of 1978

§ 3.60 Who must file.

The following officials of FEMA, if they have served 61 or more days during the preceding calendar year:

(a) Officers and employees (including special Government employees, as defined in 18 U.S.C. 202) whose positions are classified at GS–16 or above of the General Schedule, or whose basic rate of pay under other pay schedules is equal to or greater than the minimum rate of basic pay for GS–16. This includes all positions in the Senior Executive Service;

(b) Officers or employees in any other position determined by the Director of the Office of Government Ethics to be of equal classification to GS–16;

(c) Employees in the excepted service in positions which are of a confidential or policy-making character unless their positions have been excluded by regulations issued by the Director of the Office of Government Ethics (see 5 CFR 735.503).

(d) The Ethics Counselor.

§ 3.61 Form used to file.

The disclosure statement which must be used is Standard Form (SF) 278, "Financial Disclosure Statement for Executive Branch Personnel." Copies are available from the Ethics Counselor.

§ 3.62 When to file.

No later than May 14 annually, or 30 days after the individual assumes a position subject to the requirement in § 3.60 of this part unless the individual has within 30 days prior to assuming the position, left another position subject to the requirement. In the event of termination of employment, if the individual has not in the interim accepted another position subject to the requirement, report must be filed no later than the 30th day after termination, covering:

(a) The preceding calendar year if the annual May 15 report has not been filed, and

(b) The portion of the present calendar year up to the date of termination.

§ 3.63 How and where to file.

(a) The SF 278, with a copy of the employee's position description, shall be submitted to the Ethics Counselor (General Counsel), who shall note on the report the date it is received. The Ethics Counselor will forward the report to the Head of Unit under whom the individual serves for review.

(b) The Forms SF 278 of heads of units shall be submitted for review to the Deputy Director. The Deputy Director's Form SF 278 will be submitted to the Director for review.

(c) Special government employees who were employed for more than 60 days during CY 1978 will be required to file an annual report (SF 278) with processing of their forms to be accomplished in the same manner prescribed in paragraph (a) of this section.

§ 3.64 Supervisory review of report.

Upon receipt of an SF 278 the head of unit will consider the reported financial interests as they relate to the individual's duties, and make recommendations. The Director of head of unit then will return the form with attachments, to the Ethics Counselor for review. The review process shall be completed within 60 days after the date of filing.

§ 3.65 Action on report.

(a) If, after review, the Ethics Counselor or Deputy Counselor is of the opinion that the individual making the report is in compliance with applicable law and regulation, he or she shall state such opinion on the report, and sign same. If additional information is required, the involved individual shall be notified as to what this information is and as to when it must be submitted.

(b) If the Ethics Counselor or Deputy Counselor is of the opinion, on the basis of information submitted that the individual is not in compliance with applicable laws and regulations, the individual shall be notified and the procedure specified in § 3.8 of this part followed. Notwithstanding § 3.8 of this part, if steps for assuring compliance with applicable laws and regulations are not taken by the date set under § 3.8(c) by an individual appointment which requires the advice and consent of the Senate, the matter shall be referred to the President for appropriate action.

§ 3.66 Public release.

(a) No later than 15 days after any report (including SF 278) is received by FEMA, the Ethics Counselor shall permit inspection of, or furnish a copy of, such report including the position description to any person who requests inspection or a copy. The report shall be retained for six years after receipt. No fee shall be charged for furnishing a copy unless the cost of reproduction exceeds $10 in which case the fee shall be the same as those established under the FEMA regulations implementing the Freedom of Information Act (Part 5 of this Title). The Ethics Counselor shall maintain an accurate accounting of disclosures of reports in accordance with the requirements of Part 6 of this title, which relates to implementation of the Privacy Act of 1974. These reports are part of a system of records—OPM—Govt 4 established by the Office of Personnel Management.

(b) Notwithstanding paragraph (a) a report may not be made available under this section to any person, nor may any person except upon a written application by such person stating

(1) The person's name, occupation and address,

(2) The name and address of any other person on whose behalf the inspection or copy is requested, and

(3) That such person is aware of the prohibitions on the obtaining or use of the report.

These applications shall be made available to the public throughout the period during which the report is made available to the public.

§ 3.67–§ 3.79 [Reserved]

Financial Disclosure Under Executive Order 11222 and 5 CFR Part 735

§ 3.80 Who must file.

Except as provided in § 3.88, the following categories of employees shall submit statements of employment and financial interest:

(a) Employees classified as GS–13 or above who are in a postion identified as a postition the incumbent of which is responsible for making a Government decision or taking a Government action in regard to:

(1) Contracting or procurement,

(2) Administering or monitoring grants or subsidies;

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

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

(b) Employees classified at GS–13 or above who are in a position which the Director has determined has duties and responsibilities which require the incumbent to report employment and financial interests in order to avoid involvement in a possible conflicts-of-interest situation and to carry out the purpose of law, Executive order, and this part.

(c) Employees classified below GS–13 who are in a position which otherwise meet the criteria in paragraph (a) or (b) of this section, and which position has been approved by the OPM as an exception that is essential to protect the integrity of the Government and to avoid employee involvement in a possible conflict-of-interest situation.

(d) The specific postions described in paragraph (a)–(c) of this section shall be identified in a FEMA Directive issued by the Director. A copy of this directive shall be furnished to each incumbent of a position subject to the requirement of § 3.80 of this part, and shall be made available to any person upon request. The directive shall be kept current and reviewed at least annually. Designation of a position is effective upon actual notification to the incumbent, or upon inclusion of a statement in the official job description that the position is subject to this requirement.

§ 3.81 Form used to file.

The disclosure statement which must be used under this section is FEMA Form 11–1.

§ 3.82 When to file.

An employee required to submit a FEMA Form 11–1 pursuant to § 3.80 shall submit that statement not later than:

(a) Ninety days after the effective date of this part if employed on or before that effective date; or

(b) Thirty days after entrance on duty, but not earlier than 90 days after the effective date, if appointed after that effective date.

§ 3.83 How and where to file.

(a) The FEMA Form 11–1 shall be submitted to the Ethics Counselor (General Counsel) for review and custody.

(b) Changes in, or additions to, the information contained in the Form 11–1 shall be reported to the Ethics Counselor in a supplementary statement of the financial interests or employment as of September 30 each year. This supplementary statement is due by October 31. If no changes or additions occur, a negative report is required.

(c) Notwithstanding the filing of the annual report required by this section, each employee shall at all times avoid acquiring a financial interest or engaging in outside employment or other activity that could result, or taking an action that would result, in a violation of the conflict-of-interest provisions of Section 208 of Title 18, United States Code, or this Part.

§ 3.84 Review of report.

The FEMA Form 11–1 is reviewed by the Ethics Counselor, or Deputy Counselor, who shall obtain copies of the relevant job description. The counselors shall show the forms to supervisors, or other employees of FEMA only to the extent required to determine if a conflict of interest exists.

§ 3.85 Action on report.

When a statement submitted pursuant to this part or information from other sources indicates a conflict between the interests of an employee and the performance of the employee's services for the government, the employee concerned shall be provided an opportunity to explain the conflict or appearance of conflict in accordance with the procedure set out in § 3.8 of this part.

§ 3.86 Confidentiality of employees' statements.

Unlike the SF 278, each FEMA Form 11–1 and each supplementary statement shall be held in confidence by FEMA. To insure this confidentiality, the OPM regulations provide that:

(a) FEMA shall designate which officials and employees are to review and retain the statements;

(b) Officials and employees designated under paragraph (a) of this section are responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, a statement except to carry out the purpose of this Part; and

(c) FEMA may not disclose information from a statement except as the OPM or the Director may determine for good cause shown.

§ 3.87 Employees' complaint on filing requirement.

Employees have the opportunity for review through the FEMA grievance procedures of a complaint by an employee that the position has been improperly included under these regulations as one requiring the submission of a statement of employment and financial interests.

§ 3.88 Employees not required to submit statements.

Employees in positions that meet the criteria in § 008.080 may be excluded from the reporting requirement when the Ethics Counselor determines that:

(a) The duties of a position are such that the likelihood of the incumbent's involvement in a conflict-of-interest situation is remote;

(b) The duties of a position are at such a level of responsibility that the submission of a statement of employment and financial interests is not necessary because of the degree of supervision and review over the incumbent or the inconsequential effect on the integrity of the Government.

§ 3.89 Information not known to employees.

If any information required to be included on a statement or supplementary statement, including holdings placed in trust, is not known to the employee but is known to another person, the employee shall request that other person to submit information in the employee's behalf.

Subpart E—Post Employment Conflicts of Interest [Reserved]

Appendix A—Statutes Governing Conduct of Federal Employees

There are numerous statutes pertaining to the ethical and other conduct of Federal employees. The important ones of general applicability are referred to in this Appendix.

A. Bribery and Graft

.01 Title 18, U.S.C., Section 201, prohibits anyone from bribing or attempting to bribe a public official by corruptly giving, offering, or promising him or any person selected by him, anything of value with intent (a) to influence any official act by him, (b) to influence him to commit or allow any fraud on the United States, or (c) to induce him to do or omit to do any act in violation of his lawful duty. As used in Section 201, "Public officials" is broadly defined to include officers, employees, and other persons carrying on activities for or on behalf of the Government.

.02 Section 201 also prohibits a public official's solicitation or acceptance of, or agreement to take a bribe. In addition, it forbids offers or payments to, and solicitations or receipt by, a public official of anything of value "for or because of" any official act performed or to be performed by him.

.03 Section 201 further prohibits the offering to or the acceptance by a witness of anything of value involving intent to influence his testimony at a trial, Congressional hearing, or agency proceeding. A similar provision applies to witnesses "for or because of" testimony given or to be given. The provisions summarized in this section do not preclude lawful witness fees, travel and subsistence expenses, or reasonable compensation for expert testimony.

B. Compensation to Officers and Employees in Matters Affecting the Government

.01 Title 18, U.S.C., Section 203, prohibits an officer or employee from receiving compensation for services rendered for others before a Federal department or agency in matters in which the Government is a party or is interested.

.02 Section 203 applies to a special Government employee as follows:

(a) If the special Government employee has served in FEMA more than 60 days during the preceding period of 365 days, Section 203 applies to him only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially in his governmental capacity, or (2) which is pending in FEMA, or

(b) If the special Government employee has served in FEMA no more than 60 days during the preceding period of 365 days, section 203 applies to him only in relation to a particular matter involving a specific party or parties in which he has at any time participated personally and substantially in his governmental capacity.

.03 Section 203 does not apply to a retired officer of the uniformed services while not on active duty and not otherwise an officer or employee of the United States.

C. Activities of Officers and Employees in Claims Against and Other Matters Affecting the Government

.01 Title 18, U.S.C., Section 205, prohibits an officer or employee, otherwise than in the performance of his official duties from:

(a) Acting as agent or attorney for prosecuting any claim against the United States, or receiving any gratuity, or any share of or interest in any such claim in consideration of assistance in the prosecution of such claims; or

(b) Acting as agent or attorney for anyone before any Government agency, court, or officer in connection with any matter in which the United States is a party or has a direct and substantial interest.

.02 Section 205 applies to a special Government employee as follows:

(a) If the special Government employee has served in FEMA more than 60 days during the preceding period of 365 days, section 205 applies to him only in relation to a particular matter involving a specific party or parties (1) in which he has at any time participated personally and substantially in his governmental capacity, or (2) which is pending in FEMA.

(b) If the special Government employee has served no more than 60 days during the preceding period of 365 days, Section 205 applies to him only in relation to a particular matter involving a specific party or parties in which he has at any time participated personally and substantially in his governmental capacity.

.03 Section 205 does not preclude:

(a) An employee, if not inconsistent with faithful performance of his duties, from acting without compensation as agent or attorney for any person who is the subject of disciplinary, loyalty, or other personnel administration proceedings, in connection with those proceedings; or

(b) An employee from giving testimony under oath or from making statements required to be made under penalty for perjury or contempt.

.04 Sections 203 and 205 do not preclude:

(a) An employee from acting as agent or attorney for his parents, spouse, child, or any person for whom, or for any estate for which he is serving as guardian, executor, administrator, trustee, or other personal fiduciary, except in those matters in which he has participated personally and substantially as a Government employee or which are the subject of his official responsibility, provided the head of the operating unit concerned approves; or

(b) A special Government employee from acting as agent or attorney for another person in the performance of work under a grant by, or a contract with, or for the benefit of, the United States provided the Director or designee shall certify in writing that the national interest so requires, and such certification shall be published in the Federal Register.

.05 Section 205 does not apply to a retired officer of the uniformed services while not on active duty and not otherwise an officer or employee of the United States.

D. Disqualification of Former Officers and Employees in Matters Connected With Former Duties or Official Responsibilities; Disqualification of Partners

Title 18 U.S.C. Section 207 deals with former employees and possible conflicts of interest.

E. Acts Affecting a Personal Financial Interest

.01 Title 18, U.S.C. Section 208 prohibits an officer or employee, including a special Government employee, from participating personally and substantially in a governmental capacity in any matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner, or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest.

F. Salary of Government Officials and Employees

.01 Title 18, U.S.C. Section 209, prohibits:

(a) An officer or employee from receiving any salary, or any contribution to or supplementation of salary, as compensation for his services as an officer or employee of the United States from any source other than the Government of the United States, except as may be contributed out of the treasury of a State, county, or municipality, and

(b) Any person or organization from paying, contributing to, or supplementing the salary of an officer or employee under circumstances which would make its receipt a violation of subparagraph .01(a) of this section.

.02 Section 209:

(a) Does not prevent a Government employee from continuing to participate in a bona fide pension or other welfare plan maintained by a former employer;

(b) Exempts special Government employees and employees serving the Government without compensation, and grants a corresponding exemption to any outside person paying compensation to such individuals; and

(c) Does not prohibit the payment or acceptance of sums under the terms of the Government Employees Training Act.

G. Code of Ethics for Government Service

"Code of Ethics for Government Service", House Concurrent Resolution 175, 85th Congress, 2d Session, 72 Stat. B12 of July 11, 1958, which reads as follows:

"Any Person in Government Service Should:

"PUT loyalty to the highest moral principles and to country above loyalty to persons, party, or Government department.

"UPHOLD the Constitution, laws, and legal regulations of the United States and all governments therein and never be a party to their evasion.

"GIVE a full day's labor for a full day's pay; giving to the performance of his duties his earnest effort and best thought.

"SEEK to find and employ more efficient and economical ways of getting tasks accomplished.

"NEVER discriminate unfairly by the dispensing of special favors or privileges to anyone, whether for remuneration or not; and never accept for himself or his family, favors or benefits under circumstances which might be construed by reasonable persons as influencing the performance of his governmental duties.

"MAKE no private promises of any kind binding upon the duties of office, since a Government employee has no private word which can be binding on public duty.

"ENGAGE in no business with the Government either directly or indirectly, which is inconsistent with the conscientious performance of his governmental duties.

"NEVER use any information coming to him confidentially in the performance of governmental duties as a means for making private profit.

"EXPOSE corruption wherever discovered.

"UPHOLD these principles, ever conscious that public office is a public trust."

H. Prohibitions

.01 The prohibition against lobbying with appropriated funds (18 U.S.C. 1913) reads as follows:

"No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation, but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to Members of Congress on the request of any Member or to Congress, through the proper official channels, requests for legislation or

appropriations which they deem necessary for the efficient conduct of the public business.

"Whoever, being an officer or employee of the United States or of any department or agency thereof, violates or attempts to violate this section, shall be fined not more than $500 or imprisoned not more than 1 year, or both; and after notice and hearing by the superior officer vested with the power of removing him, shall be removed from office or employment."

.02 The prohibitions against disloyalty and striking (5 U.S.C. 7311, 18 U.S.C. 1918). An individual may not accept or hold a position in the Government of the United States if he:

(a) Advocates the overthrow of our constitutional form of Government;

(b) Is a member of an organization that he knows advocates the overthrow of our constitutional form of government;

(c) Participates in a strike, or asserts the right to strike, against the Government of the United States or the government of the District of Columbia; or

(d) Is a member of an organization of employees of the Government of the United States or of individuals employed by the government of the District of Columbia that he knows asserts the right to strike against the Government of the United States or the government of the District of Columbia.

.03 The prohibitions in 2 U.S.C. 441 i, against receiving any single honorarium in excess of $2000, or total honorariums in excess of $25,000 in any calendar year.

.04 The prohibitions against (a) the disclosure of classified information (18 U.S.C. 798, 50 U.S.C. 783); and (b) the disclosure of confidential information (18 U.S.C. 1905). Each employee who has access to classified information, e.g. confidential, secret, or top secret, or to a restricted area is responsible for knowing and for complying strictly with the security regulations of the Federal Emergency Management Agency.

.05 The prohibition against the use of the franking privilege to avoid payment of postage on private mail (18 U.S.C. 1719).

.06 The prohibition against the use of deceit in an examination or personnel action in connection with Government employment (18 U.S.C. 1917).

.07 The prohibition against fraud or false statements in a Government matter (18 U.S.C. 1001). An employee in connection with an official matter shall not knowingly and willfully conceal or cover up a material fact or falsify official papers or documents.

.08 The prohibition against counterfeiting and forging transportation requests (18 U.S.C. 508). Falsely making, altering or forging in whole or in part, any form of transportation request is prohibited.

.09 The prohibitions against:

(a) Embezzlement of Government money or property (18 U.S.C. 641). No employee may convert any Government money or Government property to his own use or the use of another person.

(b) Failure to account for public money (18 U.S.C. 643). Any employee, who, having received public money which he is not authorized to retain, fails to render his accounts for same as provided by law, is guilty of embezzlement.

(c) Embezzlement of the money or property of another person in the possession of the employee by reason of his employment (18 U.S.C. 654). An employee is prohibited from embezzling or wrongfully converting for his own use the money or property of another which comes under his control as the result of his employment.

.10 The prohibition against unauthorized removal or use of documents relating to claims from or by the Goverment (18 U.S.C. 285). No employee, without authority, may remove from the place where it was kept by authority of the United States any document, record, file, or paper intended to be used to procure the payment of money from or by the United States or the allowance or payment of any claim against the United States, regardless of whether the document or paper has already been used or the claim has already been allowed or paid; and no employee may use or attempt to use any such document, record, file, or paper to procure the payment of any money from or by the United States or the allowance or payment of any claim against the United States.

.11 The prohibition against proscribed political activities, including the following, among others:

(a) Using official authority or influence for the purpose of interfering with or influencing the result of an election, except as authorized by law (5 U.S.C. 7324);

(b) Taking an active part in political management or in political campaigns, except as authorized by law (5 U.S.C. 7324);

(c) Offering or promising to pay anything of value in consideration of the use of, or promise to use, any influence to procure any appointive office or place under the United States for any person (18 U.S.C. 210);

(d) Soliciting or receiving, either as a political contribution or for personal emolument, anything of value in consideration of a promise of support or use of influence in obtaining for any person any appointive office or place under the United States (18 U.S.C. 211);

(e) Using official authority to interfere with a Federal election (18 U.S.C. 595);

(f) Promising any employment compensation, or other benefit made possible by Act of Congress in consideration of political activity or support (18 U.S.C. 600);

(g) Action by a Federal officer or employee to solicit or receive, or to be in any manner concerned with soliciting or receiving, any contribution for any political purpose whatever from any other Federal officer or employee or from any person receiving compensation for services from money derived from the Treasury of the United States (18 U.S.C. 602);

(h) Soliciting or receiving (by any person) anything of value for any political purpose whatever on any Government premises (18 U.S.C. 603);

(i) Soliciting or receiving contributions for political purposes from anyone on Federal relief or work relief (18 U.S.C. 602);

(j) Payment of a contribution for political purposes by any Federal officer or employee to another Federal officer or employee (18 U.S.C. 607);

(k) Payment of a political contribution in excess of statutory limitations and purchase of goods, commodities, advertising, or articles, the proceeds of which inure to the benefit of certain political candidates or organizations (18 U.S.C. 608).

.12 The prohibition against an employee acting as the agent of a foreign principal registered under the Federal Agents Registration Act (18 U.S.C. 219).

Dated: August 9, 1979.

John W. Macy, Jr.,

Director.

[FR Doc. 79-26621 Filed 8-24-79; 8:45 am]

BILLING CODE 4210-23-M

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44 CFR Part 5

[Docket No. FEMA—Gen 5]

Production or Disclosure of Information

AGENCY: Federal Emergency Management Agency.

ACTION: Interim Regulation and Request for Comments.

SUMMARY: These interim rules establish policies and procedures for the Federal Emergency Management Agency (FEMA) to implement the Freedom of Information Act. In addition, FEMA requests public comment on these interim regulations. It is necessary for FEMA to initiate operations under these regulations immediately. Thus, FEMA is issuing a regulation which serves as an operating rule and at the same time affording opportunity for comment.

DATES: Effective date August 27, 1979. Written comments should be submitted on or before October 26, 1979.

ADDRESS: Send comments to Federal Emergency Management Agency, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: George W. Jett, General Counsel, (202) 254-9521.

SUPPLEMENTARY INFORMATION: Reorganization Plan No. 3 of 1978 established the Federal Emergency Management Agency (FEMA). The plan was activated effective April 1, 1979 by Executive Order 12127 of March 31, 1979, "Federal Emergency Management Agency," 44 FR 19367. The plan, Executive Order and, subsequently, Executive Order 12148, effective July 15, 1979, 44 FR 43239, together transferred to the new agency functions of five existing agencies in four departments or parent agencies. Under the plan, and pursuant to the orders, the regulations of the predecessor agencies remain in full force and effect in FEMA as if the reorganization or transfer had not taken place until such time as those regulations are superseded. This means that FEMA employees are subject to

four different sets of Freedom of Information Act regulations.

In order to correct this situation, it is necessary to adopt regulations which serve as interim rules and, at the same time, affording opportunity for public comment.

These regulations are based upon the regulations applicable to the agencies the functions of which have been or will be transferred to FEMA.

Interested parties may participate by submitting their views, in writing, on these interim rules to FEMA. Each comment should include the name and address of the person or organization submitting the comment and should make reference to the above-cited docket number. All comments received on or before the date set out above will be considered in promulgating final regulations on the matters addressed here. All written comments received will be docketed and made available for public inspection at FEMA.

It has been determined that the April 1, 1979 effective date of Reorganization Plan No. 3 of 1979 and the July 15, 1979 effective date of Executive Order 12148 establish good cause for immediate publication of these regulations for interim effect.

Accordingly, the Federal Emergency Management Agency is amending Chapter 1 of Title 44 CFR by adding a new Part 5 as follows:

PART 5—PRODUCTION OR DISCLOSURE OF INFORMATION

Subpart A—General Provisions

Sec.

5.1 Scope and purposes of part.
5.2 Application.
5.3 Definitions.
5.4 Availability of records.
5.5 Exemptions.
5.6 Congressional information.
5.7 Records of other agencies.
5.8 Records involved in litigation or other judicial process.
5.9 Inconsistent issuances of FEMA and its predecessor agencies superseded.

Subpart B—Publication of or Availability of General Agency Information, Rules, Orders, Policies, and Similar Material

5.20 Publication of rules and general policies.
5.21 Effect of failure to publish.
5.22 Coordination of publication.
5.23 Incorporation by reference.
5.24 Availability of opinions, orders, policies, interpretations, manuals, and instructions.
5.25 Available materials.
5.26 Rules for public inspection and copying.
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Sec.

5.40 Copies of FEMA records available at a fee.
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5.50 General.
5.51 Submission of requests for described records.
5.52 Review of requests.
5.53 Approval of request.
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5.55 Appeal within FEMA of denial of request.
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5.80 Service of subpoena or other legal demand.
5.81 Compliance with subpoena or other legal demand.
5.82 Authentication and attestation of copies.

Authority: 5 U.S.C. 552; Reorganization Plan No. 3 of 1978, 43 FR 41943; and EO 12127 (effective April 1, 1979), 44 FR 19367.

Subpart A—General Provisions

§ 5.1 Scope and purposes of part.

This part sets forth policies and procedures concerning the availability of and disclosure of records and information held by the Federal Emergency Management Agency (FEMA) in accordance with 5 U.S.C. 552, popularly known as the "Freedom of Information Act," (FOIA).

§ 5.2 Application.

This part applies to all records and information materials generated, developed, or held by FEMA at Headquarters, in Regions, or in the field, or any component thereof.

§ 5.3 Definitions.

For purposes of the part, the following terms have the meanings ascribed to them in this section:

(a) *Records.* "Records" means all books, papers, maps, photographs, or other doucmentary materials, regardless of physical form or characteristics made or received by FEMA in pursuance of Federal Law or in connection with the transaction of public business and preserved, or appropriate for preservation, as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of FEMA or because of the information value of data contained therein. The term does not include:

(1) Material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents; or

(2) Objects or articles, such as structures, furniture, paintings, sculpture, models, vehicles or equipment; or

(3) Formulae, designs, drawings, research data, computer programs, technical data packages, and the like, which are not considered "records" within the Congressional intent of reference because of development costs, utilization, or value. These items are considered exploitable resources to be utilized in the best interest of *all* the public and are not preserved for informational value nor as evidence of agency functions. Requests for copies of such material shall be evaluated in accordance with policies expressly directed to the appropriate dissemination or use of these resources. Requests to inspect this material to determine its content for informational purposes shall normally be granted, unless inspection is inconsistent with the obligation to protect the property value of the material, as, for example, may be true for patent information and certain formulae, or is inconsistent with another significant and legitimate governmental purpose.

(b) *Reasonably Described.* "Reasonably described," when applied to a request record, means identifying it to the extent that it will permit the location of the particular document with a reasonable effort.

(c) *Agency.* "Agency," as defined in § 552(e) of Title 5 U.S.C., includes any executive department, military department, government corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

(d) *Headquarters FOIA Officer.* The Director, Administrative Services.

(e) *Regional FOIA Officer.* The Regional Director for Administration.

§ 5.4 Availability of records.

(a) FEMA records are available to the greatest extent possible for keeping with the spirit and intent of FOIA and will be

furnished promptly to any member of the public upon request addressed to the office designated in § 5.26. The person making the request need not have a particular interest in the subject matter, nor must he provide justification for the request.

(b) The requirement of 5 U.S.C. 552 that records be available to the public refers only to records in being at the time the request for them is made. FOIA imposes no obligation to compile a record in response to a request.

§ 5.5 Exemptions.

Requests for FEMA records may be denied if disclosure is exempted under the provisions of 5 U.S.C. 552, as outlined in Subpart E. Usually, except when a record is classified, or when disclosure would violate any other Federal statute, the authority to withhold a record from disclosure is permissive rather than mandatory. The authority for nondisclosure will not be invoked unless there is compelling reason to do so.

§ 5.6 Congressional information.

Nothing in this part authorizes withholding information from the Congress except when executive privilege is invoked by the President.

§ 5.7 Records of other agencies.

If a request is submitted to FEMA to make available current records which are the primary responsibility of another agency, FEMA will refer the request to the agency concerned for appropriate action. FEMA will advise the requester that the request has been forwarded to the responsible agency.

§ 5.8 Records involved in litigation or other judicial process.

Where there is reason to believe that any records requested may be involved in litigation or other judicial process in which the United States is a party, including discovery procedures pursuant to the Federal Rules of Civil Procedure or Federal Rules of Criminal Procedure, the request shall be referred to the General Counsel.

§ 5.9 Inconsistent issuances of FEMA and its predecessor agencies superseded.

Policies and procedures of any of FEMA's predecessor agencies inconsistent with this regulation are superseded to the extent of that inconsistency.

Subpart B—Publication of or Availability of General Agency Information, Rules, Orders, Policies, and Similar Material

§ 5.20 Publication of rules and general policies.

In accordance with 5 U.S.C. 552(a)(1), there are separately stated and currently published, or from time to time there will be published, in the Federal Register for the guidance of the public, the following general information concerning FEMA:

(a) Description of the organization of the Headquarters Office and regional and other offices and the established places at which, the employees from whom, and the methods whereby the public may obtain information, make submittals or requests, or obtain decisions.

(b) Statement of the general course and method by which FEMA functions are channeled and determined, including the nature and requirements of all formal and informal procedures available.

(c) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations.

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by FEMA.

(e) Each amendment, revision, or repeal of the materials described in this section. Much of this information will also be codified in this Subchapter A.

§ 5.21 Effect of failure to publish.

5 U.S.C. 552(a)(1) provides that, except to the extent that a person has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or to be adversely affected by, a matter required to be published in the Federal Register and not so published.

§ 5.22 Coordination of publication.

The General Counsel, FEMA, is responsible for coordination of FEMA materials required to be published in the Federal Register.

§ 5.23 Incorporation by reference.

When deemed appropriate, matter covered by this Subpart, which is reasonably available to the class of persons affected thereby may be incorporated by reference in the Federal Register in accordance with standards prescribed from time to time by the Director of the Federal Register (see 1 CFR Part 51).

§ 5.24 Availability of opinions, orders, policies, interpretations, manuals, and instructions.

FEMA will make available for public inspection and copying the material described in 5 U.S.C. 552(a)(2) as enumerated in § 5.25 and an index of those materials as described in § 5.28, at convenient places and times.

§ 5.25 Available materials.

FEMA materials which are available under this Subpart are as follows:

(a) Final opinions and orders made in the adjudication of cases.

(b) Those statements of policy and interpretations which have been adopted by FEMA and are not published in the Federal Register.

(c) Administrative staff manuals and instructions to staff that affect a member of the public, unless such materials are promptly published and copies offered for sale.

§ 5.26 Rules for public inspection and copying.

(a) *Locations.* Materials are available for public inspection and copying at the following locations:

(1) Headquarters, Federal Emergency Management Agency, 1725 I Street, NW., Washington, DC 20472.

(2) Regional Offices:

(i) Region One—15 New Chardon Street, Boston, Massachusetts 02114.

(ii) Region Two—90 Church Street, Room 801–B, New York, NY 10007.

(iii) Region Three—Curtis Building, Sixth and Walnut Streets, Philadelphia, PA 19106.

(iv) Region Four—1371 Peachtree Street, NE., Atlanta, GA 30309.

(v) Region Five—One North Dearborn Street, Chicago, IL 60602.

(vi) Region Six—Earle Cabell Building, 1100 Commerce Street, Dallas, TX 75242.

(vii) Region Seven—Federal Office Building, 911 Walnut Street, Kansas City, MO 64106.

(viii) Region Eight—Room 311, 909 17th Street, Denver, CO 80202.

(ix) Region Nine—450 Golden Gate Avenue, P.O. Box 36006, San Francisco, CA 94102.

(x) Region Ten—Arcade Plaza Building, 1321 Second Avenue, Seattle, WA 98101.

(b) *Time.* Materials will be made available for public inspection and copying during the normal hours of business.

(c) *Copying.* FEMA will furnish reasonable copying services at fees specified in Subpart C. Such reproduction services, as are required, will be arranged by the Administrative Services Division in the headquarters or by regional offices as appropriate.

(d) *Handling of Materials.* The unlawful removal or mutilation of materials is forbidden by law and is punishable by fine or imprisonment or both. FEMA personnel making materials available will ensure that all materials provided for inspection and copying are returned in the same condition as provided.

§ 5.27 Deletion of identifying details.

To the extent required to prevent a clearly unwarranted invasion of personal privacy, FEMA may delete identifying details when making available or publishing an opinion, statement of policy, interpretation, or staff manual or instruction. However, the justification for each deletion will be explained fully in writing, and will require the concurrence of the General Counsel. A copy of the justification will be attached to the material containing the deletion and a copy will also be furnished to the Headquarters FOIA Officer or appropriate Regional Director.

§ 5.28 Indexes.

FEMA will maintain and make available for public inspection and copying current indexes arranged by subject matter providing identifying information for the public regarding any matter issued, adopted, or promulgated after July 4, 1967, and described in § 5.25. FEMA will publish quarterly and make available copies of each index or supplements thereto. The indexes will be maintained for public inspection at the location described in § 5.26.

§ 5.29 Effect of failure to make information materials available.

Materials requested to be made available pursuant to § 5.24 that affect a member of the public may be relied upon, used, or cited as precedent by FEMA against any private party only if (a) they have been indexed and either made available or published as required by 5 U.S.C. 552(a)(2), or (b) the private party has actual and timely notice of their terms.

Subpart C—Fees

§ 5.40 Copies of FEMA records available at a fee.

One copy of FEMA records not available free of charge will be provided at a fee as provided in § 5.46. A reasonable number of additional copies will be provided for the applicable fee where reproduction services are not readily obtainable from private commercial sources.

§ 5.41 FEMA publications.

Anyone may obtain FEMA publications without charge from the FEMA Headquarters, Regional Officer and from the U.S. Army Publication Center, 2800 Eastern Boulevard, Baltimore, MD 21220 in accordance with standard operating procedures, including limitation on numbers of specific individual publications. FEMA Films may be obtained on loan or certain of these films may be purchased, in which case fees will be charged as set out in a FEMA catalogue. Non-exempt FEMA research reports are available from the National Technical Information Service, United States Department of Commerce which establishes its own fee schedule. Charges, if any, for these items and similar user charges are established in accordance with other provisions of law as, for example, 31 U.S.C. 483a and are not deemed search and duplication charges hereunder.

§ 5.42 Exemptions from or reduction of fee.

(a) When the Headquarters FOIA Officer or Regional Director handling the request for FEMA records determines that at least one of the following conditions exist, the fee requirement shall be waived and one copy of the FEMA records provided without charge to the requestor:

(1) When the incremental cost of collecting the fee would be an unduly large part of or an amount greater than the fee; a fee of less than $10 is considered as meeting this requirement.

(2) When the reproduction is for a foreign, state, or local Government or international agency and furnishing it without charge is an appropriate courtesy; or

(3) When furnishing the records without charge conforms to generally established business custom, such as furnishing personal reference data to prospective employers of former employees.

(b) Records may be furnished without charge, or at a reduced charge if the Headquarters FOIA Officer or Regional Director determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public.

§ 5.43 Searches.

(a) The time spent in the following activities may be computed in determining "search time" subject to applicable fees as provided in § 5.46.

(1) Time spent in trying to locate FEMA records which come within the scope of the request;

(2) Time spent either in transporting a necessary agency searcher to a place of record storage or in transporting records to the location of a necessary agency searcher (FEMA must document in writing the necessity of transporting either the searcher or the records); and

(3) Direct costs involving the use of computer time to locate and extract requested records.

(b) The time spent in the following activities may not be computed in determining search time subject to applicable fees as provided in § 5.46.

(1) Time spent in examining a requested record for the purpose of determining whether an exemption can and should be asserted;

(2) Time spent in deleting exempt matter being withheld from records to be made available;

(3) Time spent in monitoring a requester's inspection of agency records made available; and

(4) Time spent in operating reproduction facilities.

§ 5.44 Prepayment of fees over $25.

(a) When the Headquarters FOIA Officer or Regional FOIA Officer handling a request for FEMA records determines that the anticipated total fee (search and reproduction) is likely to exceed $25, the requestor shall be notified of the requirement to prepay the anticipated fee prior to FEMA's commencing its search or reproduction. FEMA will remit the excess paid by the requestor or bill the requestor for an additional amount according to variations between the final fee charged and the amount prepaid.

(b) When a FEMA official notifies a requestor of the necessity of prepayment as provided in paragraph (a) of this section, the official also shall notify the requestor that the computation of the applicable time limits for FEMA's response to an initial request for records or an appeal will be suspended from the mailing date of the notification of requirement to prepay until the receipt of the prepayment.

§ 5.45 Form of payment.

Payment shall be by check or money order payable to the Treasurer of the United States and shall be addressed to the official designated by FEMA in correspondence with the requestor or to the Headquarters FOIA Officer or Regional FOIA Officer, as appropriate.

§ 5.46 Fee schedule.

In computing applicable fees, FEMA will consider only the following costs in providing the requested records.

(a) *Reproduction Fees.* (1) The fee for reproducing copies of FEMA records up to and including material 8½ x 14 inches shall be $0.10 per page.

(2) The fee for reproducing copies of FEMA records over 8½ x 14 inches or

whose physical characteristics do not permit reproduction by routine electrostatic copying shall be the direct cost of reproducing the records through Government or commercial sources.

(b) *Search Fee.* (1) The standard search fee shall be $4 per hour or fraction thereof beyond the initial half hour used to locate the requested records.

(2) When professional staff must be used to search for the requested records because clerical staff would be unable to locate them, the search fee shall be $8 per hour or fraction thereof beyond the initial half hour used to locate the requested records.

(3) When the search includes non-personnel expenditures to locate and extract requested records, such as computer time or transportation expenses, the applicable fee shall be the direct cost to FEMA.

§ 5.47 Appeals regarding fees.

A requestor whose application for a fee waiver or a fee reduction is denied may appeal that decision to the Deputy Director in the manner prescribed in Subpart D.

Subpart D—Described Records

§ 5.50 General.

(a) Except for records made available pursuant to Subpart B FEMA shall promptly make records available to a requestor pursuant to a request which reasonably described such records unless FEMA invokes an exemption pursuant to Subpart E. Although the burden of reasonable description of the records rests with the requestor, FEMA will assist in identification to the extent practicable. Where requested records may be involved in litigation or other judicial proceedings in which the United States is a party, the procedures set forth under § 5.8 shall be followed.

(b) Upon receipt of a request which does not reasonably describe the records requested, FEMA may contact the requestor to seek a more specific description. The 10-day time limit set forth in § 5.52 will not start until a request reasonably describing the records is received in the office of the appropriate official identified in § 5.51.

§ 5.51 Submission of requests for described records.

(a) For records located in the FEMA Headquarters, requests shall be submitted in writing, to the Headquarters FOIA Officer, Federal Emergency Management Agency, Washington, DC 20472. For records located in the FEMA Regional Offices, requests shall be submitted to the appropriate Regional FOIA Officer, at the address listed in § 5.26. Requests should bear the legend "Freedom of Information Request" prominently marked on both the face of the request letter and the envelope. The 10-day time limit for agency determinations set forth in § 5.52 shall not start until a request is received in the office of the appropriate official identified in this paragraph.

(b) The Headquarters FOIA Officer shall respond to questions concerning the proper office to which Freedom of Information requests should be addressed.

§ 5.52 Review of requests.

(a) Upon receipt of a request for information, the Headquarters FOIA Officer, or the Regional FOIA Officer for a regional office, will forward the request to the FEMA office which has custody of the record.

(b) Upon any request for records made pursuant to § 5.20, § 5.24, or § 5.51, the office having custody of the records shall determine within 10 days (excepting Saturdays, Sundays, and legal public holidays), after receipt of any such request in the office of the appropriate official identified in § 5.51 whether to comply with the request. If the request is approved, the office having custody of the record shall notify the requestor and the Headquarters FOIA Officer whether request originated in Headquarters, Region or field.

(c) When a request is received for a record which:

(1) Was obtained by FEMA from a non-U.S. Government source; or

(2) Contains information obtained by FEMA from a non-U.S. Government source; and because of the source and the nature of the records or information, there is reason to believe that the source of the information or record may object to release or may have an enforceable right to prevent release, prompt notification of intended release shall be given to the source. Release shall normally be withheld until the source has a reasonable time to comment on the proposed release. Comments received shall be considered in determining the releasability of the document. When the source advises that it is seeking a restraining order or other court action to prevent release, release will normally not be made pending the outcome of the court action.

§ 5.53 Approval of request.

When a request is approved, records will be made available promptly in accordance with the terms of the regulation. Copies may be furnished or the records may be inspected and copies as provided in § 5.26.

§ 5.54 Denial of request for records.

(a) Each of the following officials within FEMA, or any official designated to act for the official, shall have the authority to make initial denials of requests for disclosure of records within his or her custody, and shall, in accordance with 5 U.S.C. 552(a)(6)(C), be the responsible official for denials of records made under this part.

(1) At Headquarters:

(i) The Director

(ii) The Deputy Director

(iii) Associate Directors or Office Directors

(iv) Assistant Director for Training and Education

(v) Federal Insurance Administrator

(vi) U.S. Fire Administrator

(vii) Director, Operations Support

(viii) Director, Personnel

(ix) Director, Finance and Administration

(x) Director, Program Evaluation and Research

(xi) General Counsel

(xii) Inspector General

(2) At Regions—Regional Directors.

(b) If a request is denied, the appropriate official listed in paragraph (a) of this section shall except as provided in § 5.56 advise the requestor within 10 days (excepting Saturdays, Sundays, and legal public holidays) of receipt of the request by the official specified in § 5.52 and furnish written reasons for the denial. The denial will (1) describe the record or records requested, (2) state the reasons for nondisclosure pursuant to Subpart E, (3) state the name and title or position of the official responsible for the denial of such request, and (4) state the requestor's appeal rights.

(c) In the event FEMA cannot locate requested records the appropriate official specified in paragraph (a) of this section will inform the requestor (1) that the agency has determined at the present time to deny the request because the records have not yet been found or examined, but (2) that the agency will review the request within a specified number of days, when the search or examination is expected to be complete. The denial letter will state the name and title or position of the official responsible for the denial of such request. In such event, the requestor may file an agency appeal immediately, pursuant to § 5.55.

§ 5.55 Appeal within FEMA of denial of request.

(a) A requestor denied access, in whole or in part, to FEMA records may appeal that decision within FEMA. All appeals should be addressed to the Headquarters FOIA Officer, Federal

Emergency Management Agency, Washington, DC regardless of whether the denial being appealed was made at Headquarters, in a field office, or by a Regional Director.

(b) An appeal must be received in the Headquarters FOIA Office no later than thirty calendar days after receipt by the requestor of the initial denial access in the case of a total denial, or thirty calendar days after receipt by the requestor of records made available in the case of a partial denial.

(c) An appeal must be in writing and should contain a brief statement of the reasons why the records should be released and enclose copies of the initial request and denial. The appeal letter should bear the legend, "FREEDOM OF INFORMATION APPEAL," conspicuously marked on both the face of the appeal letter and on the envelope. FEMA has twenty days (excepting Saturdays, Sundays, and legal public holidays) after the receipt of an appeal to make a determination with respect to such appeal. The twenty day time limit shall not begin to run until the appeal is received by the Headquarters FOIA Officer. Misdirected appeals should be promptly forwarded to that office.

(d) The Headquarters FOIA Officer will submit the appeal to the Deputy Director for final administrative determination.

(e) The Deputy Director shall be the deciding official on all appeals except in those cases in which the initial denial was made by the Director or the Deputy Director. If the Deputy Director made the initial denial, the Director shall be the deciding official on appeal. If the Director made the initial denial, there shall be no right of appeal within FEMA. In the absence of the Deputy Director the Director will be the deciding official on all appeals.

(f) If an appeal is filed in response to a tentative denial pending locating and/or examination of records, as described in § 5.53(c), FEMA will continue to search for and/or examine the requested records and will issue a response immediately upon completion of the search and/or examination. Such action in no way suspends the time for FEMA's response to the requestor's appeal which FEMA will continue to process regardless of the response under this subsection.

(g) If a requestor files suit pending an agency appeal, FEMA nonetheless will continue to process the appeal, and will furnish a response within the twenty day time limit set out in paragraph (c) of this section.

(h) If, on appeal, the denial of the request for records is in whole or in part upheld, the Deputy Director will promptly furnish the requestor a copy of the ruling in writing within the twenty day time limit set out in paragraph (c) of this section except as provided in § 5.55. The notification letter shall contain: (1) A brief description of the record or records requested; (2) a statement of the legal basis for nondisclosure; (3) a statement of the name and title or position of the official or officials responsible for the denial of the initial request as described in § 5.54 and the denial of the appeal as described in paragraph (f) of this section, and (4) a statement of the requestor's rights of judicial review.

§ 5.56 Extension of time limits.

In unusual circumstances as specified in this section, the time limits prescribed in § 5.52 and § 5.55 may be extended by an official named in § 5.54(a) who will provide written notice to the requestor setting forth the reasons for such extension and the date on which a determination is expected. Such notice will specify no date that would result in an extension of more than ten work days. In unusual circumstances, the Headquarters FOIA Officer may authorize more than one extension, divided between the initial request stage and the appeals stage, but in no event will the combined periods of extension exceed ten work days. As used in this subsection, "unusual circumstances" include only those circumstances where extension of time is reasonably necessary to the proper processing of the particular request. Examples include:

(a) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request; or

(b) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(c) The need for consultation, which shall be conducted with all practicable speed, with another agency or with a non-Federal source having a substantial interest in the determination of the request or among two or more components of FEMA having substantial subject matter interest therein.

§ 5.57 Exhaustion of administrative remedies.

Any person making a request to FEMA for records under this part shall be deemed to have exhausted his administrative remedies with respect to the request if the agency fails to comply with the applicable time limit provisions set forth in § 5.52 and § 5.55.

§ 5.58 Judicial relief available to the public.

Upon denial of a requestor's appeal by the Deputy Director the requester may file a compliant in a district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the agency resords are situated, or in the District of Columbia, pursuant to 5 U.S.C. 552(a)(4)(B).

§ 5.59 Disciplinary action against employees for "arbitrary or capricious" denial.

Pursuant to 5 U.S.C. 552(a)(4)(F), whenever the district court, described in § 5.58 orders the production of any FEMA records improperly withheld from the complainant and assesses against the United States reasonable attorney fees and other litigation costs, and the court additionally issues a written finding that the circumstances surrounding the withholding raise questions whether FEMA personnel acted arbitrarily or capriciously with respect to the withholding, the Special Prosecutor in the Merit Systems Protection Board is required to initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who primarily was responsible for the withholding. The Special Prosecutor after investigation and consideration of the evidence submitted, submits findings and recommendations to the Director of FEMA and sends copies of the findings and recommendations to the officer or employee or his or her representative. The law requires the Director to take any corrective action which the Special Prosecutor recomments.

§ 5.60 Contempt for noncompliance.

In the event of noncompliance by FEMA with an order of a district court pursuant to § 5.58, the district court may punish for contempt the FEMA employee responsible for the noncompliance, pursuant to 5 U.S.C. 552(a)(4)(G).

Subpart E—Exemptions

§ 5.70 General.

The exemptions enumerated in 5 U.S.C. 552(b), under which the provisions for availability of records and informational materials will not apply, are general in nature. FEMA will decide each case on its merits in accordance with the FEMA policy expressed in Subpart A.

§ 5.71 Categories of records exempt from disclosure under 5 U.S.C. 552.

5 U.S.C. 552(b) provides that the requirements of the statute do not apply to matters that are:

(a) Specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are, in fact, properly classified pursuant to such Executive Order.

(b) Related solely to the internal personnel rules and practices of an agency.

(c) Specifically exempted from disclosure by statute other than section 552(b) of Title 5, provided that such statute (1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue or (2) establishes particular criteria for withholding or refers to particular types of matter to be withheld.

(d) Trade secrets and commercial or financial information obtained from a person and privileged or confidential.

(e) Inter-agency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency.

(f) Personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(g) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would:

(1) Interfere with enforcement proceedings;

(2) Deprive a person of a right to a fair trial or an impartial adjudication;

(3) Constitute an unwarranted invasion of personal privacy;

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source:

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or physical safety of law enforcement personnel.

(h) Contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(i) Geological and geophysical information and data, including maps, concerning wells. Any reasonable segregable portion of a record shall be provided to any person requesting the record after deletion of the portions which are exempt under this section.

§ 5.72 Executive privilege exemption.

Where application of the executive privilege exemption is desired, the matter shall be forwarded to the Director for consideration. If the request for information is Congressional, only the President may invoke the exemption. Presidential approval is not necessarily required if the request for information is in connection with judicial or adjudicatory proceedings or otherwise. In connection with judicial proceedings, the response shall be coordinated with the Department of Justice.

Subpart F—Subpoena or Other Legal Demands for Records and Authentication of Copies of Records

§ 5.80 Service of subpoena or other legal demand.

(a) A subpoena duces tecum or other legal demand by a court or other authority for the production of records held by FEMA should be addressed to the General Counsel, FEMA, Washington, DC 20472. For Regional records the subpoena should be addressed to the appropriate Regional Director listed in § 5.26.

(b) When such a subpena or demand is served on any employee of FEMA other than as provided in paragraph (a) of this section, unless otherwise directed by the Director such employees shall decline respectfully to produce such records on the ground that such employee is without authority under this Subpart F to do so.

§ 5.81 Compliance with subpoena or other legal demand.

Officials serviced with subpoena will comply with the subpoena or demand insofar as it is practicable by submitting authenticated copies of the records. Original records should be provided only if necessary.

§ 5.82 Authentication and attestation of copies.

The Director, Deputy Director, Associate Directors, and heads of offices having the records, the General Counsel, and in the regions, the Regional Directors and the Regional Directors of Administration are authorized to authenticate and attest for and in the name of the Director, copies or reproductions of the records. Appropriate fees will be charged for such copies or reproduction.

Dated: August 9, 1979.

John W. Macy, Jr.,

Director.

[FR Doc. 79-26622 Filed 8-24-79; 8:45 am]

BILLING CODE 4210-23-M

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44 CFR Part 6

[Docket No. FEMA—Gen 6]

Implementation of Privacy Act of 1974

AGENCY: Federal Emergency Management Agency.

ACTION: Interim Regulations and Request for Comments.

SUMMARY: These interim rules establish policies and procedures in which the Federal Emergency Management Agency (FEMA) implements the Privacy Act of 1974 and other laws and regulations relating to that Act such as OMB Circulars. In addition, FEMA requests public comment on these interim regulations. It is necessary for FEMA to begin its operations under these regulations immediately. Thus, FEMA is issuing a regulation which serves as an operating rule and also affords, at the same time, opportunity for public comment.

DATES: Effective Date August 27, 1979. Written comments should be submitted on or before October 26, 1979.

ADDRESS: Federal Emergency Management Agency, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: George W. Jett, General Counsel, (202) 254-9521.

SUPPLEMENTARY INFORMATION: Reorganization Plan No. 3 of 1978 established the Federal Emergency Management Agency (FEMA). The plan was activated effective April 1, 1979 by Executive Order 12127 "Federal Emergency Management Agency," 44 FR 19367. The plan, Executive Order 12127, and Executive Order 12148 "Federal Emergency Management Agency," effective July 15, 1979, 44 FR 43239, together transferred to the new agency functions of five existing agencies in four departments or parent agencies. Under the plan, and pursuant to the Executive Orders, the regulations of the predecessor agencies remain in full force and effect in FEMA as if the reorganization or transfer had not taken place until such time as those regulations are superceded. This means that FEMA employees are subject to four different sets of Privacy Act regulations.

In order to correct this situation it is necessary to adopt regulations which serve a dual role as interim operating

procedures, and afford opportunity for public comment.

These regulations are based upon the regulations applicable to employees of the agencies the functions of which have been transferred to FEMA.

Interested parties may participate by submitting their views in writting on these interim regulations to FEMA. Each comment should include the name and address of the person or organization submitting the comment and should make reference to the above-cited docket number. All comments received on or before the date set out above will be considered in promulgating final regulations on the matters addressed here. All written comments received will be docketed and made available for public inspection at FEMA.

It has been determined that the April 1, 1979 effective date of Reorganization Plan No. 3 of 1979 and the July 15, 1979 effective date of Executive Order 12148 establish good cause for immediate publication of these regulations for interim effect.

Accordingly, the Federal Emergency Management Agency is amending Chapter 1 of Title 44 CFR by adding a new Part 6 as follows:

PART 6—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

Subpart A—General

Sec.
6.1 Purpose and scope of part.
6.2 Definitions.
6.3 Collection and use of information (Privacy Act Statements).
6.4 Standards of agency.
6.5 Rules of conduct.
6.6 Safeguarding systems of records.
6.7 Records of other agencies.
6.8 Supoena and other legal demands.
6.9 Inconsistent issuances of FEMA and/or its predecessor agencies superseded.
6.10 Assistance and referrals.

Subpart B—Disclosure of Records

6.20 Conditions of disclosure.
6.21 Procedures for disclosure.
6.22 Accounting of disclosures.

Subpart C—Individual Access to Records

6.30 Form of requests.
6.31 Special requirements for medical records.
6.32 Granting access
6.33 Denials of access.
6.34 Appeal of denial of access within FEMA.

Subpart D—Requests to Amend Records

6.50 Submission of requests to amend records.
6.51 Review of requests to amend records.
6.52 Approval of requests to amend records.
6.53 Denial of requests to amend records.
6.54 Agreement to alternative amendments.
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Sec.
6.56 Statement of disagreement.
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Subpart E—Report on New Systems and Alterations of Existing Systems

6.70 Reporting requirement.
6.71 Federal Register notice of establishment of new system or alteration of existing system.
6.72 Effective date of new system of records or alteration of an existing system of records.

Subpart F—Fees

6.80 Records available at fee.
6.81 Additional copies.
6.82 Waiver of fee.
6.83 Prepayment of fees over $25.
6.84 Form of payment.
6.85 Reproduction fees.

Subpart G—Exempt System of Records [Reserved]

Authority: Privacy Act of 1974, Pub. L. 93-579; 5 U.S.C. 552a; Reorganization Plan No. 3 of 1978, 43 FR 41943; EO 12127, 44 FR 19367.

Subpart A—General

§ 6.1 Purpose and scope of part.

This part sets forth policies and procedures concerning the collection, use and dissemination of records maintained by the Federal Emergency Management Agency (FEMA) which are subject to the provision of 5 U.S.C. 552a, popularly known as the "Privacy Act of 1974" (hereinafter referred to as the Act). These policies and procedures govern only those records as defined in § 6.2. Policies and procedures governing the disclosure and availability of records in general are in Part 5 of this chapter. This part also covers: (a) procedures for notification to individuals of a FEMA system of records pertaining to them; (b) guidance to individuals in obtaining information, including inspections of, and disagreement with, the content of records; (c) accounting of disclosure; (d) special requirements for medical records; and (e) fees.

§ 6.2 Definitions.

For the purpose of this Part:

(a) "Agency" includes 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 (see 5 U.S.C. 552(e)).

(b) "Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence.

(c) "Maintain" includes maintain, collect, use, and disseminate.

(d) "Record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to those concerning education, financial transactions, medical history, and criminal or employment history, and that contains the name or other identifying particular assigned to the individual, such as a fingerprint, voiceprint, or photograph.

(e) "System of records" means a group of any records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identification assigned to that individual.

(f) "Statistical record" means a record in a system of records maintained for statistical research or reporting purposes only and not used in whole or in part in making any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

(g) "Routine use" means, with respect to the disclosure of a record, the use of that record for a purpose which is compatible with the purpose for which it was collected.

(h) "System manager" means the employee of FEMA who is responsible for the maintenance of a system of records and for the collection, use, and dissemination of information therein.

(i) "Subject individual" means the individual named or discussed in a record of the individual to whom a record otherwise pertains.

(j) "Disclosure" means a transfer of a record, a copy of a record, or any or all of the information contained in a record to a recipient other than the subject individual, or the review of a record by someone other than the subject individual.

(k) "Access" means a transfer of a record, a copy of a record, or the information in a record to the subject individual, or the review of a record by the subject individual.

(l) "Solicitation" means a request by an officer or employee of FEMA that an individual provide information about himself or herself.

(m) "Director" means the Director, FEMA.

(n) "Deputy Director" means the Deputy Director, FEMA.

(o) "Privacy Appeals Officer" means the Director, Finance and Administration.

§ 6.3 Collection and use of information (Privacy Act statements).

(a) *General:* Any information used in whole or in part in making a determination about an individual's rights, benefits, or privileges under FEMA programs will be collected directly from the subject individual to

the extent practicable. The system manager also shall ensure that information collected is used only in conformance with the provisions of the Act and these regulations.

(b) *Solicitation of Information:* System managers shall ensure that at the time information is solicited the solicited individual is informed of the authority for collecting that information, whether providing the information is mandatory or voluntary, the purpose for which the information will be used, the routine uses to be made of the information, and the effects on the individual, if any, of not providing the information. The Director, Finance and Administration and Regional Directors shall ensure that forms used to solicit information are in compliance with the act and these regulations.

(c) *Solicitation of Social Security Numbers:* Before an employee of FEMA requests an individual to disclose his or her social security number, the employee of FEMA shall ensure that either:

(1) The disclosure is required by Federal statute, or;

(2) The disclosure of a social security number was required under statute or regulation adopted before January 1, 1975, to verify the identity of an individual, and the social security number will become a part of a system of records in existence and operating before January 1, 1975. If solicitation of the social security number is authorized under paragraph (c) (1) or (2) of this section, the FEMA employee who requests an individual to disclose the social security account number, shall first inform that individual whether that disclosure is mandatory or voluntary, by what statutory or other authority the number is solicited, and the uses that will be made of it.

(d) *Soliciting Information From Third Parties:* An employee of FEMA shall inform third parties who are requested to provide information about another individual of the purposes for which the information will be used.

§ 6.4 Standards of accuracy.

The system manager shall ensure that all records which are used by FEMA to make determinations about any individual are maintained with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual.

§ 6.5 Rules of conduct.

Employees of FEMA involved in the design, development, operation, or maintenance of any system of records or in maintaining any record, shall conduct themselves in accordance with the rules of conduct concerning the protection of personal information in § 3.25 of this chapter.

§ 6.6 Safeguarding systems of records.

(a) Systems managers shall ensure that appropriate administrative, technical, and physical safeguards are established to ensure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity which could resutlt in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

(b) Personnel information contained in both manual and automated systems of records shall be protected by implementing the following safeguards:

(1) Official personnel folders, authorized personnel operating or work folders and other records of personnel actions effected during an employee's Federal service or affecting the employee's status and service, including information on experience, education, training, special qualification, and skills, performance appraisals, and conduct, shall be stored in a lockable metal filing cabinet when not in use by an authorized person. A system manager may employ an alternative storage system providing that it furnished an equivalent degree of physical security as storage in a lockable metal filing cabinet.

(2) System managers, at their discretion may designate additional records of unusual sensitivity which require safeguards similar to those described in paragraph (a) of this section.

(3) A system manager shall permit access to and use of automated or manual personnel records only to persons whose official duties require such access, or to a subject individual or his or her representative as provided by this part.

§ 6.7 Records of other agencies.

If FEMA receives a request for access to records which are the primary responsibility of another agency, but which are maintained by or in the temporary possession of FEMA on behalf of that agency, FEMA will advise the requestor that the request has been forwarded to the responsible agency. Records in the custody of FEMA which are the primary responsibility of the Office of Personnel Management are governed by the rules promulgated by it pursuant to the Privacy Act.

§ 6.8 Subpoena and other legal demands.

Access to records in systems of records by subpoena or other legal process shall be in accordance with the provisions of Part 5 of this chapter.

§ 6.9 Inconsistent issuances of FEMA and/or its predecessor agencies superseded.

Any policies and procedures in any issuances of FEMA or any of its predecessor agencies which are inconsistent with the policies and procedures in this Part are superseded to the extent of that inconsistency.

§ 6.10 Assistance and referrals.

Requests for assistance and referral to the responsible system manager or other FEMA employee charged with implementing these regulations should be made to the Director, Finance and Administration, Federal Emergency Management Agency, Washington, D.C. 20472.

Subpart B—Disclosure of Records

§ 6.20 Conditions of disclosure.

No employee of FEMA shall disclose any record to any person or to another agency without the express written consent of the subject individual unless the disclosure is:

(a) To officers or employees of FEMA who have a need for the information in the official performance of their duties;

(b) Required by the provisions of the Freedom of Information Act, 5 U.S.C. 552.

(c) For a routine use as published in the annual notices in the Federal Register;

(d) To the Bureau of the Census for use pursuant to Title 13, United States Code;

(e) To a recipient who has provided FEMA with advance adequate written assurance that the record will be used solely as a statistical research or reporting record subject to the following: The record shall be transferred in a form that is not individually identifiable. The written statement should include as a minimum (1) a statement of the purpose for requesting the records; and (2) certification that the records will be used only for statistical purposes. These written statements should be maintained as accounting records. In addition to deleting personal identifying information from records released for statistical purposes, the system manager shall ensure that the identity of the individual cannot reasonably be deduced by combining various statistical records;

(f) To the National Archives of the United States as a record which has sufficient historical or other value to

warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(g) To another agency or instrumentality of any governmental jurisdiction within or under the control of the United States for civil or criminal law enforcement activity, if the activity is authorized by law, and if the head of the agency or instrumentality or his designated representative has made a written request to the Director specifying the particular portion desired and the law enforcement activity for which the record is sought;

(h) To a person showing compelling circumstances affecting the health and safety of an individual to whom the record pertains. (Upon such disclosure, a notification must be sent to the last known address of the subject individual.)

(i) To either House of Congress or to a subcommittee or committee (joint or of either House, to the extent that the subject matter falls within their jurisdiction;

(j) To the Comptroller General or any duly authorized representatives of the Comptroller General 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.

§ 6.21 Procedures for disclosure.

(a) Upon receipt of a request for disclosure, the system manager shall verify the right of the requestor to obtain disclosure pursuant to § 6.20. Upon that verification and subject to other requirements of this part, the system manager shall make the requested records available.

(b) If the system manager determines that the disclosure is not permitted under the provisions of § 6.20 or other provisions of this part, the system manager shall deny the request in writing and shall inform the requestor of the right to submit a request for review and final determination to the Director or designee.

§ 6.22 Accounting of disclosures.

(a) Except for disclosures made pursuant to § 6.20 (a) and (b), an accurate accounting of each disclosure shall be made and retained for 5 years after the disclosure or for the life of the record, whichever is longer. The accounting shall include the date, nature, and purpose of each disclosure, and the name and address of the person or agency to whom the disclosure is made;

(b) The system manager also shall maintain in conjunction with the accounting of disclosures;

(1) A full statement of the justification for the disclosure.

(2) All documentation surrounding disclosure of a record for statistical or law enforcement purposes; and

(3) Evidence of written consent to a disclosure given by the subject individual.

(c) Except for the accounting of disclosures made to agencies or instrumentalities in law enforcement activities in accordance with § 6.20 (g) or of disclosures made from exempt systems the accounting of disclosures shall be made available to the individual upon request. Procedures for requesting access to the accounting are in Subpart C of this part.

Subpart C—Individual Access to Records

§ 6.30 Form of requests.

(a) An individual who seeks access to his or her record or to any information pertaining to the individual which is contained in a system of records should notify the system manager at the address indicated in the Federal Register notice describing the pertinent system. The notice should bear the legend "Privacy Act Request" both on the request letter and on the envelope. It will help in the processing of a request if the request letter contains the complete name and identifying number of the system as published in the Federal Register; the full name and address of the subject individual; a brief description of the nature, time, place, and circumstances of the individual's association with FEMA; and any other information which the individual believes would help the system manager to determine whether the information about the individual is included in the system of records. The system manager shall answer or acknowledge the request within 10 workdays of its receipt by FEMA.

(b) The system manager, at his discretion, may accept oral requests for access subject to verification of identity.

§ 6.31 Special requirements for medical records.

(a) A system manager who receives a request from an individual for access to those official medical records which belong to the U.S. Office of Personnel Management and are described in Chapter 339, Federal Personnel Manual (medical records about entrance qualifications or fitness for duty, or medical records which are otherwise filed in the Official Personnel Folder), shall refer the pertinent system of records to a Federal Medical Officer for review and determination in accordance with this section. If no Federal Medical Officer is available to make the determination required by this section, the system manager shall refer the request and the medical reports concerned to the Office of Personnel Management for determination.

(b) If, in the opinion of a Federal Medical Officer, medical records requested by the subject individual indicate a condition about which a prudent physician would hesitate to inform a person suffering from such a condition of its exact nature and probable outcome, the system manager shall not release the medical information to the subject individual nor to any person other than a physician designated in writing by the subject individual, or the guardian or conservator of the individual.

(c) If, in the opinion of a Federal Medical Officer, the medical information does not indicate the presence of any condition which would cause a prudent physician to hesitate to inform a person suffering from such a condition of its exact nature and probable outcome, the system manager shall release it to the subject individual or to any person, firm, or organization which the individual authorizes in writing to receive it.

§ 6.32 Granting access.

(a) Upon receipt of a request for access to non-exempt records, the system manager shall make these records available to the subject individual or shall acknowledge the request within 10 workdays of its receipt by FEMA. The acknowledgment shall indicate when the system manager will make the records available.

(b) If the system manager anticipates more than a 10 day delay in making a record available, he or she also shall include in the acknowledgment specific reasons for the delay.

(c) If a subject individual's request for access does not contain sufficient information to permit the system manager to locate the records, the system manager shall request additional information from the individual and shall have 10 workdays following receipt of the additional information in which to make the records available or to acknowledge receipt of the request and indicate when the records will be available.

(d) Records will be available for authorized access during normal business hours at the offices where the records are located. A requestor should be prepared to identify himself or herself by signature; i.e., to note by

signature the date of access and/or produce other identification verifying the signature.

(e) Upon request, a system manager shall permit an individual to examine the original of a non-exempt record, shall provide the individual with a copy of the record, or both. Fees shall be charged in accordance with Subpart F.

(f) An individual may request to pick up a record in person or to receive it by mail, directed to the name and address provided by the individual in the request. A system manager shall not make a record available to a third party for delivery to the subject individual except for medical records as outlined in § 6.31.

(g) An individual who selects another person to review, or to accompany the individual in reviewing or obtaining a copy of the record must, prior to the disclosure, sign a statement authorizing the disclosure of the record. The system manager shall maintain this statement with the record.

(h) The procedure for access to an accounting of disclosure is identical to the procedure for access to a record as set forth in this section.

§ 6.33 Denials of access.

(a) A system manager may deny an individual access to that individual's record only upon the grounds that FEMA has published the rules in the Federal Register exempting the pertinent system of records from the access requirement. These exempt systems of records are described in Subpart G of this part.

(b) Upon receipt of a request for access to a record which the system manager believes is contained within an exempt system of records, he or she shall forward the request to the appropriate official listed below through normal supervisory channels.

(1) At Headquarters:

(i) The Director.
(ii) The Deputy Director.
(iii) Associate Directors or Office Directors.
(iv) Assistant Director for Training and Education.
(v) U.S. Fire Administrator.
(vi) Federal Insurance Administrator.
(vii) Director, Operations Support.
(viii) Director, Personnel.
(ix) Director, Finance and Administration.
(x) Director, Program Evaluation and Research.
(xi) General Counsel.
(xii) Inspector General.

(2) *At Regions: Regional Directors.*

The system manager shall append to the request an explanation of the determination that the requested record is contained within an exempt system of records and a recommendation that the request be denied or granted.

(c) In the event that the system manager serves in one of the positions listed in paragraph (b) of this section, he or she shall retain the responsibility for denying or granting the request.

(d) The appropriate official listed in paragraph (b) of this section shall, in consultation with the Office of General Counsel and such other officials as deemed appropriate, determine if the request record is contained with an exempt system of records and:

(1) If the record is not contained within an exempt system of records, the above official shall notify the system manager to grant the request in accordance with § 6.32, or

(2) If the record is contained within an exempt system said official shall:

(i) Notify the requester that the request is denied, including a statement justifying the denial and advising the requestor of a right to judicial review of that decision as provided in § 6.57, or

(ii) Notify the system manager to make record available to the requestor in accordance with § 6.31, notwithstanding the record's inclusion within an exempt system.

(e) The appropriate official listed in paragraph (b) of this section shall provide the Privacy Appeals Office with a copy of any denial of a requested access.

§ 6.34 Appeal of denial of access within FEMA.

A requestor denied access in whole or in part, to records pertaining to that individual, exclusive of those records for which the system manager is the Director, may file an administrative appeal of that denial. Appeals of denied access will be processed in the same manner as processing for appeals from a denial of a request to amend a record set out in § 6.55, regardless whether the denial being appealed is made at headquarters or by a regional official.

Subpart D—Requests to Amend Records

§ 6.50 Submission of requests to amend records.

An individual who desires to amend any record containing personal information about the individual should direct a written request to the system manager specified in the pertinent Federal Register notice concerning FEMA's systems of records. A current FEMA employee who desires to amend personnel records should submit a written request to the FEMA Director of Personnel, Washington, D.C. 20472. Each request should include evidence of and justification for the need to amend the pertinent record. Each request should bear the legend "Privacy Act—Request to Amend Record" prominently marked on both the face of the request letter and the envelope.

§ 6.51 Review of requests to amend records.

(a) The system manager shall acknowledge the receipt of a request to amend a record within 10 workdays. If possible, the acknowledgment shall include the system manager's determination either to amend the record or to deny the request to amend as provided in § 6.53.

(b) When reviewing a record in response to a request to amend, the system manager shall assess the accuracy, relevance, timeliness, and completeness of the existing record in light of the proposed amendment and shall determine whether the request for the amendment is justified. With respect to a request to delete information, the system manager also shall review the request and the existing record to determine whether the information is relevant and necessary to accomplish an agency purpose required to be accomplished by statute or Executive Order.

§ 6.52 Approval of requests to amend records.

If the system manager determines that amendment of a record is proper in accordance with the request to amend, he or she promptly shall make the necessary corrections to the record and shall send a copy of the corrected record to the individual. Where an accounting of disclosure has been maintained, the system manager shall advise all previous recipients of the record of the fact that a correction has been made and the substance of the correction. Where practicable, the system manager shall advise the Privacy Appeals Officer that a request to amend has been approved.

§ 6.53 Denial of requests to amend records.

(a) If the system manager determines that an amendment of a record is improper or that the record should be amended in a manner other than that requested by an individual, he shall refer the request to amend and his determinations and recommendations to the appropriate official listed in § 6.33(b) through normal supervisory channels.

(b) If the official listed in § 6.33, after reviewing the request to amend a record, determines to amend the record in accordance with the request, said official promptly shall return the request to the system manager with instructions

to make the requested amendments in accordance with § 6.52.

(c) If the appropriate official listed in § 6.33, after reviewing the request to amend a record, determines not to amend the record in accordance with the request, the requestor shall be promptly advised in writing of the determination. The refusal letter (1) shall state the reasons for the denial of the request to amend; (2) shall include proposed alternative amendments, if appropriate; (3) shall state the requestor's right to appeal the denial of the request to amend; and (4) shall state the procedures for appealing.

(d) The appropriate official listed in § 6.33 shall furnish the Privacy Appeals Officer a copy of each initial denial of a request to amend a record.

§ 6.54 Agreement to alternative amendments.

If the denial of a request to amend a record includes proposed alternative amendments, and if the requester agrees to accept them, he or she must notify the official who signed the denial. That official immediately shall instruct the system manager to make the necessary amendments in accordance with § 6.52.

§ 6.55 Appeal of denial of request to amend a record.

(a) A requestor who disagrees with a denial of a request to amend a record may file an administrative appeal of that denial. The requestor should address the appeal to the FEMA Privacy Appeals Officer, Washington, D.C. 20472. If the requestor is an employee of FEMA and the denial to amend involves a record maintained in the employee's Official Personnel Folder, as described in Chapter 293 of the Federal Personnel Manual, the appeal should be addressed to the Director, Bureau of Manpower Information Systems, Office of Personnel Management, Washington, D.C. 20415.

(b) Each appeal to the Privacy Act Appeals Officer shall be in writing and must be received by FEMA no later than 30 calendar days from the requestor's receipt of a denial of a request to amend a record. The appeal should bear the legend "Privacy Act—Appeal," both on the face of the letter and the envelope.

(c) Upon receipt of an appeal, the Privacy Act Appeals Officer shall consult with the system manager, the official who made the denial, the General Counsel or a member of that office, and such other officials as may be appropriate. If the Privacy Act Appeals Officer in consultation with these officials, determines that the record should be amended, as requested, the system manager shall be instructed immediately to amend the record in accordance with § 6.52 and shall notify the requestor of that action.

(d) If the Privacy Act Appeals Officer, in consultation with the officials specified in paragraph (c) of this section, determines that the appeal should be rejected, the Privacy Act Appeals Officer shall submit the file on the request and appeal, including findings and recommendations, to the Deputy Director for a final administrative determination.

(e) If the Deputy Director determines that the record should be amended as requested, he or she immediately shall instruct the system manager in writing to amend the record in accordance with § 6.52. The Deputy Director shall send a copy of those instructions to the Privacy Act Appeals Officer, who shall notify the requester of that action.

(f) If the Deputy Director determines to reject the appeal, the requestor shall immediately be notified in writing of that determination. This action shall constitute the final administrative determination on the request to amend the record and shall include:

(1) The reasons for the rejection of the appeal.

(2) Proposed alternative amendments, if appropriate, which the requestor subsequently may accept in accordance with § 6.54.

(3) Notice of the requestor's right to file a Statement of Disagreement for distribution in accordance with § 6.56.

(4) Notice of the requestor's right to seek judicial review of the final administrative determination, as provided in § 6.57.

(g) The final agency determination must be made no later than 30 workdays from the date on which the appeal is received by the Privacy Act Appeals Officer.

(h) In extraordinary circumstances, the Director may extend this time limit by notifying the requestor in writing before the expiration of the 30 workdays. The Director's notification will include a justification for the extension.

§ 6.56 Statement of disagreement.

Upon receipt of a final administrative determination denying a request to amend a record, the requestor may file a Statement of Disagreement with the appropriate system manager. The Statement of Disagreement should include an explanation of why the requestor believes the record to be inaccurate, irrelevant, untimely, or incomplete. The system manager shall maintain the Statement of Disagreement in conjunction with the pertinent record, and shall include a copy of the Statement of Disagreement in any disclosure of the pertinent record. The system manager shall provide a copy of the Statement of Disagreement to any person or agency to whom the record has been disclosed only if the disclosure was subject to the accounting requirements of § 6.22.

§ 6.57 Judicial review.

Within 2 years of receipt of a final administrative determination as provided in § 6.34 or § 6.55, a requestor may seek judicial review of that determination. A civil action must be filed in the Federal District Court in which the requestor resides or has his or her principal place of business or in which the agency records are situated, or in the District of Columbia.

Subpart E—Report on New Systems and Alternations of Existing Systems

§ 6.70 Reporting requirement.

(a) No later than 90 calendar days prior to the establishment of a new system of records, the prospective system manager shall notify the Director, Finance and Administration of the proposed new system. The prospective system manager shall include with the notification a completed FEMA Form 11–2, System of Records Covered by the Privacy Act of 1974, and a justification for each system of records proposed to be established. If the Director, Finance and Administration determines that the establishment of the proposed system is in the best interest of the Government, then no later than 60 calendar days prior to the establishment of that system of records, a report of the proposal shall be submitted by the Director or a designee thereof, to the President of the Senate, the Speaker of the House of Representatives, and the Director of the Office of Management and Budget for their evaluation of the probable or potential effect of that proposal on the privacy and other personal or property rights of individuals.

(b) No later than 90 calendar days prior to the alteration of a system of records, the system manager responsible for the maintenance of that system of records shall notify the Director, Finance and Administration of the proposed alteration. The system manager shall include with the notification a completed FEMA Form 11–2. System of Records Covered by the Privacy Act of 1974, and a justification for each system of records he proposes to alter. If it is determined that the proposed alteration is in the best interest of the Government, then, the Director, or a designee thereof, shall

submit, no later than 60 calendar days prior to the establishment of that alteration, a report of the proposal to the President of the Senate, the Speaker of the House of Representatives, and the Director of the Office of Management and Budget for their evaluation of the probable or potential effect of that proposal on the privacy and other personal or property rights of individuals.

(c) The reports required by this regulation are exempt from reports control.

§ 6.71 Federal Register notice of establishment of new system or alteration of existing system.

Notice of the proposed establishment or alteration of a system of records shall be published in the Federal Register, in accordance with FEMA procedures when:

(a) Notice is received that the Senate, the House of Representatives, and the Office of Managment and Budget do not object to the establishment of a new system or records or to the alteration of an existing system of records, or

(b) No fewer than 30 calendar days elapse from the date of submission of the proposal to the Senate, the House of Representatives, and the Office of Management and Budget without receipt of an objection to the proposal. The notice shall include all of the information required to be provided in FEMA Form 11-2, System of Records Covered by the Privacy Act of 1974, and such other information as the Director deems necessary.

§ 6.72 Effective date of new system of records or alteration of an existing system or records.

Systems of records proposed to be established or altered in accordance with the provisions of this subpart shall be effective no sooner than 30 calendar days from the publication of the notice required by § 6.71.

Subpart F—Fees

§ 6.80 Records available at fee.

The system manager shall provide a copy of a record to a requestor at a fee prescribed § 6.98 unless the fee is waived under § 6.82.

§ 6.81 Additional copies.

A reasonable number of additional copies shall be provided for the applicable fee to a requestor who indicates that he has no access to commercial reproduction services.

§ 6.82 Waiver of fee.

The system manager shall make one copy of a record, up to 50 pages, available without charge to a requestor who is an employee of FEMA. The system manager may waive the fee requirement for any other requestor if the cost of collecting the fee is an unduly large part of, or greater than, the fee, or when furnishing the record without charge conforms to generally established business custom or is in the public interest.

§ 6.83 Prepayment of fees over $25.

If the system manager determines that the anticipated total fee is likely to exceed $25, the individual will be informed that the anticipated fee must be prepaid prior to FEMA's making the records available. FEMA will remit the excess paid by the individual or bill the individual for an additional amount if there is a variation between the final fee charged and the amount prepaid.

§ 6.84 Form of payment.

Payment shall be by check or money order payable to The Federal Emergency Management Agency and shall be addressed to the system manager.

§ 6.85 Reproduction fees.

(a) The fee for reproducing a copy of a FEMA record (by routine electrostatic copying) up to and including material 8½ x 14 inches shall be $0.10 per page.

(b) The fee for reproducing a copy of a FEMA record over 8½ x 14 inches or whose physical characteristcs do not permit reproduction by routine electrostatic copying shall be the direct cost of reproducing the records through Government or commercial sources.

Subpart G—Exempt System of Records [Reserved]

Dated: August 9, 1979.

John W. Macy, Jr.,

Director.

[FR Doc. 79-26623 Filed 8-24-79; 8:45 am]

BILLING CODE 4210-23-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[44 CFR Part 1]

[Docket No. FEMA-Gen 1]

Rulemaking; Policy and Procedures

AGENCY: Federal Emergency Management Agency.

ACTION: Proposed Rule.

SUMMARY: The FEMA proposes regulations setting forth the procedures for adoption of its rules. It is necessary that FEMA now establish procedures for rulemaking under Administrative Procedure Act and Executive Order 12044, "Improving Government Regulations." The functions of five agencies have now been transferred to it, and it will be issuing regulations.

DATE: Written comment should be submitted on or before October 26, 1979.

ADDRESS: SEND COMMENTS TO: Federal Emergency management Agency, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: George W. Jett, General Counsel, Federal Emergency Management Agency, Washington, DC 20472, (202) 254-9521.

SUPPLEMENTARY INFORMATION: Section 4 of the Administrative Procedure Act sets out procedures for informal, so-called notice and public comment rulemaking. There are a number of permissive exemptions from informal rulemaking, based on the type of regulation and also upon the function involved and there are also circumstances when the requirement can be waived. The Administrative Conference of the United States and others have recommended that agencies voluntarily engage in public participation rulemaking where not required and many agencies have published policies effecting this recommendation. Executive Order 12044 (43 FR 12661) "Improving Government Regulations" also places affirmative duties upon agencies to ensure that opportunity exists for early participation and comment in rulemaking by other Federal agencies, State or local governments, businesses, organizations, and individual members of the public. The Federal Emergency management Agency was activated effective April 1, 1979 by combining the functions of The Federal Insurance Administration with The United States Fire Administration. The functions of the Federal Disaster Assistance Administration, Federal Preparedness Agency and Defense Civil Preparedness Agency have now been assigned to FEMA effective July 15, 1979. The new agency has been assigned its own Title in the Code of Federal Regulations. The policy set out in this regulation is FEMA's response to these recommendations and new developments in administrative law. FEMA will provide for public participation in rulemaking in a number of otherwise exempt areas, while continuing some exemption such as those involving procedure or internal management, and retaining the right to expedite rules when such is necessary. The regulation also establishes procedures for FEMA in handling public comments. FEMA's internal management procedures are specified in a FEMA directive, copies of which are available. Interested parties may participate in this proposed rulemaking by submitting their views, in writing, to FEMA. Each comment should include the name and address of the person or organization submitting the comment and should make reference to the docket number cited above. All comments received on or before the date set out above will be considered in promulgating final regulation on the matters addressed here. All written comments received will be docketed and made available for public inspection at FEMA. Accordingly, Chapter 1 of Title 44 of the Code of Federal Regulations is proposed to be amended by adding a new Part 1 as follows:

PART 1—RULEMAKING; POLICY AND PROCEDURES

Subpart A—General

Sec.

1.1 Purpose
1.2 Definitions.
1.3 Scope.
1.4 Policy and procedures.
1.5 Rules docket.

Subpart B—Procedures for Rulemaking

1.10 Initiation of rulemaking.
1.11 Advance notice of proposed rulemaking.
1.12 Notice of Proposed Rulemaking.
1.13 Participation by interested persons.
1.14 Additional rulemaking proceedings.
1.15 Hearings.
1.16 Adoption of a Final Rule.
1.17 Petitions for reconsideration.
1.18 Petition for rulemaking.

Authority: 5 USC 551, 552, 553; EO 12044, 43 FR 12661.

PART 1—RULEMAKING; POLICY AND PROCEDURES

Subpart A—General

§ 1.1 Purpose.

(a) This part contains the basic policies and procedures of the Federal Emergency Management Agency (FEMA) for adoption of rules. These policies and procedures incorporate those provisions of Section 4 of the Administrative Procedure Act (APA) (5 U.S.C. 553) which FEMA will follow. This part and FEMA Manual 1120.1 implement Executive Order 12044 of March 23, 1978, "Improving Government Regulations".

(b) Rules which must be published are described in Section 3 of the APA, 5 U.S.C. 552(a) called the Freedom of Information Act. FEMA implementation of that Act, including subsection (a) is contained in 44 CFR part 5.

(c) FEMA Manual 1120.1, "The Rulemaking Process, Formulation, Drafting, Clearance, and Publication of Federal Register Documents", describes the internal procedures including policy level oversight of FEMA for

(1) Publishing the semiannual agenda of significant regulations under development and review;

(2) Making initial determinations with respect to significance of proposed rulemaking;

(3) Determining the need for regulatory analyses; and

(4) Reviewing existing regulations.

§ 1.2 Definitions.

(a) "Rule" or "regulation" means the whole or a part of any agency statement of general or particular applicability and future effect designed to (1) implement, interpret, or prescribe law or policy, or (2) describe FEMA's organization, or its procedural requirements.

(b) "Rulemaking" means the FEMA process for considering and formulating the issuance, amendment or repeal of a rule.

(c) "Director" means the Director, FEMA, or an official to whom the Director has expressly delegated authority to issue rules.

(d) "FEMA" means Federal Emergency Management Agency.

§ 1.3 Scope.

(a) This part prescribes general rulemaking procedures for the issuance, amendment, or repeal of rules in which participation by interested persons is required by 5 U.S.C 553, by Executive Order 12044, by FEMA policy, or by § 1.4 of this part.

(b) Any delegation by the Director of authority to issue rules may not be

further redelegated, unless expressly provided for in the delegation.

(c) This part does not apply to rules issued in accordance with the formal rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 556, 557).

§ 1.4 Policy and procedures.

(a) It is the policy of FEMA to provide for public participation in rulemaking regarding its programs and functions, including matters that relate to public property, loans, grants, or benefits, or contracts, even though these matters are not subject to a requirement for notice and public comment rulemaking by law or Executive policy.

(b) FEMA will publish notices of proposal rulemaking in the Federal Register and will give interested persons an opportunity to participate in the rulemaking through submission of written data, views, and arguments with or without opportunity for oral presentation.

(c) In order to give the public an early and meaningful opportunity to participate in the development of rules, for many regulations the Director will employ additonal methods of inviting public participation. These methods include, but are not limited to, publishing advance Notices of Proposed Rulemaking (ANPR), holding open conferences, convening public forums of panels, sending notices of proposed regulations to publications likely to be read by those affected and soliciting comment from interested parties by such means as direct mail. An ANPR will be used to solicit public comment early in the rulemaking process for significant rules unless the Director grants an exception based upon legitimate and pressing time constraints.

(d) It is the policy of FEMA that its notices of proposed rulemaking are to afford the public at least sixty days for submission of comments unless the Director makes an exception and sets forth the reasons for the exception in the preamble to the notice of proposed rulemaking.

(e) Unless required by statute, notice and public procedure may be omitted if the Director, for good cause, determines in a particular case or class of cases that notice and public procedure is impracticable, unnecessary or contrary to the public interest and sets forth the reason for the determination in the rule or, for a class of cases in a published rule or statement of policy. In a particular case, the reasons for the determination will be stated in the rulemaking document. Notice and public procedure may also be omitted with respect to statements of policy, interpretative rules, rules governing FEMA's organization or its own internal practices or procedures, or if a statute expressly authorizes ommission.

(f) A substantive rule will be published not less than 30 days before its effective date unless it grants or recognizes an exemption or relieves a restricton or unless the rule itself states good cause for its taking effect less than 30 days after publication. Statements of policy and interpretative rules will usually be made effective on the date of publication.

§ 1.5 Rules docket.

(a) All documents which are public records and which are a part of a specific rulemaking procedure, including but not limited to, advance notices of proposed rulemaking, notices of proposed rulemaking, written comments received in response to notices, withdrawals or terminations of proposed rulemaking, petitions for rulemaking, requests for oral argument in public participation cases, requests for extension of time, grants or denials of petitions or requests, transcripts or minutes of informal hearings, final rules and general notices shall be maintained in the Rules Docket Room. All public rulemaking comments should refer to the docket number which appears in the heading of the rule and should be addressed to the Rules Docket Clerk, Federal Emergency Managment Agency at the address shown in the heading.

(b) In accordance with the provisions of the Freedom of Information Act (5 U.S.C. 552), documents which are a part of a specific rulemaking proceeding are public records. After a docket is established, any person may examine docketed material at any time during established hours of business and may obtain a copy of any docketed material upon payment of the prescribed fee. (See Part 5 of this Chapter.)

Subpart B—Procedures for Rulemaking

§ 1.10 Initiation of rulemaking.

Rulemaking may be initiated on the Director's motion. Rulemaking may also be initiated on the petition of any interested person in accordance with the provisions of § 1.18. Interested person includes a Federal, State, or local government or government agency.

§ 1.11 Advance notice of proposed rulemaking.

An Advance Notice of Proposed Rulemaking issued in accordance with § 1.1 of this part will be published in the Federal Register and contains:

(a) A description of the proposed new program or program changes, and why they are needed;

(b) A presentation of the major policy issues involved;

(c) A request for comments, both specific and general, or the need for the proposed rule and the provisions that the rule might include;

(d) If appropriate, a list of questions about the proposal which seeks to bring out detailed comments;

(e) If known, an estimate of the reporting or recordkeeping requirements, if any, that the rule would impose; and

(f) An address to which comments may be, and the time within which they must be submitted.

§ 1.12 Notice of proposed rulemaking.

Each notice of proposed rulemaking required by statute, Executive Order 12044, or by § 1.4 will be published in the Federal register and will include:

(a) The substance or terms of the proposed rule or a description of the subject matter and issues involved;

(b) A statement of how and to what extent interested persons may participate in the proceeding;

(c) Where participation is limited to written comments, a statement of the time within which such comments must be submitted;

(d) A reference to the legal authority under which the proposal is issued; and

(e) In a proceeding which has provided Advance Notice of Proposed Rulemaking, and analysis of the principal issues and recommendations raised by the comments, and the manner in which they have been addressed in the proposed rulemaking.

§ 1.13 Participation by interested persons.

(a) Unless the notice otherwise provides, any interested person may participate in rulemaking proceedings by submitting written data, views or arguements within the comment time stated in the notice. In addition, the Director may permit the filing of comments in response to original comments.

(b) In appropriate cases, the Director may provide for oral presentation of views in additional proceedings described in § 1.14.

§ 1.14 Additional rulemaking proceedings.

The Director may invite interested persons to present oral arguments, appear at informal hearings, or participate in any other procedure affording opportunity for oral presentation of views. The transcript or minutes of such meetings, as

appropriate, will be kept and filed in the Rules Docket.

§ 1.15 Hearings.

(a) The provisions of 5 U.S.C. 556 and 557, which govern formal hearings in adjudicatory proceedings, do not apply to informal rulemaking proceedings described in this part. When opportunity is afforded for oral presentation, the informal "hearing" is a nonadversary, fact-finding proceeding. Any rule issued in a proceeding under this part in which a hearing is held need not be based exclusively on the record of such hearing.

(b) When a hearing is provided, the Director will designate a representative to conduct the hearing.

§ 1.16 Adoption of a final rule.

(a) All timely comments will be considered in taking final action on a proposed rule. Each preamble to a final rule will contain a short analysis and evaluation of the relevant significant issues set forth in the comments submitted, and a clear concise statement of the basis and purpose of the rule.

(b) When determined necessary by the Director in accordance with the provisions of 1 CFR § 18.12, the preamble shall contain the following information:

(1) A discussion of the background and major issues involved;

(2) In the case of a final rule, any significant differences between it and the proposed rule;

(3) A response to substantive public comments received; and

(4) Any other information the Director considers appropriate.

§ 1.17 Petitions for reconsideration.

Petitions for reconsideration of a final rule will not be considered. Such petitions, if filed, will be treated as petitions for rulemaking in accordance with §1.18.

§ 1.18 Petition for rulemaking.

(a) Any interested person may petition the Director for the issuance, amendment, or repeal of a rule. For purposes of this section the term "person" includes a Federal, State or local government or government agency. Each petition shall—

(1) Be submitted to the Rules Docket Clerk;

(2) Set forth the substance of the rule or amendment proposed or specify the rule sought to be repealed or amended;

(3) Explain the interest of the petitioner in support of the action sought; and

(4) Set forth all data and arguments available to the petitioner in support of the action sought.

(b) No public procedures will be held directly on the petition before its dispostition. If the Director finds that the petition contains adequate justification, a rulemaking proceeding will be initiated or a final rule will be issued as appropriate. If the Director finds that the petition does not contain adequate justification, the petition will be denied by letter or other notice, with a brief statement of the ground for denial. The Director may consider new evidence at any time; however, repetitious petitions for rulemaking will not be considered.

Dated: August 9, 1979.

John W. Macy, Jr.,

Director.

[FR Doc. 79-26624 Filed 8-24-79; 8:45 am]

BILLING CODE 4210-23-M

Monday
August 27, 1979

Part VI

Council on Wage and Price Stability

Noninflationary Pay and Price Behavior; Adoption of Form PAY-1

COUNCIL ON WAGE AND PRICE STABILITY

6 CFR Parts 705 and 706

Noninflationary Pay and Price Behavior; Adoption of Form PAY-1

AGENCY: Council on Wage and Price Stability.

ACTION: Adoption of reporting form and request for submission of data.

SUMMARY: The Council is adopting a reporting form designated as Form PAY-1 and requesting the submission of data by September 5, 1979.

EFFECTIVE DATE: August 27, 1979.

FOR FURTHER INFORMATION CONTACT: Janice Murphey, Office of Pay Monitoring, Council on Wage and Price Stability, 600 17th Street N.W., Washington, D.C. 20506, 202/456-7180.

SUPPLEMENTARY INFORMATION: The Council has published voluntary standards for non-inflationary pay and price behavior applicable during the first program year. (6 CFR Part 705). To assist in monitoring compliance with the pay standard, the Council is hereby adopting Form PAY-1. Data from this form will also assist the Council in evaluating the effectiveness of the pay standard and its various components during the program year.

The Council has already requested in letters to 600-700 companies with 10,000 or more employees that Form PAY-1 be submitted to the Council by September 5, 1979. In addition, any company, as specified in the plan of company organization, with 10,000 employees or more at any time during the program year is requested to file with the Council the information specified in Form PAY-1 by September 5, 1979. If a plan of company organization has not been filed with the Council, a plan of company organization should accompany the submission of Form PAY-1.

While the submission of data is voluntary, the Council views the access to timely, uniformly defined data as essential to the effective monitoring of compliance with the standards. The data will be treated as confidential in accordance with Section 4(f) of the Council on Wage and Price Stability Act, 12 U.S.C. 1904 note, and 6 CFR Parts 702 and 704, 44 FR 5339 (January 25, 1979).

In accordance with 6 CFR 706.20, if a company has furnished the Council with any of the data requested by Form PAY-1, it need not furnish it again, although it should identify for the Council the document (including page references) containing such data and the date on which it was submitted.

This form was submitted to the Office of Management and Budget in accordance with the Federal Reports Act, and was approved under No. 116-S79013.

(Council on Wage and Price Stability Act, Pub. L. 93-387, as amended (12 U.S.C. 1904 note); EO 12092)

Issued in Washington, D.C., August 21, 1979.

R. Robert Russell,

Acting Director, Council on Wage and Price Stability.

Instructions for Preparation of Form Pay-1—Prospective Report on Compliance With the Pay Standard

General Instructions

Purpose of Form Pay-1: As part of the President's Anti-Inflation Program, the Council on Wage and Price Stability (the Council) has issued Voluntary Standards for Noninflationary Pay and Price Behavior. These standards appear at 43 FR 60772 (December 28, 1978); 44 FR 9582 (February 13, 1979); and 44 FR 17910 (March 23, 1979). The standards are further explained by the "Pay and Price Standards—Implementation Guide" at 44 FR 5339 (January 25, 1979) and by the questions and answers appearing with these publications. Additional questions and answers appear at 44 FR 32338 (June 5, 1979). Special Procedural Rules for complying with the standards appear at 44 FR 1346 (January 4, 1979); 44 FR 5337 (January 25, 1979); 44 FR 9585 February 13, 1979); 44 FR 17916 (March 23, 1979); and 44 FR 23777 (April 20, 1979).

The submission of data on Form PAY-1 is voluntary. However, the Council views the access to timely, uniformly defined data as essential to the effective monitoring of compliance with the standards. Form PAY-1 is used by the Council as a means for collecting data from companies. The information requested will allow the Council to meet two objectives. First, the data will be used to determine the extent to which firms have complied with the voluntary standards on pay-rate increases. Second, companies are asked to report actual pay-rate increases, as well as those chargeable under the pay standard, to enable the Council to determine the effect of the "exclusions" on total pay-rates and measure the inflationary impact of actual labor costs. This is consistent with the Council's efforts to analyze the factors influencing the rate of inflation. Analysis of the requested data will have an impact on future policy decisions regarding the voluntary pay and price standards specifically, and the anti-inflation effort in general.

The Council on Wage and Price Stability Act, 12 U.S.C. Section 1904, note, authorizes the Council to collect data on wages, such as are requested on Form PAY-1.

Confidentiality of Information: Information furnished to the Council pursuant to this request will be treated as confidential in accordance with Section 4(f) of the Council on Wage and Price Stability Act, 12 U.S.C. 1904, note, and 6 CFR Parts 702 and 704, 44 FR 5339 (January 25, 1979).

Suggestions for Improvement: The Council welcomes suggestions for improving this form. In general, it seeks ways of obtaining the information it needs to exercise its responsibilities for monitoring compliance with the Voluntary Standards for Noninflationary Pay and Price Behavior with the minimum reporting burden on reporting companies.

Who Should File: A reporting company, as specified in the plan of company organization previously submitted to the Council, with 10,000 employees or more at any time during the program year, and any other company designated by the Council, is requested to file with the Council information specified in "What to File" below. If a plan of company organization is not on file with the Council, a plan of company organization should accompany this form.

If a parent company chooses to disaggregate a consolidated entity for compliance purposes and no separately identified entity has 10,000 employees or more, this should be noted by the parent company in Part 1, Item 1e of the form and the form returned to the Council.

What to File: Each reporting company is requested to submit a separate Form PAY-1 (one copy) for its individual employee units. However, regarding collective bargaining units, a company should file reports only for collective bargaining contracts negotiated during the program year (and not considered exempt as specified in Section 705B-3(e) of the Pay Standard) covering 500 employees or more. For management and "all other" employee units not under a multi-year pay agreement, companies should report their base period pay rates (Column A) and their projected pay rates for the end of the program year (Column B). For nonrepresented units under a multi-year pay commitment, companies should report their base period pay rates (Column A) and projected pay rates at the end of the commitment period (Column B).

For collective bargaining contracts, companies should report pay rates in effect at the expiration of the prior contract (Column A), and projected pay rates at the expiration of the current contract (Column B). For multi-year collective bargaining contracts and multi-year pay commitments for nonrepresented employee units, companies are also asked to report their projected pay rates at the end of each year (see Insert for Multi-year Agreements).

Where to File: Form PAY–1 should be addressed to: Office of Pay Monitoring, Council on Wage and Price Stability, Winder Building, 600 17th Street, N.W., Washington, D.C. 20506.

Specific Instructions: The Form PAY–1 closely follows the definition of pay given in the Voluntary Pay and Price Standards, and reference to the Standards and Implementation Guide will help clarify items on the forms. Do not include on this form overtime wages (unless overtime provisions change), employer contributions for legally mandated benefit programs. Exclude all or wages and benefits to workers earning straight-time wages of four dollars per hour or less as of October 1, 1978 as well as wages and benefits for workers hired during the program year at a straight-time wage of four dollars per hour or less. Also, exclude deferred compensation paid in the base period but earned in an earlier period. Include deferred compensation earned in the program period but not paid in the program period. Other exclusions and adjustments to pay which the Standards allow should be treated as follows: estimate the actual increase in the hourly pay rate *prior* to the allowable adjustments (Part III, Item 5), then list the applicable adjustments used to calculate the chargeable pay-rate increase under the Standards.

All pay rates should be calculated as pay per straight-time hour worked, per employee, carried to three decimal places (as shown on the form). When paid leave hours are incurred irregularly, these hours should be calculated according to the leave practices in effect at the end of the base quarter and at the end of the program year as though they were incurred evenly over time. Companies may use a straight-time hours-paid-for basis (e.g., for salaried workers), where paid leave is included in straight-time wage and salary pay and only changes to paid leave practices are reported as a benefit. Increases/decreases in paid leave hours during the program period affect the straight-time hours and correspondingly will increase/decrease the cost of all benefits. These effects should be reflected in calculations for columns B–E. Beginning with Part III, indicate items which are not applicable with a "0". The Council does not require companies to make inordinate calculations to complete this form; a good faith estimate should be made when data are not available.

PART I—IDENTIFYING DATA

Item 1 a-c: Enter name and address of reporting company.

Item 1 d: Enter primary 4-digit Standard Industrial Classification Code.

Item 1 e: For parent companies: enter the number of reporting companies with 10,000 employees or more, filing as separate entities.

Item 2a: Check the appropriate box indicating the type of employee unit as defined in Section 705B–2 of the Standards.

Item 2b: Give the location for the employee unit.

Item 2c(1): Attach list if more than one union is included in unit.

Item 3: For represented units, a company should use the method of pay computation applicable to collective bargaining units, Section 705B–3. For other units a company may use either the average pay-rate change for the unit, Section 705B–4(a), called the "double snapshot" method, the pay-rate change for the fixed population of continuing employees employed in the beginning and end of the program year, Section 705B–4(b), called the "fixed population" method, or the weighted average pay-rate change of distinct functional employee subgroups, Section 705B–4(e). When using method 705B–4(b), only include on the form amounts paid to continuing employees. Check the method(s) used.

Item 4a: For represented units only complete Items 4b and 4c. For nonrepresented units, the base period may be either calendar quarter, July 1, 1978 to September 30, 1978, or the company's last complete fiscal quarter prior to October 2, 1978. If a formal annual pay plan was in operation as of October 1, 1978, the company may measure compliance by comparing the pay-rate as of the end of that plan year to the pay-rate as of the end of the next plan year. If this alternative is used, the base period should be the last quarter of the plan in operation as of October 1, 1978. Enter either the base quarter dates or the dates of the company's last customary pay period within the quarter, whichever period the company is using to determine compliance. The program period is the corresponding period one year later or at the end of the pay agreement for a multi-year agreement.

Item 4b–e: Self-explanatory.

PART II—CERTIFICATION

Self-explanatory.

PART III—PAY RATE DATA

Item 1: Straight-time wage and salary pay should include, where applicable, payments for shift differentials, skill differentials, and cost-of-living adjustments.

Cost-of-living adjustments (COLA) should be included in the wage and salary entry, but should also be shown separately for the program period along with the company's estimated *actual* increase in the Consumer Price Index (CPI). Item 6c provides the opportunity to project COLA costs assuming a 6 percent annual rate of increase in the CPI.

Item 2: Incentive pay includes, where applicable, the following items (expressed as pay per straight-time hour). The Council wishes to emphasize that it does not require companies to make inordinate calculations to complete these items; a good faith estimate should be made when data are not available.

Item 2a: Sales commission and production incentive pay (*not* adjusted for volume increases; an adjustment may be made in Item 6b);

Item 2b: Bonuses and other annual incentive compensation charged when earned for nondiscretionary plans (that is, when the services are performed that generate the compensation) and when paid for discretionary plans;

Item 2c: Compensation from long-term incentive plans (including any spread between an option or purchase price and fair market value at time of grant for plans subject to the future-value standard, Section 705B–5(c)), new future-value incentive plans, and other similar compensation arrangements when earned or accrued.

Item 2d: Enter the sum of 2(a), 2(b), and 2(c).

Item 3: Benefits include, where applicable, employer contributions or costs for the following fringe benefit items (show the actual costs per straight-time hour; adjustments may be made to some items in Item 6).

Item 3a: Pay for time not worked (e.g., paid vacations and holidays, sick leave and other paid leave), see the introduction to the *Specific Instructions* for an alternate treatment;

Item 3b: Savings and thrift plans such as qualified stock bonus plans, qualified profit-sharing plans (including retirement plans), employee stock

ownership plans, other defined contribution plans and nonqualified plans;

Item 3c: Qualified defined-benefit retirement plans (if a company planned to exclude pension costs from its pay-rate computations and detailed costs are not available, an estimate based on available data is sufficient);

Item 3d: Health benefit plans;

Item 3e: Life insurance, accident insurance, and other insurance plans; and

Item 3f: Legal assistance, educational assistance, and other plans resulting in benefits to employees but not reported as income; and job prequisites and other forms of compensation not covered elsewhere in the definition of pay but reported as income under the Internal Revenue Code and its interpretive regulations and rulings. Enter the total cost for these plans; list the major items.

Item 3g: Enter the sum of 3(a) to 3(f).

Item 4: The hourly pay-rate is the sum of the straight-time wage and salary rate (Item 1), the hourly cost of incentive pay (Item 2d), and the hourly cost of fringe benefits (Item 3g).

Item 5: The annual percent pay-rate increase is the percent increase from the base period pay rate (Item 4A) to the program period pay rate (Item 4B). To determine the percent increase, divide the program period pay rate by the base period pay rate, subtract 1, and multiply the result by 100. The formula for doing this would be: Percent increase=(4B/4A−1)×100. For multi-year agreements, the total percent increase should be expressed as the annual rate taking compounding into consideration. The formula in the multi-year case for doing this is: Annual percent increase=

$$\left(\sqrt[N]{4B/4A}-1\right)\times 100,$$

where N is the number of years covered by the agreement, 4B is the pay rate at the end of the agreement period, 4A is the base period pay rate, and 4B/4A represents the total percent increase over the agreement. Thus, take the Nth root of the total pay increase (for example, the square root for a two-year agreement, the cube root for a three-year agreement), subtract 1, and multiply the result by 100.

Item 6: The pay standard provides exceptions, exclusions, and special treatment of some pay. Use this item to enter the amounts of pay which may be subtracted from the actual pay rate (Item 4) to yield the chargeable pay rate under the pay standard. All amounts should be calculated as pay divided by straight-time hours.

Remember to enter both the *direct* amount and also the *indirect* (rollup or creep) amounts due to the adjustments. (See page 32 of the *Implementation Guide*, FR, January 25, 1979 for calculation of rollup.) If retirement plan costs are excluded under Item 6e(2) or Item 6f, exclude retirement plan costs when determining roll-up or creep costs where applicable.

Item 6a: Instead of the bonus amount earned in the base period, a company may use as an alternate base the average of the corresponding bonus amounts in two of the last five years. If the alternate base is chosen, enter the *difference* between the base period bonus and the alternate bonus (which of course is larger) on this line. Show the difference as a negative number so that when the pay adjustments are subtracted in line 7, the entry will increase the base period pay rate.

Item 6b: Under sales commission or production incentive plans, increases in compensation due to increases in the physical volume of items sold or produced are not charged to the pay standard (see the example on page 45 of the *Implementation Guide*, FR, January 25, 1979). Enter such increases in compensation on this line.

Item 6c: Nonunion as well as union employee units may use a 6 percent projected rate of inflation to cost out a COLA formula in a multi-year agreement (which must, however, be binding on the company, see II–E, Q11, FR, December 28, 1979). Use this line to enter COLA amounts paid out because the inflation rate increased, or was projected to increase, by more than 6 percent. Attach a copy of the COLA formula to the PAY–1 form. Note if the COLA provision is new; list any changes if a previous COLA provision was modified.

Item 6d: Increases in the costs of maintaining existing health benefits are only charged against the pay standard up to a 7 percent annual increase in such costs; enter increases above 7 percent on this line (see Section 705B–6 of the Pay Standard).

Item 6e(1): Enter changes in pension funding costs on this line (see Section 705B–7 of the Standards). Note that cost savings due to funding changes should be entered as well as cost increases; i.e., changes in funding methods may not offset increases in pension or other benefits.

Item 6e(2): As an alternative to the adjustment in line 6e(1), for an unaltered pay-related pension plan companies may exclude the entire pension costs from both the base period and the program period. To do so, enter on this line the amounts shown in line 3c.

Item 6f: Amounts paid under a qualified profit-sharing retirement plan in which the formula is not changed may be excluded from pay in both the base period and the program period (See *Pay Standard, Pensions*, FR, June 5, 1979). To do so, enter these amounts (which were included in line 3b) on this line.

Item 6g: Pay rate increases above 7 percent which are dictated by the continuation of or prior announcement of a formal annual pay plan (as described in Sections 705B–4(c) and 705B–4(d) of the Standards) may be excluded in determining compliance and should be entered here.

Item 6h(1): Enter the amounts of pay for which the Council has granted an exception on this line. Exceptions are made for tandem pay-rate changes (TA), pay-rate increases traded for productivity-improving workrule changes in union agreements (WR), pay-rate increases attributable to acute labor shortages (LS), and undue hardship or gross inequity cases (WH). Enter the number of each type of exception next to the appropriate exception code.

Item 6h(2): Enter the same data as in line 6h(1) for exceptions which have been self-administered by the company (e.g., for an employee unit of less than 100 employees).

Item 6i: If the fixed population method of compliance is chosen, the amount of legitimate promotions and qualification increases may be excluded from the pay rate on these two lines. Also enter the corresponding amounts paid in the base period to demonstrate the consistency of the pay practices unless reasonable estimates of these data are not readily available, in which case attach other evidence of such consistency.

Item 6j: Under Section 705B–4(e) of the Standards, a weighted average of pay-rate changes may be used instead of a simple average, in order to adjust for changes in work-force composition. If this method is chosen, enter the difference between the two methods on this line.

Item 6k: Enter the sum of adjustments 6.a-j on this line (again, be sure that line 6a is a *negative* number); indicate whether Item 6k, Column A, is positive or negative.

Item 7: On this line enter the difference between line 4 and line 6k.

Item 8: Calculate the annual rate of increase in pay in the same way as in line 5. The percent increase should be 7 percent or less for the employee unit to be in compliance.

PART IV—A—DATA INSERT FOR MULTI-YEAR AGREEMENTS

The data insert should be completed for any multi-year agreements for both collective bargaining units and nonrepresented units. Columns (C)–(E)

represent individual years; complete as many columns as appropriate for the agreement period.

Items 1–4, 6, and 7: Instructions for these pay-rate items are the same as for the Base Period (column A) and Program Period (column B). The projected pay-rates in effect at the end of each year (12–Month period) should be reported. For column D the adjustments in Item 6 should be cumulative for the first two years of the agreement and for column E the adjustments in Item 6 should be cumulative for the first three years of the agreement.

Item 5: Column (C) is the percent pay-rate increase from the base period (Item 4A) to the end of the first agreement year (Item 4C). Column (D) is the percent pay-rate increase from the end of the first agreement year (Item 4C) to the end of the second agreement year (Item 4D). Column (E) is the percent pay rate increase from the end of the second agreement year (Item 4D) to the end of the third agreement year (Item 4E).

Item 8: Columns C–E should be computed the same as Item 5 With Items 7A, 7C, 7D and 7E substituted for Items 4A, 4C, 4D and 4E.

PART V—FUTURE-VALUE COMPLIANCE

Complete this part separately for each of the company's future-value incentive plans.

Item 1: Name of future-value incentive plan

Item 2: Description of plan

Item 3: The pay standard for future-value incentive plans applies to existing and successor plans. Furthermore, successor plan treatment may apply to plans with a different type of unit if a company can demonstrate that the basic value of the new unit is generally equal to the value of the replaced unit (attach explanation).

Item 4: Enter the number of recipients under the plan in the base period (12 months prior to October 1, 1978) and in the program period (October 1, 1978 through September 30, 1979) if changes in the number of recipients is based on the continuation of well-established past practices with objective criteria for determining recipients. Otherwise, enter the number of employees in the employee group to which the recipients belong.

Item 5: Enter the average number of units issued per recipient or per employee in the appropriate employee group in each period.

Item 6: A company may use as an alternate base the annual average of the units granted over the last five years. If used, enter the alternate base period average on this line.

Item 7: The percent increase in the average number of units per recipient granted or issued in the program year must be 7 percent or less of the base period for the plan to be in compliance.

BILLING CODE 3175-01-M

Form Pay-1: Report on Compliance with the Pay Standard

OMB NO:116-S79013
Company No:

CWPS
Winder Building
600 17th Street, N.W.
Washington, D. C. 20506

Part I - Identifying Data

1. Company

a. Name:_____
b. Street Address:_____
c. City, State, and Zip Code:_____
d. Primary SIC:_____
e. Number of separate reporting companies with 10,000 or more employees (this is to be completed by parent companies):_____

2. Employee Unit

a. Type: ☐ Collective bargaining ☐ Management ☐ All other
b. Location (City & State):_____
c. If collective bargaining unit:
(1) Union (include Local number):_____
(2) Contract begins:_____ expires:_____ negotiated:_____

3. Method of Computation:
☐ (CB) Collective bargaining, 705B-3
☐ (UA) Unit average, 705B-4(a)
☐ (FP) Fixed population 705B-4(b)
☐ (WA) Weighted average, 705B-4(e)

4. a. Base period (month/day/year): from _____ to _____
b. Base period straight-time hours per employee:_____
c. Base period number of employees:_____
d. Program period straight-time hours per employee:_____
e. Program period number of employees:_____

Part II. Certification

To the best of my knowledge and belief the data submitted herewith are factually correct, complete and prepared in accordance with the applicable instructions. It is requested that the information submitted herewith be considered as confidential within the meaning of Section 4(f) of the Council on Wage and Price Stability Act, 12 U.S.C. 1904, Note, and 6 CFR Parts 702 and 704, 44 FR 5339 (January 25, 1979).

Chief Executive Officer of parent firm or other authorized designee (please type)

Name of company:_____
Name and Title:_____ Tel : ( ) _____
Signature:_____ Date:_____

Part III - Pay Rate Data

	(A) Base Period Pay Rate	(B) Program Period Pay Rate	
1. Straight-Time Wage and Salary: (Projected COLA at___% CPI:$_ _._ _ _)	$_ _._ _ _	$_ _._ _ _	1
2. Incentive Pay (where applicable):			
a. Sales commission and production incentive pay:	_ _._ _ _	_ _._ _ _	2a
b. Bonuses and other annual incentive pay:	_ _._ _ _	_ _._ _ _	2b
c. Long term incentive pay:	_ _._ _ _	_ _._ _ _	2c
d. Total hourly cost of incentive pay:	_ _._ _ _	_ _._ _ _	2d
3. Benefits:			
a. Pay for time not worked:	_ _._ _ _	_ _._ _ _	3a
b. Savings and thrift plans:	_ _._ _ _	_ _._ _ _	3b
c. Qualified defined-benefit retirement plans:	_ _._ _ _	_ _._ _ _	3c
d. Health benefit plans:	_ _._ _ _	_ _._ _ _	3d
e. Other insurance plans:	_ _._ _ _	_ _._ _ _	3e
f. Other (total):_____ _____	_ _._ _ _	_ _._ _ _	3f
g. Total hourly cost of fringe benefits:	_ _._ _ _	_ _._ _ _	3g
4. Hourly Pay Rate (Sum of 1+2d+3g):	$_ _._ _ _	$_ _._ _ _	4
5. Annual Percent Pay-Rate Increase:	_ _._ _%		5

IF THE ANNUAL PERCENT PAY-RATE INCREASE IS 7 PERCENT OR LESS (AND FOR MULTI-YEAR AGREEMENTS, NO INDIVIDUAL YEARLY INCREASE IS ABOVE 8 PERCENT) AND DEFINED-BENEFIT PENSION FUNDING COSTS ARE UNCHANGED, THE EMPLOYEE UNIT IS IN COMPLIANCE AND THE REST OF THE FORM NEED NOT BE COMPLETED.

	(A) Base Period Pay Rate	(B) Program Period Pay Rate	
6. Adjustments to pay rate (where applicable)			
a. Alternate base adjustment for bonus plans:	$_ _._ _ _		6a
b. Sales commission/production incentive pay due to higher volume:		$_ _._ _ _	6b
c. COLA payments beyond 6 percent increase in CPI (attach copy of formula):		_ _._ _ _	6c
d. Maintenance of health benefits cost increase above 7 percent:		_ _._ _ _	6d
e. (1) Non-chargeable changes in defined-benefit pension funding costs:		_ _._ _ _	6e(1)
(2) Exclusion of unaltered pension plan:	_ _._ _ _	_ _._ _ _	6e(2)
f. Exclusion of qualified profit-sharing retirement plan:	_ _._ _ _	_ _._ _ _	6f
g. Overage from formal annual pay plans:		_ _._ _ _	6g
h. Overage from pay exceptions			
(1) Approved by CWPS (TA__ LS__ WR__ WH__):		_ _._ _ _	6h(1)
(2) Self-Administered(TA__ LS__ WR__ WH__):		_ _._ _ _	6h(2)
i. Effect on average wage if fixed population method used, 705B-4(b)			
(1) Promotions (in base period $_ _._ _ _):		_ _._ _ _	6i(1)
(2) Qualification increases (in base period $_ _._ _ _):		_ _._ _ _	6i(2)
j. Effect on pay rate, if weighted average method used, 705B-4(e):		_ _._ _ _	6j
k. Total adjustments: Positive / Negative	$_ _._ _ _	$_ _._ _ _	6k
7. Adjusted Hourly Pay Rate (Difference 4-6k):	$_ _._ _ _	$_ _._ _ _	7
8. Adjusted Annual Percent Pay-Rate Increase:	_ _._ _%		8

Part III-A - Data Insert for Multi-year Agreements

		(C) End of 1st year	(D) End of 2nd year	(E) End of 3rd Year	
1. Wage Rate:		$__.___	$__.___	$__.___	1
(1st year COLA:$__.___; 2nd year COLA:$__.___; 3rd year COLA:$__.___)					
2. Incentive Pay:	a.	__.___	__.___	__.___	2a
	b.	__.___	__.___	__.___	2b
	c.	__.___	__.___	__.___	2c
	d.	__.___	__.___	__.___	2d
3. Benefits:	a.	__.___	__.___	__.___	3a
	b.	__.___	__.___	__.___	3b
	c.	__.___	__.___	__.___	3c
	d.	__.___	__.___	__.___	3d
	e.	__.___	__.___	__.___	3e
	f.	__.___	__.___	__.___	3f
	g.	__.___	__.___	__.___	3g
4. Hourly Pay Rate:		$__.___	$__.___	$__.___	4
5. Percent Increase:		__.___%	__.___%	__.___%	5
6. Adjustments:	b.	__.___	__.___	__.___	6b
	c.	__.___	__.___	__.___	6c
	d.	__.___	__.___	__.___	6d
	e. 1	__.___	__.___	__.___	6e(1)
	2	__.___	__.___	__.___	6e(2)
	f.	__.___	__.___	__.___	6f
	h. 1	__.___	__.___	__.___	6h(1)
	2	__.___	__.___	__.___	6h(2)
	k.	$__.___	$__.___	$__.___	6k
7. Adjusted Pay Rate:		$__.___	$__.___	$__.___	7
8. Adjusted % Increase:		__.___%	__.___%	__.___%	8

Part IV - Future-Value Compliance

1. Plan Name: _____

2. Description: _____

_____

3. Type: ☐ Existing plan

☐ Successor plan with same type of units

☐ Successor plan with different type of units (attach explanation showing that the basic value of the new units is generally equal to the value of the replaced units)

	(A) Base Period	(B) Program Period
4. Number of recipients:	_____	_____
5. Average number of units issued:	_____	_____
6. Alternate base period average (if used):	_____	
7. Percent increase (5B/5A-1)x100 or (5B/6A-1)x100):		_____%

GPO 943-277

[FR Doc. 79-26625 Filed 8-24-79; 8:45 am]

BILLING CODE 3175-01-C

Federal Register

Monday
August 27, 1979

Part VII

Department of Transportation

Federal Aviation Administration

Lithium Sulfur Dioxide Batteries Used in Aircraft; Technical Standard Order Authorization; Airworthiness Directive

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 37

[Docket No. 18889; Amendment 37-44]

Lithium Sulfur Dioxide Batteries TSO-C97; Technical Standard Order Authorization

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Technical Standard Order (TSO) that sets forth standards for Lithium Sulfur Dioxide ($LiSO_2$) batteries used in aircraft. The new standards are established to reduce or eliminate failures of equipment incorporating the batteries due to corrosion, venting violently, and explosion of the batteries and the leakage of harmful gases into occupied areas of aircraft.

EFFECTIVE DATE: September 26, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Adolfo O. Astorga, Systems Branch, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591; Telephone (202) 426-8395.

SUPPLEMENTARY INFORMATION:

Background

$LiSO_2$ batteries have been used primarily in general aviation Emergency Locator Transmitters (ELT's) and to a limited degree in various air carrier aircraft safety equipment. The use of this type of battery has been promoted because it has a longer shelf life and can be used at lower operating temperatures than other batteries. However, $LiSO_2$ batteries have vented violently, exploded and leaked harmful gases which have incapacitated pilots and corroded other equipment and airframe structures.

To provide information to the public on this subject, the FAA issued Advisory Circular AC No. 20-91 on April 11, 1975, "Lithium Batteries Used in Emergency Locator Transmitters," which warned of the possible hazards associated with the use of $LiSO_2$ batteries. Also, four Airworthiness Directives (AD's) numbers 74-20-10 (Amendment 39-1976, 39 FR 34513), as amended, 74-02-07 (Amendment 39-2021, 39 FR 40919), as amended 79-05-02 (Amendment 39-3422, 44 FR 10980), and 79-18-05 (Amendment 39-3549, published in this issue of the Federal Register) have been issued relating the use of $LiSO_2$ batteries. Amendments 39-1976 and 39-20-21 required design changes and periodic inspections of certain $LiSO_2$ batteries. Amendment 39-3422 required removal of all $LiSO_2$ batteries and ELT's powered by $LiSO_2$ batteries from U.S.-registered civil aircraft. Amendment 39-3549 requires either reinstallation of ELT's powered by $LiSO_2$ batteries which meet new standards or installation of another ELT powered by another source. The last AD continues to require the removal from aircraft of any $LiSO_2$ batteries which do not meet the new standards and any ELT's powered by such batteries, and it extends the period of time in which aircraft, from which an ELT has been removed to comply with the AD's, may be operated without the required ELT. It also allows the use of $LiSO_2$ batteries which meet the new standard in other equipment.

At this time, if no further action were to be taken, the public would be deprived of the benefit of using $LiSO_2$ batteries which provide for operation of ELT's to temperatures below −40°C. Over 95 percent of the $LiSO_2$ battery usage in aircraft is in ELT's. Other batteries do not operate effectively below −20°C, and their use would have a detrimental effect on search and rescue (SAR) operations for downed aircraft. While the ELT is only one of the devices and techniques available to SAR forces, it continues to provide a unique and valuable means of locating crash sites. Thus, SAR forces and the National Transportation Safety Board are strongly encouraging the use of $LiSO_2$ batteries. Their main rationale for this position is the existence of large portions of the U.S. which experience temperatures below −20°C. Below −20°C, $LiSO_2$ batteries continue to operate where many other batteries cease to function.

To provide for the availability of safe $LiSO_2$ batteries, the FAA has determined it necessary to issue performance and environmental standards for such batteries. The standards adopted herein are based on Notice No. 79-8, published in the Federal Register on March 26, 1979 (44 FR 18038).

Interested persons have been afforded an opportunity to participate in the making of this amendment and due consideration has been given to all matter presented. A number of substantive changes and changes of an editorial and clarifying nature have been made to the proposed rules based upon relevant comments received and upon further review within the FAA. Except for minor editorial and clarifying changes and the substantive changes discussed below, this amendment and the reasons for it are the same as those contained in Notice No. 79-8.

Discussion of General Comments

Seventeen individual sets of comments were received in response to Notice No. 79-8. All of these were in general agreement with the overall scope and intent of the notice. Three commenters supported the proposal without specific comments. The other commenters suggested various changes and clarifications.

One commenter recommended that the use of nonlithium batteries be required in all aircraft applications. The FAA disagrees. $LiSO_2$ batteries have performance capabilities superior to other electrochemical power sources. The final decision whether to use a $LiSO_2$ battery must be left to the consumer as long as safe cells can be made available.

One commenter recommended that the requirement that Emergency Locator Transmitters (ELT's) be carried on aircraft should be eliminated. The FAA disagrees. According to data collected by the U.S. Air Force, ELT's perform a useful function in saving many lives each year, and they significantly reduce search and rescue time. It should be noted that the ELT requirement is mandated by public law, and the FAA does not have the legal authority to repeal this requirement.

Numerous commenters suggested editorial changes to clarify requirements or to remove perceived inconsistencies in the proposed standard. Based on these comments and after further review, the FAA has made a number of editorial changes of non-substantive nature. In response to several other suggestions that guidance material be provided, an Appendix B is added to provide the detailed test procedures for conduct of tests required by this standard. In addition, in light of the comments received, the FAA has reconsidered the usage of the terms "cell" and "battery" in the standard and has made changes to assure that these terms are consistent with the intent of the test requirements.

Discussion of Specific Comments to § 37.209

§ 37.209(a)

One commenter objected to the term "minimum performance standards" in proposed § 37.209(a) and recommended that the term be replaced with "minimum safety standards." However, the term "performance" in connection with technical standard orders is intended to be broader than "safety".

Safety is not the only consideration in the use of $LiSO_2$ batteries. The majority of $LiSO_2$ battery applications is in ELT's where performance under extreme environmental conditions is also important. In this context, the performance standards are necessarily safety standards. Accordingly, § 37.209(a) is adopted without substantive change.

§ 37.209(b)

One commenter objected to the requirements in proposed § 37.209(b), to mark each battery with the date it will reach 50 percent of its useful life. It was indicated that this requirement, in combination with § 37.200(g)(2) for ELT's, would put an unfair restriction on the use of $LiSO_2$ batteries by limiting the useful life to 25 percent of the shelf life. The FAA agrees and § 37.209(b) has been changed to require that each battery be marked with the date on which it must be replaced.

In response to another comment, the date marking requirements of § 37.209(b) apply only to batteries and not to cells. The marking requirement is clearly stated in this regard.

Two commenters recommended in effect that the caution statement be broadened to allow other wording. However, while FAA recognizes that there may be other ways to word the caution statement, the standardized statement covering essential specifics is retained. Discussions held during a meeting of the Lithium Battery Safety Working Group of the Joint Logisitics Chiefs Sub-Panel for Batteries and Fuel Cells indicated prolonged temperatures above 70°C will lead to significantly shorter life and possible chemical destabilization of $LiSO_2$ batteries. To clarify the caution statement, the words "high temperature" have been replaced with the words "temperatures above 70°C (158°F)."

§ 37.209(c)

One commenter requested clarification of the term "battery limitations" as used in proposed § 37.209(c)(1). Specific examples are maximum current, special shipping requirements, and maximum exposure temperature; however, since it is not possible to identify all such limitations they are not listed in the rule.

One commenter questioned whether proposed § 37.209(c)(2) should be directed toward the end equipment manufacturer rather than the battery supplier. However, it is the responsibility of the battery manufacturer to determine how its product is to be used. One way to do this is by carefully controlling the battery configuration. This requirement merely requires that the battery manufacturer supply basic data to the equipment manufacturer. Accordingly, § 37.209(c)(2) is adopted without substantive change.

No comments were received on proposed § 37.209(c)(3), and the section is adopted as proposed.

Several commenters questioned the need for the process specifications that must be furnished to the FAA in proposed § 37.209(c)(4). This requirement is needed to verify that the battery on the drawings is the one tested and the one produced. However, it should be noted that the FAA may allow the data to be maintained at the manufacturer's facility. Another commentor requested clarification of what the FAA would require as process specifications. Section 37.209(c)(4), as adopted, has been clarified by including more details on the data requirements.

One commenter requested verification that cell life and battery life data would not form part of data required under proposed § 37.209(c)(5). That understanding is correct. However, the manufacturer may wish to include such data since battery capacity under differing environmental conditions and loads is important data if equipment manufacturers are to properly employ these batteries. Section 37.209(c)(5) is adopted without substantive change.

§ 37.209(d)

One commenter stated that the data and information specified in § 37.209(c)(5), as required in proposed § 37.209(d), is superfluous and should be deleted. The FAA does not agree. Another commenter recommended that this data be made available upon request of the user. The required data must be supplied to the person receiving for use one or more cells manufactured under this TSO to ensure proper utilization of $LiSO_2$ batteries.

In light of the comments received, and upon further consideration, the FAA has concluded that cells that vent during any of the conditions specified in tests required by the Federal Aviation Administration Standard, Lithium Sulfur Dioxide Batteries, except those of § 3.7, may be allowed to be used, provided that data on these cells are furnished to the equipment manufacturer for designing for containment in the event of an explosion and for venting of gaseous products. Section 37.209(d) has been changed accordingly.

Comments to the Federal Aviation Administration Standard, Lithium Sulfur Dioxide Batteries

§ 1.0—General

No comments were received on proposed § 1.0, and this section is adopted as proposed.

§ 2.1—Cell Isolation

One commenter suggested that a sentence be added to proposed § 2.1 to require battery protection against shorting due to rubbing and chafing. The FAA does not agree that such a provision is necessary since the vibration and shock tests required by the TSO would show up mechanical faults in the battery design.

One commenter suggested that if it were demonstrated that charging currents did not lead to a hazardous condition, charging currents should be allowed. The FAA does not agree. This condition is virtually impossible to demonstrate. Factors such as age of cell, vibration, and temperature may have played a role in the recent failures of $LiSO_2$ cells. Furthermore, information in a National Aeronautics and Space Administration (NASA) Report on a workshop held at Goddard Space Flight Center, November 15–17, 1977, (NASA Conference Publication 2041) shows that reverse charging of cells can lead to explosions.

Two commenters suggested that the requirements for cell isolation be revised to make it clear that each cell must be protected. In addition, one commenter suggested that cells that have charging voltages less than one cell's nominal open circuit voltage are harmless. Another commenter suggested revising the cell isolation requirement to allow cells to be used in series. The FAA agrees with all these coments and FAA has determined that when four or less cells are connected in series, there is insufficient energy to cause one cell to go into reversal and that a shunt diode is required when five or more cells are connected in series. Section 2.1 has been revised to incorporate these provisions.

§ 2.2—Cell Connection

One commenter recommended that the type of cell connection in a multicell battery should be left to the manufacturer citing, as an example, the satisfactory performance of pressure contacts in a flashlight. The FAA does not agree. The majority of $LiSO_2$ batteries are used in ELT's, and they are normally located in areas of the aircraft that are not easily accessible; therefore, the condition of these batteries is not checked before each flight. In addition, the aircraft operates in an environment

more severe than that to which most flashlights are exposed. Furthermore, pressure contacts are more prone to increase resistance as a result of corrosion. Accordingly, § 2.2 is adopted without substantive change.

§ 2.3—Safety Relief

One commenter pointed out that any venting of a $LiSO_2$ cell would release SO_2 and acetonitrile, though not in toxic concentrations. It was stated that concentrations of SO_2 would only be unpleasant. The FAA does not agree. Threshold toxicity of SO_2 is 5 ppm. Six to 12 ppm of SO_2 causes immediate irritation to the eyes, nose, throat, and lungs. Fifty to 100 ppm of SO_2 is the maximum permissible concentration for exposures of 30 to 60 minutes. This concentration may cause respiratory paralysis. Four hundred to 500 ppm of SO_2 is an immediate danger to life. The data in Garrett Manufacturing Limited Report No. 75C3053, Revision A indicates that in a small general aviation aircraft, 13 to 14 minute concentrations of over 50 ppm would be encountered if one "C" cell vented. Peak concentrations of over 170 ppm of SO_2 would be experienced. In addition, laboratory evaluation of products formed during a venting uncovered the presence of hydrogen cyanide. This is highly toxic in small concentrations. While the SO_2 may not reach fatal levels, it can and has reached levels where a pilot has been incapacitated.

One commenter suggested that the safety relief should operate well below the melting point of lithium (186°C). The FAA agrees and based on the performance of existing designs, the maximum temperature for safety relief operation has been changed to 130°C.

One commenter recommended that button cells be exempted from the requirement to have a safety relief, since button cells do not have sufficient energy to rupture the cell case. The FAA does not agree. Since no supporting data was submitted, the FAA has no basis on which to exempt button cells at the present time.

One commenter recommended that proposed § 2.3 be divided into two parts; one would cover operation of the safety relief, the other discharge of toxic substances. The commenter also recommended that if a cell vented during any of the tests prescribed, then overboard venting should be allowed. The FAA agrees and § 2.3 has been revised consistent with the recommendations.

§ 2.4—Encapsulation

Several commenters questioned the prohibition of encapsulating the battery. It was recommended that encapsulation should be allowed if it did not prevent proper functioning of the safety relief. The FAA agrees, provided that the encapsulation material does not cause the battery to overheat. Accordingly, § 2.4 is adopted with these changes. In this connection, test requirements, § § T–2 and T–3, have been added to new Appendix B to test for any effects encapsulation may have on the battery.

§ 2.5—Seal

Several commenters recommended that a test procedure be provided to verify the performance of a hermetic seal. The FAA agrees. Section T–4 has been added to Appendix B of this standard for that purpose. As suggested by another commenter, a definition of hermetic seal has been added to Appendix A of this standard. To further clarify the definition, a specific weight loss limit has been added to § 2.5 to account for moisture losses due to the high temperatures of this test.

§ 2.6—Fuse-Protection

Several commenters recommended that the fuse location relative to the battery case be more clearly defined. The FAA agrees. The intent was that the fuse, for a battery of one or more cells, would be within the battery container, but external to the cell.

Several other commenters suggested that fuse protection was not necessary for some batteries. The FAA does not agree. Service Difficulty Reports indicate that the venting violently and explosion associated with $LiSO_2$ batteries are time related, and fusing is one way to protect batteries over long time periods.

A number of commenters suggested that the proposed current limiting device of 150 milliamperes for the battery discharge was not appropriate for all batteries. The commenters also suggested that the rating of the device should be related to the ampere rate at which the batteries are tested in other sections of the standard. Finally, one commenter recommended changing the section title to "Current Limiting Protection". The FAA agrees. Section 2.6 as adopted, incorporates the recommended changes.

§ 2.7—Voltage-Life

Several commenters stated that the proposed voltage life characteristics requirements in § 2.7 should be eliminated because the requirement is not meaningful without specifying the rate of discharge which is dependent on the battery application. The FAA agrees and proposed § 2.7 is withdrawn.

§ 2.8—Useful Life

Two commenters stated that the 60°C proposed in § 2.8 for storage is an unrealistic environmental condition, while another commenter suggested a temperature of 24°C. The objective of this requirement is to model actual average environmental conditions. Ideally, the temperature would vary with time of day and throughout the year. As this is not practical, a compromise temperature between the extremes is sought. Therefore, 40°C is adopted as a more realistic environmental condition. To compensate for this higher than the suggested 24°C temperature, the useful life is increased to 4 years. Another commenter suggested that proposed § 2.8 be made a storage survivability test. However, to change the requirement and make it a storage survivability test misses the intent of the requirement. The problems associated with $LiSO_2$ batteries may be time related, and thus it is the FAA's intent to limit the life of $LiSO_2$ batteries until the batteries can be proven to be safe beyond the useful life.

In answer to the question of one commenter, the useful life of the battery begins on the date of manufacture. Several commenters requested a definition of useful life. To clarify the term "useful life," § T–5 of Appendix B has been added to provide a method to determine the useful life of batteries.

One commenter believed that there is a conflict between the useful life of the battery as defined in proposed § 2.8 and as defined in FAR § 37.200(g)(2) concerning ELT's. The FAA sees no conflict since the data furnished by the ELT transmitter manufacturer must be based on the data furnished by the battery manufacturer. With the changes discussed, § 2.8 is adopted and redesignated as § 2.7

§ 2.9—Transient Response

Several commenters stated that the proposed transient response requirement in § 2.9 should be eliminated because the requirement is unattainable or not practicable to meet. The FAA agrees, and proposed § 2.9 is withdrawn.

§ 2.10—Examination of Product

No comments were received on the proposed § 2.10. Accordingly, this section is adopted without substantive change and redesignated as § 2.8.

§ 2.11.1—Open Circuit Voltage

One commenter suggested that a minimum standard of 2.9 volts per cell be utilized as the specified minimum

open circuit voltage in proposed § 2.11.1. The FAA does not agree. The objective of this test is to determine variations in cell voltage that cause charging currents. Several commenters recommended that ±5 or ±10 percent be used instead of the proposed ±2.5 percent for open circuit voltage. The FAA agrees. The value ±5 percent is more readily obtainable without compromising the objective of the test. One commenter suggested that a definition for the term "nominal" be provided in the proposed requirement. The term "nominal" as used in the proposed requirement is not needed because the tolerance in the requirement allows for an approximation. Accordingly, § 2.11.1 is adopted with the changes noted, and redesignated as § 2.9.

§ 2.11.2—Voltage Under Constant Load

Two commenters stated that the proposed voltage under constant load requirements in § 2.11.2 are not meaningful and the intent of the requirements is not clear. Other commenters recommended that proposed § 2.11.2 be deleted because the requirements are dependent on the battery application. The FAA agrees, and proposed § 2.11.2 is withdrawn.

§ 2.12—Capacity

Two commenters recommended that minimum capacity be established for each battery application. The FAA does not agree since it cannot be predicted what future applications will be made and variation in cell capacity can affect the safety of $LiSO_2$ batteries. Several commenters stated that the proposed "±2.5 percent" variation in cell capacity is not realistic and is too restrictive, and some recommended that "±10 percent" be used. The FAA agrees. Another commenter recommended that cell capacity be measured only down to a cell voltage of 2.0 volts. However, there are certain battery applications, as for example in ELT's, where the battery may be required to be completely discharged. One commenter suggested that capacity be clarified. This is accomplished by the addition of § T–6 to Appendix B of this standard. Accordingly, proposed § 2.12 is adopted with the changes discussed, and redesignated as § 2.10.

§ 3.1—Effects of Test

One commenter suggested that exceptions, §§ 3.6, 3.9, 3.11, and 3.12 be added to those already listed. Based on these comments and upon further review the FAA has determined that only tests which may involve destruction of the cell should be listed as exceptions. Therefore, this section is revised to include as exceptions §§ 3.6, 3.7, 3.8, 3.9, and 3.10. Another commenter recommended that the tests should be performed in a specific sequence in order to reduce the time and expense in demonstrating compliance to the standard. The FAA has determined that specifying a testing sequence would reduce time and expense in demonstrating compliance to the standard. Accordingly, proposed § 3.1 is adopted with the changes discussed above and retitled "General".

§ 3.2—Shock Test

One commenter recommended the use of a military standard procedure instead of the procedure proposed in § 3.2 for the shock test. Several commentators believe that the test conditions are too severe and unrealistic and should be changed. The FAA does not agree. Batteries that meet this standard will primarily be used to power ELT's and the shock test requirements for the batteries should be compatible with the shock test requirement for ELT's. Two commenters recommended that the shock test be performed on the battery rather than individual cells since this would simultaneously evaluate the cell, intercell connections, insulation, fuse, and battery configuration to shock conditions. The FAA agrees. Furthermore, the FAA has determined that it is not necessary for the cell to meet the examination of product requirements (proposed § 2.10), voltage requirements (proposed § 2.11), and capacity requirements (proposed § 2.12) following application of the shocks as proposed. Deletion of these 3 requirements from § 3.2 will reduce the time and expense in demonstrating compliance to the standard. The same considerations apply with respect to the vibration test of § 3.3, the temperature cycle test of § 3.4, and the altitude test of § 3.5 and the post-test requirements are deleted also from these sections. Proposed § 3.2 is adopted with the changes discussed above.

§ 3.3—Vibration Test

Two commenters recommended the use of a military test procedure instead of the test procedure proposed in § 3.3. One of the commenters suggested increasing the acceleration requirement from "7G" to "40G". The FAA does not agree. The proposed test ensures compatability with the test procedure for ELT's which is the equipment that will primarily use batteries meeting this standard. Several commenters recommended that the proposed test be performed on assembled batteries rather than on each cell as proposed. The FAA agrees. One commenter stated that if this applied to a battery, then the battery should only be tested as part of the equipment that it is used in. However, this does not follow since the battery test demonstrates the integrity of the battery, while the equipment test demonstrates the integrity of the combination of the two items. One commenter stated that the shock and vibration tests are not compatible because the methods for securing the batteries during the tests are not the same. However, no reason has been given for requiring that the means for securing the batteries during the shock and vibration tests need to be the same. Accordingly, proposed § 3.3 is adopted with the change to make it applicable to assembled batteries and to delete the post test requirements as discussed under § 3.2.

§ 3.4—Temperature Cycle Test

One commenter recommended that U.S. Military Standard 810C Method 503.1 be used for the test in place of the requirements proposed in § 3.4. The FAA does not agree. The proposed temperature test is more severe and it is considered essential for the intended application of $LiSO_2$ batteries. One commenter questioned how the battery would be tested for leakage after completion of the test proposed in § 3.4. A test procedure is added to Appendix B under § T–4 to test for leakage. One commenter recommended that multiple temperature cycling be required to determine the effectiveness of the seal. The FAA agrees. Temperature cycling more closely models actual environmental conditions. One commenter suggested specifying how the battery would be returned from the high temperature to room temperature, and that proposed § 3.4 should be made consistent with other sections in the standard. The FAA agrees. The proposed temperature cycle test as adopted specifies that information. For a discussion of the deletion of §§ 2.10, 2.11, and 2.12 referenced in § 3.4, see the discussion on § 3.2. Accordingly, proposed § 3.4 is adopted with the changes discussed above.

§ 3.5—Altitude Test

One commenter suggested that U.S. Military Standard 810C Method 504.1 be used for the test, instead of the requirement proposed in § 3.5. The FAA does not agree. The suggested requirement is not appropriate. One commenter recommended, for clarity, replacing the term "exhibit leakage" with the term "examined and tested for leakage." The FAA agrees; however, the requirement to test for leakage is relocated to § 3.6 in the standard. One

commenter stated that the temperature, altitude, and time requirements proposed are not realistic. However, the purpose of the test is to evaluate the integrity of the hermetic seal in low atmospheric pressure under accelerated conditions. For a discussion of the deletion of §§ 2.10, 2.11, and 2.12 referenced in §3.5, see the discussion on § 3.2. Accordingly, proposed §3.5 is adopted with the change discussed above.

§ 3.6.1—Verification of Vent Operation

One commenter stated that since SO_2 gas is toxic, no $LiSO_2$ battery could meet the requirement proposed in §3.6.1. The intent of this requirement is not to eliminate the use of $LiSO_2$ batteries, but to require verification of vent operation performance. One commenter recommended that the proposed requirements not be applied to button cells. The FAA does not agree. As previously discussed, all cells are required to have a vent. One commenter recommended that this test be performed only on a cell and not on the battery. The FAA agrees that the requirements are more appropriate for the cell.

The substance of proposed § 3.6.1 with clarifying changes and with the change discussed above are incorporated in § T–1 of Appendix B of this standard. Therefore, proposed § 3.6.1 is withdrawn. The requirement for a hotplate in proposed § 3.6.1 has been replaced in § T–1 of Appendix B of this standard with electric heating tape.

§ 3.6.2—Open Flame Test

Several commenters stated that the proposed open flame test in § 3.6.2 could not be met because the flash point of acetonitrile (one of the electrolite components of $LiSO_2$ batteries) is below the proposed flame test temperature. Upon further review, the FAA is withdrawing proposed § 3.6.2.

§ 3.7—Cell Deformation Test

One commenter stated that the proposed cell deformation test in § 3.7 should be eliminated because it does not simulate an internal short circuit which is the intent of the test. The FAA agrees, and proposed § 3.7 is withdrawn.

§ 3.8—Accelerated Life Test

One commenter suggested deleting the accelerated life test because it pertained to performance rather than safety standards. Another commenter suggested deleting this requirement because it seems to be of little significance to the assessment of cell usage. The FAA does not agree on deleting proposed §3.8. From a safety viewpoint, it is important that long-term storage not adversely affect the cell capacity. Variation in cell capacity may at some time cause charging currents to be generated, thus leading to a potentially hazardous situation. The adopted test requirements will indicate how storage affects cell capacity. Two commenters recommended that the proposed "± 2.5 percent" variation in cell capacity requirement be replaced with "± 10 percent." They stated that larger variance is more typical of battery capacity. The FAA agrees. Accordingly, proposed §3.8 is redesignated as §3.7, and adopted with change for percent variation, and retitled "High Temperature Cell Capacity Test" to more accurately describe its purpose. In addition, the section requires that the test be performed in accordance with § T–6 of Appendix B which identifies the test equipment required and test procedure to use.

§ 3.9—Reverse Discharge Test

Several commenters stated that the fuse would blow during this test, since the specified current exceeded the maximum current value of the fuse. One commenter recommended that the rate at which the cell is discharged be equal to the rating of the fuse. The FAA agrees. Another commenter suggested that the test be performed at high temperature (55°C). However, the intent of the requirement is to have the test performed at room temperature. Therefore, for clarity, a test temperature value of 24° ± 3°C is prescribed. In addition, for clarity, the duration for observing the condition of the cell after the test should be defined, and a period of 24 hours is specified. Proposed § 3.9 is adopted with the changes discussed above and redesignated as § 3.8.

§ 3.10—Immersion Test-Salt Water

One commenter suggested deleting the reference requirements of §§ 2.11 and 2.12 in proposed § 3.10, stating that they pertain to performance rather than safety standards. Another commenter suggested that the entire section be deleted. The FAA does not agree. The adverse effects of humidity on the battery voltage and capacity are safety related and must be determined. One commenter questioned whether the test would apply to batteries or cells, or both. The test applies only to batteries. For clarification, the test requirement is revised to require compliance with § T–4 of Appendix B which identifies the test equipment and the test procedure to use. As revised, proposed § 3.10 is adopted and redesignated § 3.6.

§ 3.11—Short Circuit Test

Several commenters made recommendations to the proposed short circuit test in § 3.11 that would negate the intent of the requirement. Other commenters suggested editorial changes. In light of the comments received and upon further review, proposed § 3.11 is withdrawn.

§ 3.12—Forced Discharge Test

One commenter suggested deleting proposed § 3.12 because it was redundant. The FAA does not agree. While the forced discharge test is similar to the reverse discharge test, this test may provide different results. One commenter suggested that the term "not greater than −20°C" in proposed § 3.12 should be clarified. This is standard terminology for temperatures higher than a reference temperature and is thus retained. One commenter recommended that this test also be applied to the batteries that have completed the accelerated life test of § 3.8. Considering $LiSO_2$ battery service experience, the FAA agrees. One commenter suggested that this test be performed on time-expired cells (cells that have reached their useful life). The FAA does not agree. This would add an unacceptable time to qualify the batteries. Several commenters suggested that proposed § 3.12 was either unclear or had inconsistencies for fuse ampere rate vs. test ampere rate. Another commenter stated that the test was apparently aimed at one size battery and suggested that it be made applicable to all size batteries. The forced discharge test is intended to have general applicability to all size batteries and as adopted, the discharge current is revised to equal that of the rating of the fuse used in the battery for a period corresponding to the rated capacity of the battery. In addition, for clarity, the duration for monitoring the cells after the test is added. As revised, proposed § 3.12 is adopted and redesignated as § 3.9.

§ 3.13—Total Discharge Test

One commenter recommended deleting the term "vent violently". The FAA does not agree. A battery should not vent when discharged. One commenter recommended defining a time for observing the battery after the short is applied to determine if venting occurs. The FAA agrees. Twenty-four hours is believed to be a reasonable observation period. Several commenters recommended that the battery testing current levels be made consistent with the fuse value and battery capacity. The FAA agrees. The change would make these requirements consistent with the

other discharge requirement. Accordingly, proposed § 3.13 is revised and as adopted, redesignated § 3.10.

Appendix A

Several commenters requested that additional terms be defined, or suggested revision to the definitions proposed in Appendix A. Appendix A is adopted with clarifying changes and with additional definitions as discussed under the discussion of comments to this standard.

Adoption of the Amendment

Accordingly, Part 37 of the Federal Aviation Regulations (14 CFR Part 37) is amended by adding a new § 37.209 effective Sept. 26, 1979 to read as follows:

§ 37.209 Lithium sulfur dioxide batteries TSO-C97.

(a) *Applicability.* This technical standard order prescribes the minimum performance standards that lithium sulfur dioxide ($LiSO_2$) batteries must meet to be identified with the applicable TSO marking. Batteries that are to be so identified must meet the requirements of the "Federal Aviation Administration Standard, Lithium Sulfur Dioxide Batteries" set forth at the end of this section.

(b) *Marking.* Each battery must be marked in accordance with § 37.7 and must be marked with the month and year of manufacture and the date on which it must be replaced. In addition, each cell and battery must be marked with the phrase, "$LiSO_2$ BATTERY CAUTION: PRESSURIZED CONTENTS; NEVER RECHARGE, SHORT CIRCUIT, OR EXPOSE TO TEMPERATURES ABOVE 70°C (158°F)".

(c) *Data requirements.* In accordance with § 37.5, the manufacturer must furnish to the Chief, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration (or in the case of the Western Region, the Chief, Aircraft Engineering Division) in the region in which the manufacturer is located, the following technical data:

(1) One copy of the battery limitations and operating characteristics.

(2) One copy of the installation procedures and installation limitations with applicable drawings and specifications indicating all limitations, restrictions, and conditions pertinent to the installation.

(3) One copy of the manufacturer's test report.

(4) One copy of the Master Drawing List of the battery, including identification of all drawings and applicable revision status and all process specifications and revision status.

(5) Battery data sheets specifying, within the prescribed range of environmental conditions, the actual performance of batteries of that type with respect to each performance factor prescribed in the applicable standard.

(d) *Data to be furnished with manufactured units.* (1) One copy of the data and information specified in paragraphs (c)(1), (c)(2), and (c)(5) of this section must be furnished to each person receiving for use one or more articles manufactured under this TSO.

(2) If a cell vents from any of the tests required by the Federal Aviation Administration Standard, Lithium Sulfur Dioxide Batteries, except those of §§ T-1 and T-2 of Appendix B of the standard, one copy of the data must be furnished to each person receiving for use one or more cells manufactured under this TSO which will allow that person to design—

(i) A receptacle to contain the simultaneous violent venting or explosion of all cells within the battery; and

(ii) Provisions for venting overboard the gaseous products of the explosion.

Federal Aviation Administration Standard

Lithium Sulfur Dioxide Batteries

1.0 *General.*

1.1 This standard applies to cells and batteries of a nonaqueous $LiSO_2$ type. Batteries may consist of a single cell, cells connected in series or in parallel, or both, to obtain the necessary output for the intended application. Definitions for terms used in this standard are set forth in Appendix A of this standard.

2.0 *Minimum Performance Standards Under Standard Conditions.*

2.1 *Cell Isolation.* Cells in a multi-cell battery or packs of more than one battery may not be connected in parallel unless provisions are made to prevent individual cells from being exposed to charging voltages greater that the cell's nominal open circuit voltage. When five or more cells are reconnected in series, each cell must be protected by a shunt diode.

2.2 *Cell connection.* All electrical connections between cells in a battery must be soldered, welded, or brazed in accordance with an approved process specification.

2.3 *Safety Relief.*

2.3.1 *Safety Relief Mechanism.* Each cell used in the battery must incorporate a safety relief mechanism that will relieve internal pressure at a value and rate which will preclude venting violently, or explosion. The safety relief must operate at a temperature below 130°C in accordance with § T-1 of Appendix B of this standard.

2.3.2 *Discharged Materials.* If a cell vents during any of the tests required by §§ 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, and 3.10, the data requirements of § 37.209(d)(2) must be met.

2.4 *Encapsulation.* Encapsulation of the battery may not be used unless it is demonstrated, in accordance with §§ T-2 and T-3 of Appendix B of this standard, that encapsulation does not inhibit the functioning of the safety release mechanism or cause the battery to overheat.

2.5 *Seal.* Each cell must be hermetically sealed. The seal must be tested in accordance with § T-4 of Appendix B of this standard. The difference in the weight of the cell before and after this test must be less than 50 milligrams.

2.6 *Current Limiting Protection.* The battery must have a current limiting device. This device must limit the current that can be drawn from the battery to a value lower than that which it was subjected to in §§ 3.8, 3.9, and 3.10 of this standard, and must be an integral part of the battery and not susceptible to shorting or any failure causing the device to be bypassed.

2.7 *Useful life.* The useful life of the battery may not exceed 4 years unless demonstrated. The useful life must be demonstrated at a minimum temperature of 40°C. When tested at periods in excess of 4 years, the battery must retain 80 percent of its ampere-hour capacity as demonstrated in accordance with § T-5 of Appendix B of this standard, and meet the requirements of §§ 2.9, 2.10, and all sections under § 3.0 of this standard.

2.8 *Examination of Product.* When required, subsequent to a test required by § 3.0 of this standard, each of the cells must be visually examined. Special emphasis must be placed on observing signs of leakage and overall appearance of the safety relief feature.

2.9 *Open Circuit Voltage.* Open circuit voltage of the battery must be measured and be within ±5 percent of its specified value, and the polarity must be correct.

2.10 *Capacity.* The variation in battery capacity may not vary more than ±10 percent when compared with the capacity as demonstrated in accordance with § T-6 of Appendix B of this standard.

3.0 *Minimum Performance Standards Under Environmental Conditions.*

3.1 *General.* Except as provided in §§ 3.6, 3.7, 3.8, 3.9, and 3.10 of this

standard, the design of the battery must be such that subsequent to the application of the specified tests, no condition may exist that would be detrimental to the continued performance of the battery. The same battery must be used for the following tests and these tests must be performed in this order: §§ 3.2, 3.3, 3.4, 3.5, and 3.6.

3.2 *Shock Test.* The battery must be secured to a shock table by a mechanically secure device. The shock test machine must be capable of imparting to the battery a series of calibrated shock impulses. The shock impulse waveform must be a half-sine pulse whose distoration at any point on the waveform may not be greater than 15 percent of the peak value of the shock pulse. For the purposes of this section, duration of the shock impulse is specified with reference to the zero points of the half sine wave, and shock forces are specified in terms of peak amplitude G values. The shock impulse must be measured using a calibrated accelerometer and associated instrumentation having a 3dB response over a range of at least 5 to 250 Hertz. The shock test must be conducted as follows:

(a) Mount the battery on the shock test machine in such a manner that it can be subjected to shock impulses in each direction successively along the three mutually orthogonal axes of the battery.

(b) Apply a 100G shock impulse of duration 23±2 milliseconds to the battery in a direction coincident with the first orthogonal axis.

(c) Reset the activation mechanism.

(d) Repeat the procedures specified in §§ 3.2(b) and (c) applying an impulse shock in the remaining 5 axial directions.

3.3 *Vibration Test.* The battery must be secured to a vibration table so that sinusoidal vibratory motion can be exerted parallel to one of the three major orthogonal axes of the battery. The battery must be affixed to the vibration table by the means specified by the equipment manufacturer for service installations. The vibration frequency must be varied at a rate not to exceed 1.0 octave per minute. The vibration must exhibit a constant total excursion of 2.5mm from 5 Hertz to the frequency at which an acceleration of 7G (zero-to-peak) is reached and from that frequency to 2,000 Hertz at a constant acceleration of 7G. Continue the vibration for a minimum of 1 hour. The tests described in this section must be repeated with the vibratory motion being applied along each of the other major axes of the cell.

3.4 *Temperature Cycle Test.* The battery must be subjected to a temperature not greater than −65°C for a period of 20 hours. The test chamber temperature must then be raised at a rate of 5°±2°C per minute to a temperature of at least +71°C, and this temperature maintained for a period of 4 hours. After the 4-hour period, the test chamber temperature must be returned, at a rate of 5°±2°C per minute, to a temperature not greater than −65°C, and this temperature must be maintained for 20 hours. The temperature cycle must be repeated 5 times. After completion of the temperature cycle, the battery must be returned to room temperature.

3.5 *Altitude Test.* The battery must be stored for 6 hours at an atmospheric pressure corresponding to an altitude of 15,000 meters at 24°±4°C. The pressure must then be increased to sea level pressure.

3.6 *Immersion Test—Salt Water.* After being immersed in salt water (3.5±0.1 percent sodium chloride), with terminals insulated, for a period of at least 15 hours, the battery must be tested for leakage in accordance with § T–4 of Appendix B of this standard, and meet the requirements of §§ 2.8, 2.9, and 2.10 of this standard.

3.7 *High Temperature Battery Capacity Test.* After 30 days of storage at a temperature of 71°±2°C, the battery must be returned to room temperature and must be capable of delivering 90 percent of its rated capacity with no more than ±10 percent variation in cell capacity. The test must be performed in accordance with § T–6 of Appendix B of this standard.

3.8 *Reverse Discharge Test.* The cell must not be fuse protected. The cell must be discharged in series with an external power supply at a current equal to that of the rating of the fuse used in the battery at a temperature of 24°±3°C. The discharge must be maintained for a time corresponding to the rated capacity of the battery that the cell will be used in or until the cell has vented. The cell condition must be monitored for 24 hours after termination of reverse discharge.

3.9 *Forced Discharge Test.* The battery must be operative and have the fuse removed for purposes of this test. The test must be conducted on (1) a battery that has not been discharged, and (2) a battery that has completed the high temperature battery capacity test of § 3.7. a battery must be forced discharged at a current load equal to that of the rating of the fuse used in the battery at a temperature not greater than −20°C isothermally for a period corresponding to the rated capacity of the battery. The battery condition must be monitored for 24 hours after the rated capacity of the battery has been reached.

3.10 *Total Discharge Test.* The battery must be operative and have the fuse removed for purposes of this test. The battery must be discharged at a temperature of 24°±3°C at a current level equal to that of the rating of the fuse used in the battery for a period corresponding to the rated capacity of the battery. Immediately thereafter, a direct short must be placed and left across the battery terminals. The battery condition must be monitored for 24 hours after the direct short has been applied.

Appendix A

The following definitions of terms are applicable to the Lithium Sulfur Dioxide Batteries Standard.

1.0 *Definitions.* For purposes of this standard, the following definitions apply:

"Battery" means an electrical energy source made up of one or more cells, arranged in electrical series or parallel or in a series-parallel combination.

"Capacity" means the total amount of electrical energy, measure in ampere hours, that a cell can generate.

"Cell" means an individual electrochemical unit.

"Hermetic sealed cells" means that each cell is sealed in such a manner that over the useful life of the cell there is no loss of gaseous or solid material from the cell.

"Venting" means the controlled release of the electrolyte or any chemical reactant products, or both, from a cell.

"Venting violently" means the rapid uncontrolled discharge of either harmful gases or liquid, or both, from a cell accompanied by the generation of heat.

Appendix B

The following test procedures give details for demonstrating that the requirements of the Lithium Sulfur Dioxide Batteries Standard are met.

T–1 *Verification of Safety Relief Mechanism (§ 2.3.1)*

Equipment Required: Calibrated iron constantan thermocouple, accurate to within ±1°C. Electric heating tape. Recording potentiometer.

Test Procedure: a. Attach a thermocouple to the surface of the metal cell case under test and attach the thermocouple to the recording potentiometer.

b. Wrap the circumference of the cell, not covering the ends, with the electric heating tape.

c. Increase the temperature of the cell at a linear rate of 10°±3°C per minute.

d. Continuously monitor the temperature of the cell case and record the temperature at which the cell(s) vent.

T–2 *Operation of Safety Relief in Encapsulating Material (§ 2.4)*

a. Expose the battery to environmental conditions which will cause the battery to

vent (e.g., high temperature or direct short with the current limiting device inoperative).

b. The operation of the safety relief mechanisms and the encapsulation should be observed.

c. Determine that the encapsulation material does not cause the battery to vent in a manner different than that of the cell tested in § T–1.

T–3 *Heat Transfer Properties of the Encapulation Material (§ 2.4)*

Equipment Required: Two calibrated thermocouples accurate to ±1°C. Two recording potentiometers.

Test Procedure: a. Attach a load to an encapsulated battery with the fuse removed which will draw a current equal to the ampere rating of the fuse used in the battery.

b. Attach a load to an identical battery without encapsulation and with the fuse removed which will draw a current equal to the ampere rating of the fuse used in the battery.

c. Continuously monitor the temperature of both batteries. The room ambient temperature should by 24° ±3°C.

d. Continue the test until the ampere hour rating of the cell is reached.

T–4 *Hermetic Seal Test (§ 2.5)*

Equipment Required: Temperature-controlled oven. Scale (accurate to 1 milligram).

Test Procedure: a. Weigh each cell under test.

b. Place each cell in the temperature-controlled oven.

c. Raise the temperature to 71°C.

d. Maintain this temperature for 30 days.

e. Lower the temperature to ambient.

f. Remove the cells and weigh each cell.

g. Compare the weight of each cell with the weight before the test.

T–5 *Useful Life (§ 2.7)*

Equipment Required: Temperature-controlled oven.

Test Procedure: a. Place each battery in the temperature-controlled oven, seals pointed down so that the seal is covered by the electrolyte.

b. Raise the temperature to at least 40°C.

c. Maintain this temperature for 4 years plus the additional time for which useful life is desired to be demonstrated.

d. Lower the temperature and remove each battery.

e. Measure the remaining capacity of the cell in accordance with § T–6 of this Appendix.

T–6 *Battery Capacity (§ 2.10).*

Equipment Required: Resistive load. Data recorder. Digital printer. Digital voltmeter.

Test Procedure: a. Attach a resistive load to the battery under test which will initially draw a current equivalent to the value of the fuse used in the battery in which the cell under test is to be used.

b. Monitor the voltage time until the end-voltage of the battery reaches 0.5 volt.

c. Calculate the cell capacity using the timed averaged voltage method. The formula for this method is

$$\bar{V} = \frac{1}{tco} \sum_{i=1}^{n-1} \frac{(V_i + V_{i+1})}{2} (t_{i+1} - t_i)$$

$$AH = \bar{V} \frac{tco}{R_L}$$

where:

V=Time averaged voltage
tco=Elapsed discharge time to cutoff in hours
V_i= Voltage at time t_i
V_{i+1}=Voltage at time t_{i+1}
t_i=Time in hours at which V_i was measured
t_{i+1}=Time in hours at which V_{i+1} was measured
AH=Discharged capacity
R_L=Load resistance in ohms.

(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)).

Note.—The FAA has determined that this document involves a regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by the Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT".

Issued in Washington, D.C., on August 23, 1979.

James O. Robinson,

Acting Director, Office of Airworthiness.

[FR Doc. 79–26657 Filed 8–24–79; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 39

[Docket No. 18734; Amdt. 39–3549]

Lithium Sulfur Dioxide Batteries

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Lithium Sulfur Dioxide ($LiSO_2$) batteries installed in aircraft or in equipment used in aircraft, which required removal of all $LiSO_2$ batteries and Emergency Locator Transmitters (ELT) powered by such batteries. This amendment adopts a new AD which requires either reinstallation of ELT's powered by $LiSO_2$ batteries which meet new standards or installation of another ELT powered by another source. The AD requires the removal from aircraft of any $LiSO_2$ batteries which do not meet the new standards and any ELT's powered by such batteries. It also extends the period to time in which aircraft from which an ELT has been removed in accordance with these AD's may be operated without the required ELT.

DATES: Effective—August 24, 1979.

Compliance is required as indicated in body of AD.

FOR FURTHER INFORMATION CONTACT: Mr. Adolfo O. Astorga, Systems Branch, Aircraft Engineering Division, Office of Airworthiness, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591; Telephone (202) 426–8395.

SUPPLEMENTARY INFORMATION: Amendment 39–3422 (44 FR 10980; February 26, 1979), AD 79–05–02 required removal of all $LiSO_2$ batteries from U.S.-registered civil aircraft and the removal of all ELT's powered by $LiSO_2$ batteries installed in U.S.-registered civil aircraft. It further provided that notwithstanding FAR § 91.52, aircraft from which an ELT had been removed to comply with the AD would be permitted to operate for a period of 180 days without the ELT. This AD was prompted by reports of $LiSO_2$ batteries exploding, venting violently, corroding, burning, and leaking gas.

Since issuing Amendment 39–3422, AD 79–05–02, the FAA has issued TSO–C97 which sets forth the requirements which must be met for TSO approval of $LiSO_2$ batteries. This Technical Standard Order (TSO), FAR § 37.209, was published in the Federal Register on August 27, 1979.

This amendment adopts a new AD which requires removal from U.S.-registered civil aircraft of all $LiSO_2$ batteries which do not meet the requirements of TSO–C97 and all ELT's powered by such batteries. It also requires that before March 28, 1980 in those aircraft from which ELT's were removed in accordance with AD 79–05–02 or this AD that either (1) $LiSO_2$ batteries which meet the requirements of TSO–C97 be installed in the ELT and the ELT be reinstalled on the aircraft or (2) that another ELT powered by a source other than $LiSO_2$ batteries be installed in the aircraft. In either case, the ELT must meet the requirements of FAR § 37.200. Further, it requires that this action be recorded in the aircraft records and that the "ELT not installed" placard be removed. In addition, the AD extends until March 28, 1980 the period in which an aircraft from which an ELT has been removed to comply with AD 79–05–02 or this AD may be operated without the ELT required by FAR §§ 91.52(a) and (b).

The temporary extension is being provided to allow time for the testing, TSO authorization, manufacture, and distribution of $LiSO_2$ batteries that meet the requirements of TSO–C97. However, it should be noted that there is no certainty that $LiSO_2$ batteries that meet

the TSO requirements will be manufactured and commercially available. Thus, before March 28, 1980, it may be necessary for some aircraft owners to replace ELT's that were originally powered by $LiSO_2$ batteries. Other equipment may be required to be modified to use other power sources if $LiSO_2$ batteries are not available.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

Adoption of Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended effective Aug. 24, 1979 by adding the following new airworthiness directive:

Lithium Sulfur Dioxide Batteries. Applies to all Lithium Sulfur Dioxide ($LiSO_2$) batteries installed in aircraft or in equipment used in aircraft.

$LiSO_2$ batteries have been used in, but not necessarily limited to, the following Emergency Locator Transmitters (ELT's):

Communications Components Corp.

Model CIR 10, all serial numbers
Battery pact BP-60, BP-60A, BP-60B, and BP-60C
Model CIR 11-2, all serial numbers
Battery pack BP-60-11, BP-60-11A, BP-60-11B, and BP-60-11C

Cessna Aircraft Co.

Part Number C589511-0103
Part Number C589510-0202
Part Number C589510-0209
Part Number C589510-0109

Dorne & Margolin

Model DMELT 6 serial number 1 to 24,999 with battery pack DMELT 6.11, except those ELT's which have been modified by the change to battery pack DMELT 6.13.

Garrett

Model No. 627-810—all serial numbers
Model No. 627-818—all serial numbers
Model No. 627-934—all serial numbers
Model No. 625-088—all serial numbers
Battery part number—616-246-1, 616-246-2

Leigh

Model SHARC 7 with a 3 or 4 cell battery pack. The ELT including battery weighs approximately 1.8 pounds.

Pathfinder

Model No. 2052

Pointer

Model 2000
Model 2000, Series Mod A
Model 3000, Series Mod A
Model 3000-2
$LiSO_2$ battery pack—P/N 2018, P2018, M2018, 2018 HSP, and 2018 HSM

Other aircraft equipment that have used $LiSO_2$ batteries:

(1) Bendix RNAV Computer Model RNS3500 Control Display Unit CD-3501A.

(2) Emergency lighting, sliderafts, and flashlights.

Manufacturers have not used $LiSO_2$ batteries in the following ELT's. However, such batteries may have been substituted after manufacture.

Pacific Communication Corp.

Alert Model 50, 60, & 70

Pacific Avionic Co., Inc

Model ELT-1

DME Corp.

Model RLB-5 (A)
Model RLB-9 (A) and (B)

Micro Electronics

Emergency Beacon Corp.

All models

LARAGO/MERL, Inc.

LARAGO 79007
MERL 1005

Dorne and Margolin

Model DMELT 6 serial no. 25,000 & above

Compliance is required as indicated, unless already accomplished.

To prevent fire, venting violently, explosion, corrosion, or leakage of gas associated with certain $LiSO_2$ batteries, accomplish the following:

(a) Before further flight, remove all $LiSO_2$ batteries which do not meet the requirements of TSO-C97 from U.S.-registered civil aircraft, including any installed in equipment used in such aircraft.

Note.—This AD requires that $LiSO_2$ batteries used in U.S.-registered civil aircraft meet the requirements of TSO-C97. $LiSO_2$ batteries removed from equipment in accordance with AD 79-05-02 or this AD may be replaced by $LiSO_2$ batteries which meet the requirements of TSO-C97 or another power source. However, in either case the equipment must meet all applicable requirements of the Federal Aviation Regulations.

(b) Before further flight, remove from U.S.-registered civil aircraft any ELT powered by $LiSO_2$ batteries which do not meet the requirements of TSO-C97, and comply with the recordkeeping and placarding requirements of FAR § 91.52(f)(10)(i).

(c) For any aircraft from which an ELT has been removed to comply with AD 79-05-02 or this AD, before March 28, 1980, either—

(1) Install $LiSO_2$ batteries which meet the requirements of TSO-C97 in the ELT and, provided the ELT meets the requirements of FAR § 37.200, reinstall it in the aircraft; or

(2) Install in the aircraft an ELT which meets the requirements of FAR § 37.200 which is powered by a source other than $LiSO_2$ batteries.

(d) Upon installation of an ELT in accordance with paragraph (c) of this AD, record in the aircraft records the action taken, and remove the placard which states "ELT not installed".

(e) Notwithstanding FAR § 91.52(f)(10)(ii), an aircraft from which an ELT has been removed in accordance with AD 79-05-02 or this AD, may operate without an ELT required by FAR §§ 91.52 (a) and (b) until complying with paragraph (c) of this AD but in no event later than March 28, 1980.

Note.—No further extensions of the period of time in which an aircraft may operate without an ELT installed will be granted. It should be noted that this extension allows aircraft operation without ELT's during the severe conditions of the winter months. Especially for those persons who operate in remote areas where cold temperatures are common, it is recommended that another approved power source be substituted until $LiSO_2$ batteries meeting TSO-C97 become available. The ELT manufacturers should be contacted directly to ascertain the availability of non-$LiSO_2$ battery power sources. If alternative power sources are not available a temporary replacement ELT should be considered. These comments should not be interpreted as promoting the permanent use of non-$LiSO_2$ powered ELT's since $LiSO_2$ batteries offer superior performance in cold temperatures. The FAA's concern is that during the next winter those persons who will most likely benefit from an ELT have one installed in their aircraft.

Within 3 months after the adoption of this AD the FAA expects to have definitive information on whether or not batteries that meet TSO-C97 can be manufactured. If it becomes apparent that $LiSO_2$ batteries that are safe for aviation will not be available, the FAA will advise the public on the necessity of replacing $LiSO_2$ battery-powered ELT's. This information will be made available in time to allow such replacements before March 28, 1980.

This supersedes Amendment 39-3422, AD-79-05-02.

This amendment becomes effective August 24, 1979.

(Secs. 313(a), 601, 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)); 14 CFR 11.89)

Note.—The FAA has determined that this document involves a regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and implemented by the Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

Issued in Washington, D.C. on August 23, 1979.

James O. Robinson,

Acting Director, Office of Airworthiness.

[FR Doc. 79-26658 Filed 8-24-79; 8:45 am]

BILLING CODE 4910-13-M

Reader Aids

Federal Register
Vol. 44, No. 167
Monday, August 27, 1979

INFORMATION AND ASSISTANCE

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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/SECRETARY*	USDA/ASCS		DOT/SECRETARY*	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/FHWA	USDA/FSQS		DOT/FHWA	USDA/FSQS
DOT/FRA	USDA/REA		DOT/FRA	USDA/REA
DOT/NHTSA	MSPB/OPM		DOT/NHTSA	MSPB/OPM
DOT/RSPA	LABOR		DOT/RSPA	LABOR
DOT/SLS	HEW/FDA		DOT/SLS	HEW/FDA
DOT/UMTA			DOT/UMTA	
CSA			CSA	

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 July 2, 1979, all agencies in the Department of Transportation, will publish on the Monday/Thursday schedule.

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

FEDERAL COMMUNICATIONS COMMISSION

43279 7-24-79 / FM broadcast station in Rosamond, Calif.; Changes made in table of assignments eff. 8-27-79

43727 7-26-79 / Private land mobile radio service

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Education Office—

37866 6-28-79 / Adult education; implementation of State-Administered Program and Commissioner's discretionary grant program

POSTAL SERVICE

43719 7-26-79 / Overprinting of unauthorized designs, messages, or other markings on stamps

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last Listing August 17, 1979