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federal register

MONDAY, DECEMBER 20, 1976

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Monday	Tuesday	Wednesday	Thursday	Friday
NRC	USDA/ASCS		NRC	USDA/ASCS
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DOT/OPSO	LABOR		DOT/OPSO	LABOR
	HEW/FDA			HEW/FDA

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

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

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

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(For Details, See 41 FR 46527, Oct. 21, 1976)

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title 7—Agriculture

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER D—GUARANTEED LOANS

[FmHA Instruction 449.1]

PART 1845—FmHA EMERGENCY LIVESTOCK LINE OF CREDIT GUARANTEES

Extension of Program

Various sections of Part 1845, Title 7, Code of Federal Regulations (40 FR 30623) are amended. These amendments extend the emergency livestock (EL) loan program through September 30, 1978, pursuant to Pub. L. 94-517 enacted October 15, 1976. The purpose of these changes is to permit lenders to obtain guarantees on loans to new applicants and continue making advances to those borrowers already indebted under the EL loan program.

It is the policy of this Department that rules relating to public property, loans, grants, benefits or contracts shall be published for comments notwithstanding the exemption of 5 U.S.C. 533 with respect to such rules. See the Secretary of Agriculture's statement setting forth the policy on public participation in rulemaking 36 FR 13804, dated July 24, 1971. These amendments, however, are being published without prior notice of proposed rulemaking because they implement provisions of Pub. L. 94-517, thus public notice and procedure thereon are unnecessary.

Accordingly, §§ 1845.2, 1845.3, 1845.13, 1845.14, 1845.26, 1845.31 and 1845.35 are amended as follows:

§ 1845.2 [Amended]

1. Section 1845.2 is amended by deleting "by Public Law 94-35" from the first sentence of the text.

2. Section 1845.3(a) is amended to read as follows:

§ 1845.3 Definitions. * * *

(a) *Act.* The Emergency Livestock Credit Act of 1974 (Pub. L. 93-357); as amended by Pub. L 94-35, and Pub. L. 94-517.

* * * * *

§ 1845.13 [Amended]

3. Section 1845.13(g) is amended by deleting "December 31, 1976" and inserting "September 30, 1978"" in the first sentence.

§ 1845.14 [Amended]

4. Section 1845.14(d) is amended by deleting "January 1, 1977" and inserting "October 1, 1978" in the last sentence.

§ 1845.26 [Amended]

5. Section 1845.26(c) is amended by deleting "December 31, 1976" and inserting "September 30, 1978" in the last sentence.

§ 1845.26 [Amended]

6. Section 1845.26(e) is amended by deleting "December 31, 1976" and inserting "September 30, 1978" in the first sentence.

7. Section 1845.31 is amended to add a paragraph (e) as follows:

§ 1845.31 Revision of existing forms.

* * * * *

(e) Form FmHA 449-27, "Contract of Guarantee, (Emergency Livestock Loan.)" in item "a" of the first paragraph, delete "December 31, 1976" and insert "September 30, 1978."

* * * * *

§ 1845.35 [Amended]

8. Section 1845.35 is amended by deleting "December 31, 1976" and inserting "September 30, 1978" in the second sentence.

(Sec. 10 Pub. L. 93-357, 88 Stat 392, delegation of authority by the Secretary of Agriculture, 7 CFR 2.23, delegation of authority by the Assistant Secretary of Rural Development, 7 CFR 2.70.)

Effective date: This document shall become effective on December 20, 1976.

Dated: December 1, 1976.

FRANK W. NAYLOR, Jr.,
Acting Administrator,
Farmers Home Administration.

[FR Doc.76-37196 Filed 12-17-76;8:45 am]

Title 9—Animals and Animal Products

CHAPTER II—PACKERS AND STOCKYARDS ADMINISTRATION, DEPARTMENT OF AGRICULTURE

PART 204—ORGANIZATION AND FUNCTIONS

Miscellaneous Amendments

Effective on December 20, 1976, paragraphs (b) (3) and (e) (2) of § 204.2 and paragraph (c) of § 204.3 of Title 9, Code of Federal Regulations, are amended to read as follows:

§ 204.2 Organization.

* * * * *

(b) * * *

(3) Executive Assistant to the Administrator. The Executive Assistant to the Administrator participates with the Administrator and the Associate Administrator in the development, administration, and analysis of policies and programs and directs the internal administrative management, and related activities of the Packers and Stockyards Administration and maintains liaison with the Agricultural Marketing Service in arranging for management support services.

* * * * *

(e) * * *

(2) The locations of these offices, which are under officers in charge, are as follows:

Atlanta—Rm. 640, 1720 Peachtree St., NW, Atlanta, Georgia 30309.
Denver—208 Livestock Exchange Building, Denver, Colorado 80216.
Fort Worth—Rm. 8A36, Federal Building, 819 Taylor Street, Fort Worth, Texas 76102.
Indianapolis—Suite 24, 537 Turtle Creek South Drive, Indianapolis, Indiana 46227.
Kansas City—828 Livestock Exchange Building, Kansas City, Missouri 64102.
Lawndale—Rm. 2W6, Federal Office Building, 15000 Aviation Boulevard, Lawndale, California 90260.
Memphis—Rm. 459, Federal Building, 167 North Main Street, Memphis, Tennessee 38103.
North Brunswick—525 Milltown Road, North Brunswick, New Jersey 08902.
Omaha—435 Livestock Exchange Building, Omaha, Nebraska 68107.
Portland—Suite E, 9370 SW Greenburg Road, Portland, Oregon 97223.
South St. Paul—208 Post Office Building, Box 8, South St. Paul, Minnesota 55075.
Springfield—Emmerson Building Annex, State Fairgrounds, Springfield, Illinois 62706.
Sterling—Route 1, Box 109, Sterling, Virginia 22170.

§ 204.3 Delegations of authority.

* * * * *

(c) Division Directors: The Directors of the Industry Analysis Staff, Livestock Marketing Division, and the Packer and Poultry Division, under administrative and technical direction of the Administrator and Associate Administrator, are hereby individually delegated authority, in connection with the respective functions assigned to each of said organizational units in § 204.2, to perform all the duties and to exercise all the functions and powers which are now, or which may hereafter be, vested in the Administrator (including the power of redelegation) except such authority as is reserved to the Administrator and the Associate Administrator under paragraph (i) of this section.

* * * * *

This amendment changes only the information regarding the name of the organization furnishing management services to the agency, the current locations and addresses of the field offices, and the withdrawal from division directors of authority to issue subpoenas. The amendment does not affect the rights or obligations of any person. Accordingly, under the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice of rulemaking and other public procedure in connection

with this amendment are impracticable and unnecessary, and good cause is found for making the amendment effective less than 30 days after publication thereof in the FEDERAL REGISTER.

Done at Washington, D.C., this 14th day of December 1976.

MARVIN L. MCLAIN,
Administrator,
Packers and Stockyards Administration.

[FR Doc.76-37269 Filed 12-17-76;8:45 am]

Title 10—Energy

CHAPTER I—NUCLEAR REGULATORY COMMISSION

PART 9—PUBLIC RECORDS

Privacy Act Regulations; Exemptions

On August 19, 1976, the Nuclear Regulatory Commission published in the FEDERAL REGISTER (41 FR 35073) a notice proposing to amend 10 CFR Part 9 of its regulations to exempt from certain requirements of the Privacy Act portions of the NRC systems of records NRC–1, "Appointment and Promotion Certificate Records–NRC." The exemptions are intended to protect investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under a promise of confidentiality, as provided by 5 U.S.C. 552a (k) (5).

The notice included a statement that an appropriate exemption, pursuant to 5 U.S.C. 552a(k) (5), of the NRC system of records NRC–1, to conform with the amendment of 10 CFR 9.95 will be published when final action is taken on the proposed amendment of 10 CFR 9.95.

Interested persons were invited to submit written comments by September 20, 1976. No comments have been received on the proposed exemption. Accordingly, the Commission has adopted the amendment as proposed. By separate notice the Commission is publishing amendments of the NRC system of records NRC–1 to conform with the amendment of 10 CFR 9.95 (see the Notices section of today's issue of the FEDERAL REGISTER).

Since the amendment does not impose obligations on persons other than the Nuclear Regulatory Commission, the Commission has found that good cause exists for making the amendment effective immediately upon publication without the customary 30-day notice.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552, 552a, and 553 of Title 5 of the United States Code, as amended, the following amendment of Title 10, Chapter I, Code of Federal Regulations, Part 9, is published as a document subject to codification.

1. Section 9.95 of 10 CFR Part 9 is amended by adding a new paragraph (m) to read as follows:

§ 9.95 Specific exemptions.

Pursuant to 5 U.S.C. 552a(k), portions of the following NRC systems of records are exempted from 5 U.S.C. 552a(c) (3); (d); (e) (1); (e) (4) (G), (H), (I), and (f) and are subject to the provisions of § 9.61 of this part:

* * * * *

(m) Appointment and Promotion Certificate Records.

Effective date: This amendment becomes effective on December 20, 1976.

(Sec. 161, Pub. L. 83-703, 68 Stat. 948 (42 U.S.C. 2201); Sec. 201, Pub. L. 93-438, 88 Stat. 1242 (42 U.S.C. 5841; 5 U.S.C. 552a).)

Dated at Bethesda, Maryland this 11th day of November 1976.

For the Nuclear Regulatory Commission.

LEE V. GOSSICK,
Executive Director for Operations.

[FR Doc.76-37335 Filed 12-17-76;8:45 am]

CHAPTER II—FEDERAL ENERGY ADMINISTRATION

PART 205—ADMINISTRATIVE PROCEDURES AND SANCTIONS

PART 210—GENERAL ALLOCATION AND PRICE RULES

Amendments to Procedures for Review of Subpoenas and Special Report Orders

I. BACKGROUND

On July 20, 1976, the Federal Energy Administration ("FEA") gave Notice (41 FR 29868, July 20, 1976) of a Proposed Rulemaking to consider proposals to revise Parts 205 and 210 of Title 10, Code of Federal Regulations, in order to clarify the procedures for administrative review of subpoenas (§ 205.8) and Special Report Orders (SROs) (§ 210.91).

In response to that Notice, 10 comments were received by FEA. FEA's consideration of these comments, as well as other information available to FEA, is reflected in these amendments.

II. CHANGES TO THE CURRENT REGULATIONS

With regard to subpoenas, § 205.8(h) has provided that a person to whom a subpoena was issued may apply to the "* * * FEA official who issued the subpoena, or if he is unavailable to the Administrator, to quash or modify such subpoenas." FEA regulations adopted today continue to require that applications to quash or modify should initially be made to the official who issued the subpoena within 10 days from the date of service. However, in order to insure that further administrative review will be available from denials of applications to quash or modify, § 205.8(h) (2) is amended to provide a review by the Regional Administrator for the region in which the subpoena was issued of the initial decision on applications to quash or modify, if filed within 10 days after service of such decision. In the case of subpoenas issued by the FEA National Office in Washington, D.C., § 205.8(h) (2) is amended to require that review from the initial decision on such applications be made by the Assistant Administrator or Director of the office that issued the subpoena.

Special Report Orders (SROs) are authorized by 10 CFR § 205.91. The existing regulations are silent with regard to the proper method of modifying or quashing such orders. Therefore, in order to clarify the procedures regarding SROs, § 210.91 is amended to provide that within 10 days after the date of service of an SRO, the person to whom the SRO was issued may submit to the official that issued the SRO an application to have it modified or quashed. Upon denial of that motion, the person may within 10 days thereafter seek review by the Regional Administrator of the region in which it was issued or by the Assistant Administrator for Regulatory Programs in the case of an SRO issued by the National Office.

Sections 205.8 and 210.91 are also amended to provide that in the case of any adverse ruling on an application to quash or modify a subpoena or a special report order by a Regional Administrator, or the Assistant Administrator or Director of the Office that issued the action, an applicant may seek relief in the nature of a writ of review from the FEA Office of Private Grievances and Redress within 10 days of the date of service of the adverse decision. FEA's Office of Private Grievances and Redress will hear only those cases in which the applicant demonstrates that the circumstances are so exceptional that an immediate review is warranted to correct substantial errors of law, or to prevent substantial injury to legal rights, or cure a gross abuse of administrative discretion. The Office of Private Grievances and Redress will make an initial review of all requests for relief to determine if there is a reasonable probability that an applicant for extraordinary relief will be able to satisfy the prerequisites warranting the granting of such relief. If the Office of Private Grievances and Redress determines that an application fails to meet this threshold burden, the application will be dismissed. Those applications which, in the view of the Office of Private Grievances and Redress, are likely to meet the test for exceptional relief will be considered on the merits.

Several responses to the proposed rulemaking presented questions concerning whether enforcement action on a subpoena and SRO by the agency would be automatically stayed pending the various stages of administrative review. FEA believes that the concern evinced by these commentators is well-founded and that the regulations should clearly establish the agency's policy with regard to stays of enforcement when subpoenas and SROs are under review. Accordingly, the regulations as adopted (§ 205.8(h) (5) and § 210.91(e)) provide for an automatic stay pending timely application for and during administrative review of the application to quash or modify. However, when the time for application for the first stage of review has expired, or after the FEA has completed a review which has resulted in an unfavorable decision to the applicant, the stay evaporates.

An applicant who seeks further review by the Regional Administrator, the Assistant Administrator or Director of the office that issued the action, or the Office of Private Grievances and Redress may request a stay of the obligation to comply with the subpoena or SRO. FEA has concluded that the grant of "stays" beyond the initial stage of review should be discretionary with the reviewing body. The necessity for an applicant for further review to file for such a stay at the intermediate and final levels of review will tend to eliminate the more frivolous or dilatory requests for review and result in a more expedient processing of subpoena and SRO review applications.

One of those responding to the Notice of Proposed Rulemaking expressed concern that a "subpoena issued for immediate compliance" would not be practicably appealable under both the existing and proposed FEA regulations. However, under the regulations adopted herein, return of any subpoena is automatically stayed for a period of 10 days, and, therefore, a party has adequate opportunity to file an application to quash or modify before the expiration of the 10 day period.

In response to several comments regarding the time allowed FEA for review of subpoenas and SROs at the intermediate stage of review, amendments are adopted today clarifying the provisions of § 205.8(h) (3) and § 210.91(c). The amendments now state that if a Regional Administrator or other reviewing official fails to take action on a petition for review within 20 days, then the application will be deemed to have been denied in all respects as of 12:01 a.m. on the day following the 20th day after the petition was filed. This modification should eliminate any confusion concerning the appropriate time for proceeding to the last stage of administrative review.

Several of the comments received indicated that the proposed rulemaking was unclear as to whether it will be possible to request further review when a subpoena or SRO has not been modified or quashed in the manner asked for in the application for review. In response to those comments, §§ 205.8(h) (2) and (4) and § 210.92 (c) and (d) have been modified to treat any partial denial of a request to quash or modify as constituting grounds for further appeal. Thus, if an applicant has received only partial relief on his request to modify or quash a subpoena or SRO, he may consider that decision adverse and pursue further review.

One of the commentators criticized the proposed scope of review of subpoenas and SROs delegated to the Office of Private Grievances and Redress as too narrow in that it is limited to correcting substantial or gross errors of law or administrative discretion. That commentator proposed that the scope of review at the third level should be patterned on the standards applied to appeals generally under § 205.100. FEA has provided extensive means for the reexamination of the sufficiency of subpoenas and SROs at the first two levels of review. Any additional review should only exist to check gross errors in judgment made at those two levels. The intent of FEA in establishing such a review procedure is to ensure that there is a means within the agency to redress such gross errors in judgment, not to provide another routine level of review. For this reason, FEA has concluded that an initial determination should be made by the Office of Private Grievances and Redress to exclude any applications which upon initial review do not show a reasonable probability of satisfying the prerequisites warranting extraordinary relief.

One of the comments received questioned whether review by the Regional Administrator or Assistant Administrator or Director of the office that issued the subpoena or SRO could constitute review by a "disinterested party," and requested clarification on how an aggrieved party might further pursue his appeal in the federal courts. FEA believes that an administrative review procedure offers a fair, prompt and less formal means of evaluating application to quash or modify SROs and subpoenas. It is intended that this administrative review will provide adequate redress for most applicants. Of course, an applicant may seek judicial intervention if aggrieved by the decision reached at the conclusion of the FEA administrative process.

One of the comments received questioned the constitutional propriety of the entire SRO procedure as a violation of Fourth Amendment rights. FEA is confident that the SRO is a legitimate exercise of the power granted FEA by Section 13 of the Federal Energy Administration Act of 1974 and the Emergency Petroleum Allocation Act of 1973.

This amendment has been reviewed in accordance with Executive Order No. 11821, issued on November 27, 1974 (39 FR 41502), and has been determined not to be of a nature that requires an evaluation of its inflationary impact pursuant to that Order.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133 and Pub. L. 94-163; Federal Energy Administration Act of 1974, Pub. L. 93-275 as amended, Pub. L. 94-385; Energy Policy and Conservation Act, Pub. L. 94-163; E.O. 11790, 39 FR 23185).

In consideration of the foregoing, Parts 205 and 210 of Chapter II, Title 10, Code of Federal Regulations are amended as set forth below, effective from December 13, 1976.

Issued in Washington, D.C., December 13, 1976.

MICHAEL F. BUTLER,
General Counsel,
Federal Energy Administration.

1. Section 205.8(h) is amended to read as follows:

§ 205.8 Subpoenas; witness fees.

* * * * *

(h) (1) Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than ten (10) days after the date of service such subpoena, apply to quash or modify such subpoenas to the FEA official who issued the subpoena, who may (i) deny the application; (ii) quash or modify the subpoena; or (iii) condition denial of the application to quash or modify the subpoena upon the satisfaction of certain just and reasonable requirements. A denial of an application must contain a statement of facts and conclusions of law.

(2) Within 10 days after the day of service of any adverse decision on an application to quash or modify a subpoena, an applicant may seek review of that decision from the Regional Administrator for the region which issued the subpoena, or the Assistant Administrator or Director of the office which issued the subpoena in the case of subpoenas issued by the National Office. The relief requested may include a request for a stay of the obligation to comply with the subpoena, for good cause shown, pending a determination by the Regional Administrator or Assistant Administrator or Director of the office which issued the subpoena. The Regional Administrator or other reviewing official will evaluate the application and render a determination. A denial of an application must contain a statement of facts and conclusions of law.

(3) If the Regional Administrator or other reviewing official fails to take action on an application for review within 20 days of filing, the application for review will be deemed to have been denied in all respects as of 12:01 a.m. on the day following the 20th day.

(4) Any person to whom a subpoena is directed, in the event that an application to quash or modify such subpoena is in any part denied by a Regional Administrator or other reviewing official, may, within ten (10) days after the date of service of such denial, seek relief from the Office of Private Grievances and Redress, at the address provided in § 205.12, only upon a showing that the circumstances are so exceptional that an immediate review is warranted to correct substantial errors of law, or to prevent substantial injury to legal rights, or to cure a gross abuse of administrative discretion. The relief requested may include a request for a stay of the obligation to comply with the subpoena, for good cause shown, pending a determination by the Office of Private Grievances and Redress.

(5) Return on any subpoena issued by FEA pursuant to § 205.8 is temporarily stayed pending timely application for and during administrative review by FEA as specified in § 205.8(h) (1).

2. Section 210.91 is amended to read as follows:

§ 210.91 Reports.

(a) Whenever the FEA considers it necessary for the effective administration of the FEA, it may order any firm to file special or separate reports, setting forth information relating to the FEA regulations in addition to any other reports required in Part 211, Part 212, or Part 214 of this chapter.

(b) Notwithstanding any provision of Part 205 of this chapter, any firm ordered to file a special or separate report under this section, may, within ten (10) days after the date of service of such order, submit an application to the FEA official that issued that order to quash or modify that order. The FEA official who issued the order, on an application to quash or modify, may (i) deny the application; (ii) quash or modify the order; or (iii) condition denial of the application to quash or modify the order upon the satisfaction of certain and just reasonable requirements. A denial of an application must contain a statement of facts and conclusions of law.

(c) Within 10 days after the date of service of any adverse decision on an application to quash or modify an order issued pursuant to this section, an applicant may seek review of that decision from the Regional Administrator for the region which issued the separate or special report order, or the Assistant Administrator for Regulatory Programs if the order was issued by the FEA National Office. The relief requested may include a request for a stay of the obligation to comply with the order, for good cause shown, pending a determination by the Regional Administrator or the Assistant Administrator for Regulatory Programs. The Regional Administrator or Assistant Administrator for Regulatory Programs will evaluate the application and render a determination. Denial of an application must contain a statement of facts and conclusions of law. If the Regional Administrator or the Assistant Administrator for Regulatory Programs failed to take action on an application for review within 20 days of filing, the application for review will be deemed to have been denied in all respects as of 12:01 a.m. on the day following the 20th day.

(d) Any firm which receives a special or separate report order and whose application to quash or modify pursuant to this section is in any part denied by a Regional Administrator or the Assistant Administrator for Regulatory Programs, may, within ten (10) days from the date of service of such denial, seek relief from the Office of Private Grievances and Redress, at the address provided in § 205.12, only upon a showing that the circumstances are so exceptional that an immediate review is warranted to correct substantial errors by law, or to prevent substantial injury to legal rights or cure a gross abuse of administrative discretion. The relief requested may include a request for a stay of the obligation to comply with the order, for good cause shown, pending a determination by the Office of Private Grievances and Redress.

(e) Return on any special or separate report order issued by FEA pursuant to § 210.91(a) is temporarily stayed pending timely application for and during administrative review by FEA as specified in § 210.91(b).

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Title 12—Banks and Banking

CHAPTER I—COMPTROLLER OF THE CURRENCY, DEPARTMENT OF THE TREASURY

PART 1—INVESTMENT SECURITIES REGULATION

Securities Eligible for Purchase, Dealing In and Underwriting; Limitations on Holdings

The following new sections are added to 12 CFR Part 1:

Sec.
1.411 Connecticut Development Authority, Industrial Projects Bonds.
1.412 Board of Trustees of the University of Alabama Medical Center Revenue Bonds.
1.413 Missoula County (Montana) Special Revenue Refunding Bonds.
1.414 Hillsborough County Port District Special Refunding Revenue Bonds (Florida).
1.415 Gilroy Unified School District School Building Corporation (California).
1.416 Pajaro Valley Unified School District School Building Corporation (California).
1.417 Los Angeles County Health Facilities Authority.
1.418 Ventura County Public Facilities Corporation (California).
1.419 Livermore Valley Joint Unified School District Educational Facilities Corporation (California).
1.420 Linden Roselle Sewerage Authority (New Jersey).
1.421 San Ramon Valley Unified School District Educational Facilities Corporation (California).
1.422 New Jersey Sports and Exposition Authority.
1.423 Maryland Consolidated Transportation Bonds.
1.424 University of South Alabama.
1.425 Jackson Redevelopment Authority (Mississippi).
1.426 Connecticut Resources Recovery Authority, Greater Bridgeport System Bonds.
1.427 New Courthouse Corporation, Madison County, Nebraska.
1.428 City of Memphis, Tennessee, Electric System Special Obligation Refunding Bonds.
1.429 Louisiana Stadium and Exposition District, Refunding Bonds.
1.430 Municipal Assistance Corporation for the City of New York, Refunding Bonds.
1.431 Arizona State University.

AUTHORITY: §§ 1.411–1.431 issued under R.S. 324 et seq., as amended, paragraph Seventh of R.S. 5136, as amended; (12 U.S.C. 1 et seq., 24(7)), unless otherwise noted.

§ 1.411 Connecticut Development Authority, Industrial Projects Bonds.

(a) *Request.* Ruling on the eligibility of the $23,635,000 Connecticut Development Authority, Industrial Projects Bonds, Series 1975A through Series 1975X for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24.

(b) *Opinion.* (1) The Connecticut Development Authority is a body politic and corporate constituting a public instrumentality and political subdivision of the State of Connecticut created in 1973 for the performance of an essential public function by an Act of the General Assembly of the State. The principal purpose of the Authority is to assist in financing the cost of acquiring, constructing, improving and equipping plants and other industrial and commercial facilities. The Authority is authorized to borrow money for such projects through the issuance of its bonds and notes and is issuing these bonds for that purpose.

(2) The Act requires the Authority to establish and maintain a capital reserve fund sufficient to meet the maximum payments required in the succeeding calendar year for principal and interest on its outstanding bonds, and provides that on or before December 1 of each year there is deemed to be appropriated from the State general fund such sums as shall be certified by the chairman of the Authority as necessary to restore said fund to an amount equal to the required minimum capital reserve and such amounts shall be allotted and paid to the Authority. The State of Connecticut which possesses general powers of taxation has thus committed its faith and credit in support of these bonds.

(c) *Ruling.* It is our conclusion that the $23,635,000 Connecticut Development Authority, Industrial Projects Bonds Series 1975A through Series 1975X, are general obligations of a State under paragraph Seventh of 12 U.S.C. 24 and are eligible for purchase, dealing in, underwriting and unlimited holding by national banks. (letter dated Dec. 8, 1975.)

§ 1.412 Board of Trustees of the University of Alabama Medical Center Revenue Bonds.

(a) *Request.* Ruling on the eligibility of approximately $25,530,000 Birmingham Medical Center Facilities Revenue Bonds, Series 1976, of The Board of Trustees of the University of Alabama for purchase, dealing in, underwriting and holding by national banks under paragraph Seventh of 12 U.S.C. 24, subject to the ten percent limitation thereof.

(b) *Opinion.* (1) The Board of Trustees of the University of Alabama is a public educational corporation and instrumentality of the State of Alabama. The Board controls the University of Alabama and is authorized to issue bonds to finance the acquisition and construction of buildings and other facilities for use by an institution under its supervision.

(2) The University of Alabama in Birmingham is one of five campuses of the University of Alabama. The Medical Center is composed of five health schools: Medicine, Dentistry, Nursing, Optometry, and Community and Allied Health

Resources; the University of Alabama Hospitals, a 680 bed teaching hospital complex, and a number of specialized health care and medical research facilities.

(3) The University of Alabama in Birmingham is currently implementing a major capital expansion and improvement program with a total estimated cost of approximately $57,000,000. The Board is issuing these bonds to provide a portion of that cost. The proceeds of the bonds will be used in part to finance improvements to existing health care facilities and to construct new health care facilities, and in part to refund certain outstanding bonds of the Board issued to provide a part of the facilities comprising the Medical Center.

(c) *Ruling.* It is our conclusion that the approximately $25,530,000 Birmingham Medical Center Facilities Revenue Bonds, Series 1976, of The Board of Trustees of the University of Alabama are issued by an agency of a State for university purposes and are eligible under paragraph Seventh of 12 U.S.C. 24 for purchase, dealing in, underwriting, and holding by national bank within the ten percent limitation with respect to aggregate holdings of obligations issued by The Board of Trustees of the University of Alabama. (letter dated Jan. 26, 1976.)

§ 1.413 Missoula County (Montana) Special Revenue Refunding Bonds.

(a) *Request.* Ruling on the eligibility of the $4,430,000 Missoula County, Montana Special Revenue Bonds, 1976, for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24.

(b) *Opinion.* (1) Missoula County is a political subdivision of the State of Montana. The County is authorized to issue revenue bonds to finance the acquisition of hospitals and other facilities.

(2) The County is issuing these bonds and $5,500,000 in Hospital Revenue Bonds to provide funds for the establishment of an escrow account which will provide for the payment of interest and principal on the outstanding Hospital Revenue bonds and notes in the total amount of $3,805,000 issued by the Missoula Community Hospital in 1970.

(3) The refunding program is being undertaken to restructure the Hospital's indebtedness, generate additional working capital for the Hospital, and facilitate the issuance of additional parity Bonds to finance future project improvements.

(4) Principal and interest on these bonds (Special Revenue Bonds) will be payable principally from interest earnings received from the investments in the escrow account which will consist of obligations issued by, or otherwise supported by the full faith and credit of, the United States, and from other funds including proceeds from the sale of the bonds. The interest earnings together with the other funds are required to be sufficient to provide for the timely payment of all principal and interest on the bonds. These bonds will thus be supported by obligations of the United States.

(c) *Ruling.* It is our conclusion that the $4,430,000 Missoula County, Montana Special Revenue Bonds, 1976, are eligible for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24. (letter dated Feb. 6, 1976.)

§ 1.414 Hillsborough County Port District Special Refunding Revenue Bonds (Florida).

(a) *Request.* Ruling on the eligibility of not to exceed $35,000,000 Hillsborough County Port District Special Refunding Revenue Bonds, 1976A, for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24.

(b) *Opinion.* (1) Hillsborough County Port District, a political subdivision of the State of Florida, and its governing body, Tampa Port Authority, exist pursuant to special acts of the State. The District is authorized to issue bonds to finance the acquisition of port facilities, and to refinance bonds issued for that purpose.

(2) The District is issuing these bonds and not to exceed $15,500,000 in Revenue Refunding Bonds, 1976, to provide funds for the payment of principal, interest, and redemption premiums on outstanding revenue bonds and notes in the total amount of $17,085,000 issued by the District in 1967 and 1973.

(3) The refunding program is being undertaken to restructure the District's indebtedness, generate additional working capital and facilitate the issuance of additional parity bonds to finance future project improvements.

(4) Principal and interest on these bonds (Special Refunding Revenue Bonds, 1976A) will be payable principally from interest earnings received from the investments in the escrow account which will consist of obligations issued by, or otherwise supported by the full faith and credit of, the United States, and from other funds including proceeds from the sale of the bonds. The interest earnings together with the other funds are required to be sufficient to provide for the timely payment of all principal and interest on the bonds. These bonds will thus be supported by obligations of the United States.

(c) *Ruling.* It is our conclusion that the not to exceed $35,000,000 Hillsborough County Port District Special Refunding Revenue Bonds, 1976A, are eligible for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24. (letter dated March 11, 1976.)

§ 1.415 Gilroy Unified School District School Building Corporation (California).

(a) *Request.* Ruling on the eligibility of the $10,000,000 Gilroy Unified School District School Building Corporation Bonds, Series of 1976, for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24.

(b) *Opinion.* (1) Gilroy School District School Building Corporation, a California non-profit corporation acting for the Gilroy Unified School District was created to render financial assistance to the District by financing and constructing public school buildings and facilities. The Corporation is issuing these bonds to finance the construction of a comprehensive high school and related facilities for 1800 students on a 61 acre site. The completed high school will be leased to and operated by the District.

(2) The District has unconditionally promised in the lease rental agreement to pay annual lease rentals to the Corporation in an amount sufficient to meet annual interest and principal payments on these bonds, as well as other necessary expenses. The District, which possesses general powers of taxation, has thus committed its faith and credit in support of the bonds.

(c) *Ruling.* It is our conclusion that the $10,000,000 Gilroy Unified School District School Building Corporation Bonds, Series of 1976, are general obligations of a State or a political subdivision thereof under paragraph Seventh of 12 U.S.C. 24 and are eligible for purchase, dealing in, underwriting and unlimited holding by national banks. (letter dated April 6, 1976.)

§ 1.416 Pajaro Valley Unified School District School Building Corporation (California).

(a) *Request.* Ruling on the eligibility of the $4,050,000 Pajaro Valley Unified School District School Building Corporation Bonds, Series of 1976, for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24.

(b) *Opinion.* (1) Pajaro Valley Unified School District School Building Corporation, a California non-profit corporation acting for the Pajaro Valley Unified School District was created to render financial assistance to the District by financing and constructing public school buildings and facilities. The Corporation is issuing these bonds to finance the construction of a services and instructional materials center and additions at three elementary schools, one junior high school, and one high school, for leasing to the District.

(2) The District has unconditionally promised in the lease rental agreement to pay annual lease rentals to the Corporation in an amount sufficient to meet annual interest and principal payments on these bonds, as well as other necessary expenses. The District, which possesses general powers of taxation, has thus committed its faith and credit in support of the bonds.

(c) *Ruling.* It is our conclusion that the $4,050,000 Pajaro Valley Unified School District School Building Corporation Bonds, Series of 1976, are general obligations of a State or a political subdivision thereof under paragraph Seventh of 12 U.S.C. 24 and are eligible for purchase, dealing in, underwriting and unlimited holding by national banks. (letter dated April 26, 1976.)

§ 1.417 Los Angeles County Health Facilities Authority.

(a) *Request.* Ruling on the eligibility of the $7,625,000 Los Angeles County Health Facilities Authority Comprehensive Health Center Leasehold Revenue Bonds for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24.

(b) *Opinion.* (1) The Los Angeles County Health Authority is a public entity created under the laws of California by an agreement between the County of Los Angeles and the City of Los Angeles. Under this agreement, the Authority is authorized to acquire, construct, remodel, replace, equip and lease health care facilities within Los Angeles County and to issue bonds to finance the East Los Angeles Comprehensive Health Center.

(2) The County has unconditionally promised in the lease rental agreement to pay annual rentals to the Authority in an amount sufficient to meet annual interest and principal payments on these bonds, as well as other necessary expenses. The County which possesses general powers of taxation, has thus committed its faith and credit in support of the bonds.

(c) *Ruling.* It is our conclusion that the $7,625,000 Los Angeles County Health Facilities Authority Comprehensive Health Center Leasehold Revenue Bonds are general obligations of a State or a political subdivision thereof under paragraph Seventh of 12 U.S.C. 24 and are eligible for purchase, dealing in, underwriting and unlimited holding by national banks. (Letter dated April 30, 1976.)

§ 1.418 Ventura County Public Facilities Corporation (California).

(a) *Request.* Ruling on the eligibility of the $31,000,000 Ventura County Public Facilities Corporation Leasehold Mortgage Bonds, Issue of 1976, Series B, for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24.

(b) *Opinion.* (1) Ventura County Public Facilities Corporation, a California non-profit corporation acting for the County of Ventura, was created to assist the County by financing the acquisition, construction, and improvement of certain public facilities including an administrative complex and justice center. The Corporation is issuing these bonds to finance the construction of a hall of justice building and related facilities to be leased to and operated by the County.

(2) The County has unconditionally promised in the lease rental agreement to pay annual lease rentals to the Corporation in an amount sufficient to meet annual interest and principal payments on these bonds, as well as other necessary expenses. The County, which possesses general powers of taxation, has thus committed its faith and credit in support of the bonds.

(c) *Ruling.* It is our conclusion that the $31,000,000 Ventura County Public Facilities Corporation Leasehold Mortgage Bonds are general obligations of a State or a political subdivision thereof under paragraph Seventh of 12 U.S.C. 24 and are eligible for purchase, dealing in, underwriting and unlimited holding by national banks. (Letter dated June 4, 1976.)

§ 1.419 Livermore Valley Joint Unified School District Educational Facilities Corporation (California).

(a) *Request.* Ruling on the eligibility of the $1,800,000 Livermore Valley Joint Unified School District Educational Facilities Corporation Bonds of Series A, for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24.

(b) *Opinion.* (1) Livermore Valley Joint Unified School District Educational Facilities Corporation, a California nonprofit corporation acting for the Livermore Valley Joint Unified School District was created to provide financial assistance to the District by financing and constructing public school buildings and facilities. The Corporation is issuing these bonds to finance the construction and alteration of public school facilities including class room, library, transportation, warehouse, administration and other related facilities which will be leased to and operated by the District.

(2) The District has unconditionally promised in the lease rental agreement to pay annual lease rentals to the Corporation in an amount sufficient to meet annual interest and principal payments on these bonds, as well as other necessary expenses. The District, which possesses general powers of taxation, has thus committed its faith and credit in support of the bonds.

(c) *Ruling.* It is our conclusion that the $1,800,000 Livermore Valley Joint Unified School District Educational Facilities Corporation Bonds of Series A, are general obligations of a State or a political subdivision thereof under paragraph Seventh of 12 U.S.C. 24 and are eligible for purchase, dealing in, underwriting and unlimited holding by national banks. (letter dated June 4, 1975.)

§ 1.420 Linden Roselle Sewerage Authority (New Jersey).

(a) *Request.* Ruling on the eligibility of the $8,700,000 The Linden Roselle Sewerage Authority, 1975 Revenue Bonds for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24.

(b) *Opinion.* (1) The Linden Roselle Sewerage Authority, created under the laws of the State of New Jersey by parallel ordinances of the City of Linden and the Borough of Roselle, is a public body politic and corporate and a political subdivision of the State. The Authority has power under New Jersey law to finance, acquire, construct and operate a sewer system within its District. It is issuing these bonds for that purpose.

(2) The Authority has entered into service contracts with the City and the Borough. These service contracts, as authorized by New Jersey law, provide for payment to the Authority of annual charges calculated to provide such amounts (in addition to other available funds) as will be required by the Authority for payments of principal and interest on any of its bonds or other obligations, operating expenses, maintenance of reserves and to provide for deficits. The annual charges payable by the municipalities are general obligations of the municipalities and are payable from unlimited property taxes.

(c) *Ruling.* It is our conclusion that the $8,700,000 The Linden Roselle Sewerage Authority, 1975 Revenue Bonds, are general obligations of a State or a political subdivision thereof under paragraph Seventh of 12 U.S.C. 24 and accordingly are eligible for purchase, dealing in, underwriting and unlimited holding by national banks. (Letter dated July 16, 1976.)

§ 1.421 San Ramon Valley Unified School District Educational Facilities Corporation (California).

(a) *Request.* Ruling on the eligibility of the $11,000,000 San Ramon Valley Unified School District Educational Facilities Corporation Bonds, Series of 1976, for purchases, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24.

(b) *Opinion.* (1) San Ramon Valley Unified School District Educational Facilities Corporation, a California nonprofit corporation acting for the San Ramon Valley Unified School District was created to provide financial assistance to the District by financing and constructing public school buildings and facilities. The Corporation is issuing these bonds to finance the construction of a new intermediate school, a classroom addition to a high school and classroom additions and remodeling at another high school all of which will be leased to and operated by the District.

(2) The District has unconditionally promised in the lease rental agreement to pay annual lease rentals to the Corporation in an amount sufficient to meet annual interest and principal payments on these bonds, as well as other necessary expenses. The District, which possesses general powers of taxation, has thus committed its faith and credit in support of the bonds.

(c) *Ruling.* It is our conclusion that the $11,000,000 San Ramon Valley Unified School District Educational Facilities Corporation Bonds, Series of 1976, are general obligations of a State or a political subdivision thereof under paragraph Seventh of 12 U.S.C. 24 and are eligible for purchase, dealing in, underwriting and unlimited holding by national banks. (Letter dated July 21, 1976.)

§ 1.422 New Jersey Sports and Exposition Authority.

(a) *Request.* Ruling on the eligibility of the $15,000,000 New Jersey Sports and Exposition Authority, Sports Complex Completion Bonds, for purchase, dealing in, underwriting and unlimited holding

by national banks under paragraph Seventh of 12 U.S.C. 24.

(b) *Opinion.* (1) The New Jersey Sports and Exposition Authority is a public body corporate and politic, an instrumentality of the State exercising public and essential governmental functions, created in 1971 by an act of the New Jersey State Legislature. The Authority is authorized to develop, construct, and operate a sports complex in the Hackensack Meadowland. It is also authorized to issue its bonds to finance the construction of the project and additional parity bonds for the completion of the project. It has issued and outstanding $302 million of construction bonds. It is issuing these bonds to complete the project.

(2) The sports complex is nearing completion on a 588 acre site and will include a race-track for thoroughbred and harness racing which will accommodate 35,000 spectators, a 76,500 seat stadium to be leased by the New York Football Giants Inc., and related facilities.

(3) These bonds like the construction bonds will be secured by a debt service reserve fund which will be established and maintained in an amount not less than the maximum annual debt service, including principal, interest and sinking fund requirements, for any succeeding year on all outstanding bonds of the Authority. In order to secure the maintenance of this fund, the Act provides that there "shall be appropriated and paid" for deposit to the fund of such sum as is annually certified to be necessary to restore the fund to the required level. The State, which possesses general powers of taxation, has thus committed its faith and credit in support of these bonds.

(c) *Ruling.* It is our conclusion, in accordance with our ruling of December 18, 1973 (12 CFR 1.387) relating to the construction bonds, that the $15,000,000 New Jersey Sports and Exposition Authority, Sports Complex Completion Bonds, are obligations of a State or a political subdivision thereof under paragraph Seventh of 12 U.S.C. 24 and are eligible for purchase, dealing in, underwriting and unlimited holding by national banks. (letter dated July 29, 1976.)

§ 1.423 Maryland Consolidated Transportation Bonds.

(a) *Request.* Ruling on the eligibility of the $50,000,000 Department of Transportation of Maryland Consolidated Transportation Bonds, Series 1976, for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24.

(b) *Opinion.* (1) The Department of Transportation is authorized by Article 94A of the Maryland Code to issue on behalf of the State of Maryland its bonds to finance the cost of transportation facilities. It is issuing these bonds to finance construction of state highway facilities, to pay capital costs related to a 7.6 mile rail rapid transit line for Baltimore, to pay the State's share of the capital costs of the Washington Metropolitan Area Transit Authority program and construction of improvements by the Port of Baltimore and Baltimore Washington International Airport.

(2) Section 9(a) of Article 94A levies and imposes an "annual tax", consisting of excise taxes on motor vehicle fuel and certificates of title and certain corporate taxes, for the payment of the principal of and interest on the bonds; section 9(c) irrevocably pledges to that purpose the taxes so imposed and section 9(d) provides that the bonds do not constitute a debt or pledge of the State's faith and credit.

(3) The Court of Appeals of Maryland has considered these provisions of the Maryland Code and the provisions of section 34 of Article III of the Maryland Constitution in "Secretary of Transportation of Maryland v. James R. Mancuso, Jr.," No. 7 (Adv.) (Ct. of App. Md. June 24, 1976). In its opinion the Court rejected the argument that the limitation of source of debt service payment to exclude a pledge of the State's faith and credit removed the bonds from the ambit of section 34 and concluded that "the use of the taxing authority for debt service payment for the Maryland Consolidated Transportation Bonds creates a constitutional 'debt' of the State."

(4) Section 34 of Article III of the Constitution provides in pertinent part: "No debt shall be hereafter contracted by the General Assembly unless such debt shall be authorized by a law providing for the collection of an annual tax or taxes sufficient to pay the interest on such debt as it falls due, and also to discharge the principal thereof within fifteen years from the time of contracting the same; and the taxes laid for this purpose shall not be repealed or applied to any other object until the said debt and interest thereon shall be fully discharged." The Constitution also provides (section 52 of Article III) for an Executive Budget Bill to include appropriations "to pay and discharge the principal and interest of the debt of the State in conformity with Section 34 of Article III of the Constitution, and all laws enacted in pursuance thereof" and that "the General Assembly shall not amend the Budget Bill so as to affect * * * the obligations of the State under Section 34 of Article III of the Constitution * * *."

(c) *Ruling.* On the basis of the Court's decision that the bonds are a constitutional debt of the State and the constitutional provisions for the payment of such debt, it is our conclusion that the $50,000,000 Department of Transportation of Maryland Consolidated Transportation Bonds, Series 1976, are general obligations of a State under paragraph Seventh of 12 U.S.C. 24 and are eligible for purchase, dealing in, underwriting and unlimited holding by national banks. (Letter dated Aug. 6, 1976.)

§ 1.424 University of South Alabama.

(a) *Request.* Ruling on the eligibility of the $6,500,000 University of South Alabama, University Extension Tuition Fee and Facilities Revenue Bonds, Series F, for purchase, dealing in, underwriting and holding by national banks under paragraph Seventh of 12 U.S.C. 24, subject to the ten percent limitation thereof.

(b) *Opinion.* (1) The Board of Trustees of the University of South Alabama is a public body corporate under the name of University of South Alabama with authority to establish and provide for the maintenance and operation of a state university in Mobile County. The Board is authorized to issue bonds to finance the acquisition and construction of buildings and other facilities for use by the University.

(2) The University of South Alabama is comprised of a College of Arts and Sciences, a College of Business and Management Studies, a College of Education, a College of Engineering, a College of Medicine, a Coordinate College for Health Professions, a Graduate School and a School of Continuing Education.

(3) The proceeds of the bond issue will be used to finance ten two-story resident homes, each to accommodate 48 students and an associated residence center with dining, laundry and recreational facilities at an approximate cost of $4,000,000. Also to be financed in part is a new building for general student use and various additions and capital improvements at an approximate cost of $3,500,000, of which it is presently anticipated that $900,000 will be paid from funds provided by the Alabama Public School and College Authority and $10,000 from funds on hand.

(c) *Ruling.* It is our conclusion that the $6,500,000 University of South Alabama University Extension Tuition Fee and Facilities Revenue Bonds, Series F, are issued by an agency of a State for university purposes and are eligible under paragraph Seventh of 12 U.S.C. 24 for purchase, dealing in, underwriting and holding by national banks within the ten percent limitation with respect to aggregate holdings and obligations issued by the University of South Alabama. (letter dated Aug. 9, 1976.)

§ 1.425 Jackson Redevelopment Authority (Mississippi).

(a) *Request.* Ruling on the eligibility of $7,500,000 Urban Renewal Town Creek Tube Project Bonds and $1,600,000 Urban Renewal 1976 Parking Facilities Project Bonds both issued by the Jackson Redevelopment Authority, Jackson, Mississippi, for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24.

(b) *Opinion.* (1) The Jackson Redevelopment Authority is a public body corporate and politic created and authorized to exercise its powers as the urban renewal agency of the City of Jackson, Mississippi pursuant to the laws of the State of Mississippi including the Urban Renewal Law.

(2) The Authority is issuing these bonds to finance (1) a creek diversion project and (2) the acquisition of and clearing of land as a site for a municipal parking facility. Both projects are in the central business district of Jackson.

(3) With respect to each project the City has agreed to grant and contribute to the Authority from the general fund of the City, semi-annually, amounts which together with other available funds will be sufficient to pay the principal of and interest on bonds as they mature and become due. The City which posessess power to grant or contribute funds to the Authority and to levy taxes for such purposes has thus committed its faith and credit in support of the bonds.

(c) *Ruling.* It is our conclusion that the $7,500,000 Urban Renewal Town Creek Tube Project Bonds and $1,600,000 Urban Renewal 1976 Parking Facilities Project Bonds of the Jackson Redevelopment Authority are general obligations of a State or a political subdivision thereof under paragraph Seventh of 12 U.S.C. 24 and are eligible for purchase, dealing in, underwriting and unlimited holding by national banks. (letter dated Aug. 9, 1976.)

§ 1.426 Connecticut Resources Recovery Authority Greater Bridgeport System Bonds.

(a) *Request.* Ruling on the eligibility of the $53,000,000 Greater Bridgeport System Bonds, Series A, of the Connecticut Resources Recovery Authority for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24.

(b) *Opinion.* (1) The Connecticut Resources Recovery Authority is a body politic and corporate constituting a public instrumentality and political subdivision of the State of Connecticut created in 1973 by an Act of the General Assembly of the State. The Authority has the responsibility for establishing solid waste disposal and resource recovery systems, facilities and services where necessary and desirable throughout the State, may contract with municipalities for solid waste disposal services and may charge and collect fees for such services. The Authority is authorized to borrow money for such projects and to issue its bonds and notes from time to time.

(2) It is issuing these bonds for a project to serve the City of Bridgeport and the Towns of Darien, Easton, Fairfield, Greenwich, Monroe, Stratford, Trumbull and Westport. These municipalities have entered into service contracts with the Authority. The service contracts provide for payment to the Authority of amounts which together with other available funds will be sufficient to pay the costs of operating the project and the debt service on the bonds. The municipalities, which possess general powers of taxation, have pledged their full faith and credit for the payments required by their respective service contracts.

(3) The Authority will establish and maintain a capital reserve fund sufficient to meet the maximum payments required in any succeeding calendar year for principal and interest on these bonds. The Act provides that on or before December 1 of each year there is deemed to be appropriated from the State general fund such sums as shall be certified by the chairman of the Authority as necessary to restore the fund to an amount equal to the required minimum capital reserve and such amounts shall be allotted and paid to the Authority. The State of Connecticut which possesses general powers of taxation has thus committed its faith and credit in support of these bonds.

(c) *Ruling.* It is our conclusion that the $53,000,000 Greater Bridgeport System Bonds, Series A, of the Connecticut Resources Recovery Authority are general obligations of a State or a political subdivision thereof under paragraph Seventh of 12 U.S.C. 24 and are eligible for purchase, dealing in, underwriting and unlimited holding by national banks. (letter dated Aug. 31, 1976.)

§ 1.427 New Courthouse Corporation, Madison County, Nebraska.

(a) *Request.* Ruling on the eligibility of $650,000 New Courthouse Corporation, Madison County, Nebraska, Building Bonds for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24.

(b) *Opinion.* (1) New Courthouse Corporation is a non-profit corporation created under the laws of Nebraska to assist Madison County in financing the construction of a new courthouse building for the County. The cost of the building is estimated to be $1,278,625. The County will pay the cost in excess of that being financed by the bonds. The completed building will be leased to and operated by the County.

(2) The laws of Nebraska require a county board to provide a suitable courthouse. They also authorize a county board to lease real property for authorized purposes and provide that such leases shall not be restricted to a single year and may provide for the purchase of the property in installment payments.

(3) The County has unconditionally promised in the lease purchase agreement to pay annual rentals to the Corporation in an amount sufficient to meet annual interest and principal payments on these bonds. The County will provide for payment of all insurance, taxes and operating expenses. The County, which possesses general powers of taxation, has thus committed its faith and credit in support of the bonds.

(c) *Ruling.* It is our conclusion that the $650,000 New Courthouse Corporation, Madison County, Nebraska, Building Bonds are general obligations of a State or a political subdivision thereof under paragraph Seventh of 12 U.S.C. 24 and are eligible for purchase, dealing in, underwriting and unlimited holding by national banks. (letter dated Oct. 1, 1976.)

§ 1.428 City of Memphis, Tennessee, Electric System Special Obligation Refunding Bonds.

(a) *Request.* Ruling on the eligibility of the $77,725,000 City of Memphis, Tennessee, Electric System Special Obligation Refunding Bonds of 1976 for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24.

(b) *Ruling.* These bonds will be supported by obligations of the United States. In accordance with the Comptroller's ruling of June 13, 1975, (12 CFR 1.403) these bonds are eligible for purchase, dealing in, underwriting and unlimited holding by national banks. (letter dated Oct. 8, 1976.)

§ 1.429 Louisiana Stadium and Exposition District, Refunding Bonds.

(a) *Request.* Ruling on the eligibility of the $135,225,000 Louisiana Stadium and Exposition District, Refunding Bonds Series 1976, for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24.

(b) *Ruling.* These bonds have the same legal basis and are eligible for purchase, dealing in, underwriting and unlimited holding by national banks to the same extent as the 1971 and 1974 bonds of the District which were the subject of the Comptroller's rulings of April 1, 1971, and March 1, 1974, (12 CFR 1.300 and 1.389). (Letter dated Nov. 3, 1986.)

§ 1.430 Municipal Assistance Corporation for the City of New York, Refunding Bonds.

(a) *Request.* Ruling on the eligibility of the $253,000,000 Municipal Assistance Corporation for the City of New York, 1976 Series CC Bonds for purchase, dealing in, underwriting and unlimited holding by national banks under paragraph Seventh of 12 U.S.C. 24.

(b) *Opinion.* (1) Municipal Assistance Corporation for the City of New York is issuing these refunding bonds to the State of New York in exchange for 1975 bonds held by the State. The 1975 bonds received by the Corporation from the State will be cancelled and will thereupon no longer be outstanding. The State is offering the refunding bonds to underwriters for resale to the public.

(c) *Ruling.* The refunding bonds have the same legal basis and are eligible for purchase, dealing in, underwriting and unlimited holding by national banks in the same manner as the 1975 Series A Bonds of the Corporation which were the subject of the Comptroller's ruling of June 26, 1976 (12 CFR § 1.404). (letter dated Nov. 5, 1976.)

§ 1.431 Arizona State University.

(a) *Request.* Ruling on the eligibility of $13,700,000 Arizona State University System Improvement and Refunding Revenue Bonds Series of 1976 for purchase, dealing in, underwriting and holding by national banks under paragraph Seventh of 12 U.S.C. 24 subject to the ten percent limitation thereof.

(b) *Opinion.* (1) The Arizona Board of Regents is issuing these bonds to make improvements and additions to Sun Devil Stadium at Arizona State University and to refund outstanding bonds of the University the proceeds of which were used to finance the construction and improvement of educational facilities, a student union, and a stadium.

(c) *Ruling.* It is our conclusion that the $13,700,000 Arizona State University System Improvement and Refunding Revenue Bonds Series of 1976 are issued by an agency of a State for University purposes and are eligible under paragraph Seventh of 12 U.S.C. 24 for purchase, dealing in, underwriting and holding by national banks within the ten percent limitation with respect to aggregate holdings of obligations issued by the Arizona Board of Regents. (letter dated Nov. 10, 1976.)

Dated: December 15, 1976.

ROBERT BLOOM,
Acting Comptroller of the Currency.

[FR Doc.76-37244 Filed 12-17-76;8:45 am]

CHAPTER II—FEDERAL RESERVE SYSTEM

SUBCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. Z; Docket No. R-0067]

PART 226—TRUTH IN LENDING

Supplement V

This supplement to Regulation Z prescribes the criteria and procedures under which a State may apply for an exemption from the provisions of Chapter 4 (Credit Billing) of the Truth in Lending Act or for a ruling regarding whether a provision of State law is inconsistent with a provision of Chapter 4 of the Act. The Fair Credit Billing Act added Chapter 4 to the Truth in Lending Act. Section 171 of Chapter 4 authorizes the Board to grant exemptions from Chapter 4 to States, if the Board determines that the State's law imposes requirements substantially similar to those of Chapter 4 or that the State's law provides greater protection to consumers than is provided by Chapter 4. Additionally, the Board must determine that there is adequate provision for enforcement of the State's law. Section I of the supplement sets out the criteria and procedures under which a State may secure such an exemption.

Section 171 also authorizes the Board to make determinations as to whether a State's law is inconsistent with Chapter 4 of the Federal law in any respect. The Board is prohibited from determining that a State's law is inconsistent with any provision of Chapter 4 when the State's law provides greater protection to consumers than does Chapter 4. Section II of the supplement prescribes the criteria and procedures under which a State may secure such a determination.

The provisions of section 553 of Title 5, United States Code, relating to notice, public participation, and deferred effective dates are not followed in connection with the adoption of the action because the rules relate to agency procedures and, accordingly, do not constitute substantive rules subject to the requirements of such section.

Pursuant to section 171 of Chapter 4 of the Truth in Lending Act, as amended in Pub. L. 93-495, the Board hereby amends 12 CFR Part 226, effective immediately, by the addition of Supplement V as follows:

SUPPLEMENT V TO REGULATION Z

TRUTH IN LENDING

[Sections 226.12 & 226.6(b)(2)—Supplement]

SECTION I

Procedures and criteria under which any State may apply for exemption from the provisions of Chapter 4 of the Truth in Lending Act pursuant to paragraph (a) of § 226.12.

(a) *Application.* Any State may make application to the Board, pursuant to the terms of Section I of this supplement and the Board's Rules of Procedure (12 CFR Part 262), for a determination that under the laws of that State,[1] transactions under open end credit plans, including credit card plans, as provided in section 103 (f) and (i) of the Act and § 226.2(x) of this part, within that State are subject to requirements which are substantially similar to those imposed under Chapter 4 of the Act[2] or which provide greater protection to customers than those provided under Chapter 4 of the Act, and that there is adequate provision for enforcement of such requirements. Such application shall be made by letter addressed to the Board signed by the Governor, the Attorney General, or any official of the State having responsibilities under the State laws which are applicable to the relevant class of transactions. The application shall be supported by the documents specified in paragraph (b) of Section I of this supplement.

(b) *Supporting documents.* The application shall be accompanied by:

(1) A copy of the full text of the laws of the State which are claimed by the applicant to impose requirements substantially similar to those imposed under Chapter 4 of the Act or to provide greater protection to customers than does Chapter 4 of the Act with respect to open end credit and credit card transactions as defined in § 226.2(x) of Regulation Z, including credit other than open end extended by use of a credit card.

(2) A comparison of each requirement of State law with the corresponding requirement of Chapter 4 of the Act, together with reasons to support the claim that the requirements of State law are substantially similar to or provide greater protection to customers than requirements imposed under Chapter 4 of the Act with respect to the class of credit transactions, and to demonstrate that any differences are not inconsistent with and do not result in a diminution in the protection otherwise afforded customers by the requirements of Chapter 4 of the Act and a statement that there are no other State laws which are related to or would have an effect upon the State law which is being considered for exemption and which should be considered by the Board in making its determination.

(3) A copy of the full text of the laws of the State which provide for enforcement of the State laws referred to in subparagraph (1) of this paragraph.

(4) A comparison of the provisions of State law with the provisions of sections 108, 112, 130, 131, and 161(e) of the Act, together with reasons to support the claim that such State laws provide for:

(i) Administrative enforcement of the State laws referred to in subparagraph (1) of this paragraph which is equivalent to the enforcement provided under section 108 of the Act;

(ii) Criminal liability for willful and knowing violation of the State law with penalties substantially similar to those prescribed under section 112 of the Act, except that more severe penalties may be provided;

(iii) Civil liability for failure to comply with the requirements of the State law, including class action liability, which is substantially similar to that provided under sections 130 and 131 of the Act, except that more severe penalties may be provided;

(iv) A forfeiture penalty substantially similar to that provided by section 161(e) of the Act, except that a more severe forfeiture penalty may be provided;

(v) A statute of limitations that prescribes a period with respect to civil liability actions of substantially similar duration as that provided under paragraph (e) of section 130 of the Act, except that a longer period may be provided.

(5) A statement identifying the office designated or to be designated to administer the State laws referred to in subparagraph (1) of this paragraph, together with complete information regarding the fiscal arrangements for administrative enforcement (including the amount of funds available or to be provided), the number and qualifications of personnel engaged therein, and a description of the procedures under which such State laws are to be administratively enforced, including administrative enforcement with respect to Federally chartered creditors.[3] The foregoing statement should include reasons to support the claim that there is adequate provision for enforcement of such State laws.

(c) *Criteria for determination.* The Board will consider the following criteria along with any other relevant information in making a determination of whether the laws of a State impose requirements substantially similar to or provide greater protection to customers than those requirements imposed under Chapter 4 of the Act with respect to open end credit and credit card transactions including credit other than open end extended by use of a credit card, and whether there is adequate provision for enforcement of such laws:

(1) In order for provisions of State law to be substantially similar to or provide greater protection to customers than the provisions of Chapter 4 of the Act, the provisions of State law[4] shall require that:

(i) Definitions and rules of construction, as applicable, import the same meaning and

[1] Any reference to State law in Supplement V includes a reference to any regulations which implement State law and formal interpretations thereof by a court of competent jurisdiction or a duly authorized agency of that State.

[2] Any reference in Supplement V to Chapter 4 of the Act or any section thereof includes a reference to the implementing provisions of this part and the Board's formal interpretations thereof. Additionally, any reference to Chapter 4 of the Act includes a reference to sections 127(a)(8), 127(b)(11), and 127(c) of Chapter 2 of the Act (and any implementing provisions in this Part) which, though technically a part of Chapter 2, implement and relate to substantive requirements of Chapter 4.

[3] Transactions within a State in which a Federally chartered institution is a creditor shall not be subject to the exemption, and such Federally chartered creditors shall remain subject to the requirements of the Act and administrative enforcement by the appropriate Federal authority under section 108 of the Act, unless it is established to the satisfaction of the Board that appropriate arrangements have been made with such Federal authorities to assure effective enforcement of the requirements of State laws with respect to such creditors.

[4] This paragraph is not to be construed as indicating that the Board would consider adversely any additional requirements of State law which are not inconsistent with the purpose of the Act or the requirements imposed under Chapter 4 of the Act.

have the same application as those prescribed under § 226.2 of this part;

(ii) Creditors make all of the applicable disclosures required by this part and deliver required notices in the form, content, terminology, and time periods as prescribed by this part: *Provided,* That references to Federal law in the statement required under §§ 226.7 (a)(9), 226.7(d), and 226.7(i) may be changed so as to refer to State law. The text of the statements required by State law which correspond to those required by §§ 226.7(a)(9), 226.7(d), and 226.7(i) of this part must be varied to accurately reflect the State law if there are any differences between the State law and Chapter 4 which are determined by the Board not to be inconsistent with Chapter 4 when granting any exemption and which would affect the accuracy of the statement as provided in this part;

(iii) Creditors take all affirmative actions and abide by obligations substantially similar to those prescribed by Chapter 4 of the Act, under substantially similar conditions and within the same (or more stringent) time periods as are prescribed in Chapter 4 of the Act;

(iv) Creditors abide by the same (or more stringent) prohibitions as are provided by Chapter 4 of the Act;

(v) Customers need comply with no obligations or responsibilities which are more costly, lengthy, or burdensome as a condition of exercising any of the rights or gaining the benefits of the protections in the State law which correspond to those afforded by Chapter 4 of the Act, than those obligations or responsibilities imposed upon customers in Chapter 4 of the Act;

(vi) Substantially similar or more favorable rights and protections are provided to customers under conditions substantially similar or more favorable to customers than those afforded by Chapter 4 of the Act.

(2) In determining whether the provisions for enforcement of the State law referred to in paragraph (b)(1) are adequate, consideration will be given to the extent to which, under the laws of the State, provision is made for:

(i) Administrative enforcement, including necessary facilities, personnel, and funding;

(ii) Criminal liability for willful and knowing violation with penalties substantially similar to or more severe than those prescribed under section 112 of the Act;

(iii) Civil liability for failure to comply with the provisions of State law substantially similar to that provided under sections 130 and 131 and a forfeiture penalty substantially similar to that provided in section 161(e) of the Act, except that more severe civil liability and forfeiture penalties may be prescribed; and

(iv) A statute of limitations with respect to civil liability of substantially similar duration as that provided under § 130 of the Act, except that a longer duration may be provided.

(d) *Public notice of filing and proposed rulemaking.* In connection with any application which has been filed in accordance with the requirements of paragraphs (a) and (b) of Section I, following initial review of said application, notice of such filing and proposed rulemaking will be published by the Board in the FEDERAL REGISTER, and a copy of such application will be made available for examination by interested persons during business hours at the Board and at the Federal Reserve Bank of each Federal Reserve District in which any part of the State of the applicant is situated. A reasonable period of time will be allowed from the date of such publication for the Board to receive written comments from interested persons with respect to that application.

(e) *Exemption from requirements of Chapter 4.* If the Board determines on the basis of the information before it that under the law of a State open end credit and credit card transactions, including credit transactions other than open end extended by use of a credit card are subject to requirements which are substantially similar to or which provide greater protection to customers than those imposed under Chapter 4 of the Act and that there is adequate provision for enforcement, the Board will extempt such class of transactions in that State from the requirements of Chapter 4 of the Act in the following manner and subject to the following conditions:

(1) Notice of the exemption will be published in the FEDERAL REGISTER, and the Board will furnish a copy of such notice to the official who made application for such exemption and to each Federal authority responsible for administrative enforcement of the requirements of Chapter 4 of the Act.

(2) The appropriate official of any State which receives an exemption shall inform the Board within 30 days of the occurrence of any change in its related law (including regulations). The report of any such change shall contain copies of the full text of that change together with statements setting forth the information and opinions with respect to that change as specified in subparagraphs (2) and (4) of paragraph (b). The appropriate official of any State which has received an exemption shall file with the Board from time to time such reports as the Board may require.

(3) The Board will inform the appropriate official of any State which receives an exemption of any subsequent amendments of Chapter 4 of the Act (including the implementing provisions of this part and the Board's formal interpretations) which might call for amendment of State law, regulations or formal interpretation thereof.

(f) *Adverse Determination.* (1) after publication of notice in the FEDERAL REGISTER as provided under paragraph (d) the Board finds on the basis of the information before it that it cannot make a favorable determination in connection with the application, the Board will notify the appropriate State official of the facts upon which such finding is based and shall afford that State a reasonable opportunity to demonstrate or achieve compliance.

(2) If, after having afforded the State such opportunity to demonstrate or achieve compliance, the Board finds on the basis of the information before it that it still cannot make any favorable determination in connection with the application, the Board will publish in the FEDERAL REGISTER a notice of its decision with respect to such application and will furnish a copy of such notice to the official who made application for such exemption.

(g) *Revocation of Exemption.* (1) The Board reserves the right to revoke any exemption if at any time it determines that the State law does not, in fact, impose requirements which are substantially similar to or provide greater protection to customers than those imposed under Chapter 4 of the Act or that there is not, in fact, adequate provision for enforcement.

(2) Before revoking any State exemption, the Board will notify the appropriate State official of the facts or conduct which in the opinion of the Board warrant such revocation and shall afford that State such opportunity as the Board deems appropriate in the circumstances to demonstrate or achieve compliance.

(3) If, after having been afforded the opportunity to demonstrate or achieve compliance, the Board determines that the State has not done so, notice of the Board's intention to revoke such exemption shall be published as a notice of proposed rulemaking in the FEDERAL REGISTER. A period of time will be allowed from the date of such publication for the Board to receive written comments from interested persons with respect to the proposed rulemaking.

(4) In the event of revocation of such exemption, notice of such revocation shall be published by the Board in the FEDERAL REGISTER, and a copy of such notice shall also be furnished to the appropriate State official and to the Federal authorities responsible for enforcement of requirements of Chapter 4 of the Act, and the class of transactions affected within that State shall then be subject to the requirements of Chapter 4 of the Act and subject to administrative enforcement as provided under section 108 of the Act.

SECTION II

Procedures and criteria under which any State may apply for a determination that a State law is not inconsistent with and not preempted by a provision of Chapter 4 of the Act pursuant to § 226.6(b)(2) of this part.

(a) *Application.* Any State may make application to the Board pursuant to the terms of Section II of this supplement and the Board's rules of procedure (12 CFR Part 262), for a determination that a law of such State is consistent* with a provision of Chapter 4 of the Act, because such State law provides greater protection to customers than does the provision of Chapter 4 of the Act, that such law is consistent with a provision of Chapter 4 for any other reasons, or for a determination of any issues not clearly covered by § 226.6(b) with regard to the relationship of the Federal law to the State's law. Such application shall be made by letter addressed to the Board signed by the Governor, Attorney General, or any official of the State having responsibilities under the State law put forward for consideration and supported by the documents specified in paragraph (b) of Section II of this supplement.

(b) *Supporting Documents.* The application shall be accompanied by:

(1) A copy of the full text of the laws of the State which are claimed by the applicant to be consistent with a provision of Chapter 4 of the Act or whose relationship (with regard to consistency or inconsistency) to a provision of Chapter 4 of the Act is claimed by the applicant to be not clearly covered by the standards and criteria for comparison set forth in § 226.6(b) of this part.

(2) A comparison of each requirement of the State law with the corresponding requirement of Chapter 4 of the Act, together with reasons to support the claim that the State law is consistent with a provision of Chapter 4 of the Act or that the relationship (with regard to consistency or inconsistency) between the State law and a provision of Chapter 4 of the Act is not clearly covered by the standards and criteria set forth in § 226.6(b) of this part.

(3) A copy of the full text of any provisions of State law corresponding to sections 112, 130, 131, and 161(e) (if applicable) together with reasons for applicant's claim that such State provisions are not inconsistent (because they provide greater protection to customers or for other reasons) with the Act.

(4) A statement that there are no State laws (including administrative or judicial interpretations) other than those submitted to the Board which have any bearing on whether or not the State law is consistent with a provision of Chapter 4 of the Act.

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*For purposes of this supplement the terms "consistent" and "not inconsistent" shall convey the same meaning and shall involve the same evidentiary showing.

(5) A statement identifying the office designated or to be designated to administer the State laws referred to in subparagraph (1) of this paragraph. If no such administrative office exists, then a statement identifying the office to which the Board can address any correspondence regarding the request for such determination shall accompany the application.

(c) *Criteria for determination.* The Board will consider the following criteria along with any other relevant information, in addition to the criteria set forth in § 226.6(b) of this part, in making a determination of whether or not State law is inconsistent with a provision of Chapter 4 of the Act. In order for provisions of State law to be determined to be consistent with a provision of Chapter 4 of the Act, the provisions of State law[6] shall, to the extent relevant to the determination, require that:

(1) Definitions and rules of construction, as applicable, import the same meaning and have the same application as those prescribed by this part;

(2) Creditors make all of the applicable disclosures required by the corresponding provision of Chapter 4 of the Act and this Part and deliver required notices with the content and in the terminology, form, and time periods prescribed by this part; however, variations in form, content, and terminology from the disclosures required by this part will be permitted in order to accurately reflect a State law which is different from the Federal law but determined to be consistent therewith, and more frequent disclosures which do not frustrate any of the purposes of the Act may be determined to be consistent with the Act;

(3) Creditors take all affirmative actions and abide by obligations substantially similar to those prescribed by a provision of Chapter 4 of the Act under substantially similar (or more stringent) conditions and within the same (or more stringent) time periods as are prescribed in Chapter 4 of the Act;

(4) Creditors abide by the same (or more stringent) prohibitions as are prescribed by the corresponding provision of Chapter 4 of the Act;

(5) Customers need comply with obligations or responsibilities which are not more costly, lengthy, or burdensome as a condition of exercising any of the rights or gaining the benefits of the protections provided in the State law, which correspond to those afforded by Chapter 4 of the Act, than those obligations or responsibilities imposed on customers in Chapter 4 of the Act;

(6) Customers are to have rights and protections substantially similar to or more favorable than those provided by the corresponding provision of Chapter 4 of the Act under conditions and within time periods which are substantially similar to or more favorable to customers than those prescribed by Chapter 4 of the Act.[7]

[6] This paragraph is not to be construed as indicating that the Board would consider adversely any additional requirements of State law which are not inconsistent with the purposes of the Act or the requirements imposed under Chapter 4 of the Act.

[7] A State may make a showing that in certain limited readily identifiable circumstances a law which may otherwise be inconsistent with a provision of Chapter 4 of the Act is not inconsistent under the criteria set forth in paragraph (c) of Section II of this supplement. The Board may determine such State law to be consistent only under those circumstances but will make no such determination if doing so would mislead or confuse customers.

(d) *Public notice of filing and proposed rulemaking.* In connection with any application which has been filed in accordance with the requirements of paragraphs (a) and (b) of Section II of this supplement, notice of such filing and proposed rulemaking will be published by the Board in the FEDERAL REGISTER, and a copy of such application will be made available for examination by interested persons during business hours at the Board and at the Federal Reserve Bank of each Federal Reserve District in which any part of the State of the applicant is situated. A period of time will be allowed from the date of such publication for the Board to receive written comments from interested persons with respect to that application.

(e) *Determination that a State law is consistent with chapter 4.* If the Board determines on the basis of the information before it that the law of a State is consistent with a provision of chapter 4 of the Act, notice of such determination shall be published in the following manner and shall be subject to the following conditions:

(1) Notice of the determination will be published in the FEDERAL REGISTER, and the Board will furnish a copy of such notice to the official who made application for such exemption and to each Federal authority responsible for administrative enforcement of the requirements of Chapter 4 of the Act.

(2) The appropriate official of any State which receives such a determination shall inform the Board within 30 days of the occurrence of any change in its related law (or regulations). The report of any such change shall contain copies of the full text of the law, as changed, together with statements setting forth the information and opinions with respect to that change as specified in subparagraphs (2) and (4) of paragraph (b) of Section II. The appropriate official of any State which has received such a determination shall file with the Board from time to time such reports as the Board may require.

(3) The Board will inform the appropriate official of any State which receives such a determination of any subsequent amendments of Chapter 4 of the Act (including the implementing provisions of this Part and the Board's formal interpretations) which might call for amendment of State law, regulations, or formal interpretations.

(f) *Adverse Determination.* (1) If after publication of notice in the FEDERAL REGISTER as provided under paragraph (d) the Board finds on the basis of the information before it that such State law is inconsistent with a provision of Chapter 4 of the Act, the Board will notify the appropriate State official of the facts upon which such finding is based and shall afford that State authority a reasonable opportunity to demonstrate further that such State law is not inconsistent with the corresponding provision of Chapter 4 of the Act, if such State authority desires to do so.

(2) If, after having afforded the State authority such further opportunity to demonstrate that the State law is consistent with a provision of Chapter 4 of the Act, the Board finds on the basis of the information before it that the State law is inconsistent, the Board will publish in the FEDERAL REGISTER a notice of its decision with respect to such application and will furnish a copy of such notice to the official who made application for the determination.

(g) *Reversal of determination.* (1) The Board reserves the right to reverse any determination made under Section II of this supplement to the effect that a State law is consistent with a provision of Chapter 4 of the Act, if at any time it determines that the State law is in fact inconsistent with a provision of Chapter 4 of the Act because of subsequently discovered facts, a change in the State or Federal law (by amendment or administrative or judicial interpretation or otherwise) or for any other reason bearing on the coverage or impact of the State or Federal law.

(2) Before reversing any such determination, the Board will notify the appropriate State official of the facts or conduct which, in the opinion of the Board, warrant such reversal and shall afford that State such opportunity as the Board deems appropriate in the circumstances to demonstrate that the determination should not be reversed.

(3) If, after having been afforded the opportunity to demonstrate that its law is consistent with a provision of Chapter 4 of the Act, the Board determines that the State has not done so, notice of the Board's intention to reverse such determination shall be published as a notice of proposed rulemaking in the FEDERAL REGISTER. A reasonable period of time will be allowed from the date of such publication for the Board to receive written comments from interested persons with respect to the proposed rulemaking.

(4) In the event of reversal of such determination, notice of such reversal shall be published by the Board in the FEDERAL REGISTER, and a copy of such notice shall also be furnished to the appropriate State official and to the Federal authorities responsible for enforcement of the requirements of Chapter 4 of the Act and the State law affected shall then be considered inconsistent with and preempted by Chapter 4 of the Act within the meaning of section 171(a) of the Act.

By order of the Board of Governors, December 10, 1976.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.76-37243 Filed 12-17-76;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 76-CE-23-AD; Amdt. 39-2789]

PART 39—AIRWORTHINESS DIRECTIVES

Beech Model 19, 23 and 24 Airplanes

A proposal to amend Part 39 of the Federal Aviation Regulations to include an Airworthiness Directive (AD) applicable to Beech Model 19, 23 and 24 airplanes (also commonly known as Beech Musketeer series airplanes) was published in the FEDERAL REGISTER on November 1, 1976, (41 FR 47916). This proposal would require modification of the wing trailing edge on these aircraft in accordance with Beechcraft Service Instructions No. 0510-032 to prevent interchanging left and right ailerons during reinstallation.

Interested persons were afforded an opportunity to participate in the making of the amendment. One adverse comment was received. The commentator objected to the proposal because he believed that competent licensed mechanics, authorized inspectors and pilots should provide sufficient protection to assure that ailerons are properly installed on these aircraft. He further stated that only one accident resulting from improper aileron installation in the last few years does not warrant AD action. In response to these comments, the Federal Aviation Administration states that even after the agency's publication of a General Aviation Inspection Aid and the manufac-

turer's issuance of a service instruction, both relative to this problem, one accident, which involved a fatality, occurred because of improper aileron installation. Accordingly, in the interest of safety, the FAA is proceeding with the issuance of an AD.

The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

In consideration of the foregoing and pursuant to the authority delegated to me by the Administrator, 14 C.F.R. 11.89 (31 FR 13697), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new AD.

BEECH. Applies to Models A23-19, 19A, M19A and B19 (Serial Numbers MB-1 thru MB-545 and MB-547), Models 23, A23, A23A, B23 and C23 (Serial Numbers M-2 thru M-1415), Models A-23-24 and A24 (Serial Numbers MA-1 thru MA-368), and Model A24R (Serial Numbers MC-2 thru MC-127) airplanes.

Compliance: Required as indicated, unless already accomplished.

To prevent interchanging left and right ailerons during reinstallation and resulting reversed aileron control response, accomplish the following:

(A) Within the next 100 hours' time in service after the effective date of this AD or at the next removal of the ailerons or within one year after the effective date of this AD, whichever occurs first, install one each Beech P/N 169-110000-481 strap in the left and right wing trailing edge in accordance with Beechcraft Service Instruction 0510-032 or later approved revisions.

(B) Any alternate method of compliance with this AD must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Central Region.

This amendment becomes effective January 24, 1977.

(Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 and 1423), and of sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

Issued in Kansas City, Missouri, on December 10, 1976.

JOHN E. SHAW,
Acting Director, Central Region.

[FR Doc.76-37061 Filed 12-17-76;8:45 am]

[Docket No. 16372; Amdt. 39-2790]

PART 39—AIRWORTHINESS DIRECTIVES

Rolls-Royce RB.211-22B Engines

There has been a report of an in-flight high pressure turbine disc failure on a Rolls-Royce RB.211-22B engine and another high pressure disc failure during cyclic rig testing at the manufacturer's plant. Since this condition is likely to exist or develop in other engines of the same type design, an airworthiness directive is being issued to require inspection of the H.P. turbine disc bore on RB.211-22B engines in service.

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.

(Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, and 1423) and sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

In consideration of the foregoing, and pursuant to the authority delegated to me by the Administrator (14 CFR 11.89), § 39.13 of Part 39 of the Federal Aviation Regulations is amended by adding the following new airworthiness directive:

ROLLS-ROYCE (1971) LTD. Applies to RB.211-22B engines.

Compliance is required as indicated, unless already accomplished.

To prevent hazards of H.P. turbine disc failure from cracks in the disc bore surface, accomplish the following:

(a) For engines not incorporating Rolls-Royce Service Bulletin RB.211-72-3225—with H.P. disc serial numbers CQDY 779, 794, 802, 824, 829, 840, 851, 933 and 952 installed—inspect the H.P. disc bore in accordance with Rolls-Royce Alert Service Bulletin RB.211-72-A4303 dated December 3, 1976, or an FAA-approved equivalent, as follows:

(1) For engines that have accumulated in excess of 2,400 flight cycles, inspect within 10 flight cycles after the effective date of this AD.

(2) For engines that have accumulated in excess of 1,000 flight cycles but less than 2,401 cycles, inspect within 80 flight cycles after the effective date of this AD.

(3) For other engines, inspect within the next 250 flight cycles after the effective date of this AD.

(b) For engines not incorporating Rolls-Royce Service Bulletin RB.211-72-3225—with H.P. disc serial numbers CQDY 750 and higher, and serial numbers CQDY 577, 624 and 742 (but excluding the serial numbers listed in paragraph (a) of this AD) installed—that have accumulated in excess of 2,300 flight cycles, inspect the H.P. disc bore in accordance with Rolls-Royce Alert Service Bulletin RB.211-72-A4303 dated December 3, 1976, or an FAA-approved equivalent, within the next 100 flight cycles after the effective date of this AD.

(c) For engines incorporating Rolls-Royce Service Bulletin RB.211-72-3225—with H.P. disc serial numbers CQDY 790, 791, 887, 972, 1002, 1016, 1030, 1073 and CQDY 1106 and higher installed—inspect the H.P. disc bore in accordance with Rolls-Royce Alert Service Bulletin RB.211-72-A4303 dated December 3, 1976, or an FAA-approved equivalent, as follows:

(1) For engines that have accumulated in excess of 1,000 flight cycles, inspect within the next 10 flight cycles after the effective date of this AD.

(2) For engines that have accumulated in excess of 700 flight cycles but less than 1,001 flight cycles, inspect within the next 50 flight cycles after the effective date of this AD.

(3) For engines that have accumulated in excess of 400 flight cycles but less than 701 flight cycles, inspect within the next 80 flight cycles after the effective date of this AD.

(4) For all other engines inspect within the next 250 flight cycles after the effective date of this AD.

(d) For engines incorporating Rolls-Royce Service Bulletin RB.211-72-3225—with serial numbers CQDY 750 and higher (except those covered in paragraph (c) of this AD) installed—that have accumulated in excess of 900 flight cycles, inspect the H.P. disc bore in accordance with Rolls-Royce Alert Service Bulletin RB.211-72-A4303 dated December 3, 1976, or an FAA-approved equivalent, within the next 100 flight cycles after the effective date of this AD.

(e) For engines inspected under paragraphs (a) and (b) of this AD which are found to be serviceable in accordance with the acceptance standards of Rolls-Royce Alert Service Bulletin RB.211-72-A4303 dated December 3, 1976, or an FAA approved equivalent, either—

(1) Continue to inspect the H.P. disc bore in accordance with Rolls-Royce Alert Service Bulletin RB.211-72-A4303 dated December 3, 1976, or an FAA-approved equivalent, at intervals not to exceed 2,800 flight cycles; or

(2) Rework the H.P. discs in accordance with Rolls-Royce Service Bulletin RB.211-72-4447 dated October 7, 1976, or an FAA-approved equivalent.

(f) For engines inspected under paragraphs (c) and (d) of this AD which are found serviceable in accordance with the acceptance standards of Rolls-Royce Alert Service Bulletin RB.211-72-A4303 dated December 3, 1976, or an FAA-approved equivalent, either—

(1) Continue to inspect the H.P. disc bore in accordance with Rolls-Royce Alert Service Bulletin RB.211-72-A4303 dated December 3, 1976, or an FAA-approved equivalent, at intervals not to exceed 1,500 flight cycles; or

(2) Rework the H.P. discs in accordance with Rolls-Royce Service Bulletin RB.211-72-4447 dated October 7, 1976, or an FAA-approved equivalent.

(g) Replace those discs found not to be serviceable during any inspection required by this AD before further flight with—

(1) A serviceable FAA-approved disc that has been reworked in accordance with Rolls-Royce Service Bulletin RB.211-72-4447 dated October 7, 1976, or an FAA-approved equivalent; or

(2) A serviceable FAA-approved disc that has not been reworked in accordance with Rolls-Royce Service Bulletin RB.211-72-4447 dated October 7, 1976, or an FAA-approved equivalent. If the disc installed pursuant to this subparagraph has a serial number specified in paragraph (a), (b), (c), or (d) of this AD, continue to inspect the disc at the interval specified in paragraph (e)(1) or (f)(1) of this AD, as appropriate.

(h) For the purpose of this AD, the number of flight cycles equals the number of flights that involve an engine operating sequence consisting of engine starting, takeoff operation, landing, and engine shutdown.

This amendment becomes effective January 3, 1977.

The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Issued in Washington, D.C. on December 10, 1976.

J. A. FERRARESE,
Acting Director,
Flight Standards Service.

[FR Doc.76-37060 Filed 12-17-76;8:45 am]

[Airspace Docket No. 76-SW-37]

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

Alteration of Federal Airway

The purpose of this amendment to Part 71 of the Federal Aviation Regulations is to alter the description of V-198 east of Hobby, Tex., by one degree. This

alteration is required because of the relocation of the Hobby VORTAC from one side of the William P. Hobby Airport to the other. Additional routes which will automatically move slightly without redesignation are V–15, V–20, V–76, V–198, J–37, J–177 and J–138. The bearing and distance to the Humble waypoint will be changed. However, none of the Area High Routes will be moved.

Since this amendment is a minor matter on which the public would have no particular desire to comment and since no substantive change in the regulations is effected, notice and public procedure thereon are unnecessary.

In consideration of the foregoing, Part 71 of the Federal Aviation Regulations is amended, effective 0901 G.m.t. April 21, 1977, as hereinafter set forth.

§ 71.123 (41 307) is amended as follows:

In V–198 "Hobby, Tex.; INT Hobby 090°" is deleted and "Hobby, Tex.; INT Hobby 091°" is substituted therefor.

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

Issued in Washington, D.C., on November 26, 1976.

WRAY R. MCCLUNG,
Acting Chief, Airspace and Air Traffic Rules Division.

[FR Doc.76-37063 Filed 12-17-76;8:45 am]

[Docket No. 16311; Amdt. No. 1051]

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

Recent Changes and Additions

This amendment to Part 97 of the Federal Aviation Regulations incorporates by reference therein changes and additions to the Standard Instrument Approach Procedures (SIAPs) that were recently adopted by the Administrator to promote safety at the airports concerned.

The complete SIAPs for the changes and additions covered by this amendment are described in FAA Forms 8260–3, 8260–4, or 8260–5 and made a part of the public rule making dockets of the FAA in accordance with the procedures set forth in Amendment No. 97–696 (35 FR 5609).

SIAPs are available for examination at the Rules Docket and at the National Flight Data Center, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591. Copies of SIAPs adopted in a particular region are also available for examination at the headquarters of that region. Individual copies of SIAPs may be purchased from the FAA Public Information Center, AIS–230, 800 Independence Avenue, SW., Washington, D.C. 20591 or from the applicable FAA regional office in accordance with the fee schedule prescribed in 49 CFR 7.85. This fee is payable in advance and may be paid by check, draft, or postal money order payable to the Treasurer of the United States. A weekly transmittal of all SIAP changes and additions may be obtained by subscription at an annual rate of $150.00 per annum from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. Additional copies mailed to the same address may be ordered for $30.00 each.

Since a situation exists that requires immediate adoption of this amendment, I find that further notice and public procedure hereon is impracticable and good cause exists for making it effective in less than 30 days.

In consideration of the foregoing, Part 97 of the Federal Aviation Regulations is amended as follows, effective on the dates specified:

1. Section 97.23 is amended by originating, amending, or canceling the following VOR–VOR/DME SIAPs, *effective January 27, 1977.*

Lihue, HI—Lihue Arpt., VORTAC Rwy 21, Amdt. 3
Fort Huachuca, AZ—Libby AAF/Sierra Vista, VOR–A, Original
Ocala, FL—Ocala Muni (Jim Taylor Field), VOR Rwy 36, Amdt. 9
Lihue, HI—Lihue Arpt., VOR–A (TAC), Amdt. 3
Lihue, HI—Lihue Arpt., VOR–B (TAC) Original
Mattoon-Charleston, IL—Coles County Memorial, VOR Rwy 6, Amdt. 9
Mason City, IA—Mason City Municipal, VOR Rwy 35, Amdt. 11, cancelled
Mason City, IA—Mason City Muni., VOR Rwy 35 (TAC), Original
Mason City, IA—Mason City Muni., VORTAC Rwy 17, Amdt. 7
Mason City, IA—Mason City Municipal, VORTAC Rwy 35, Amdt. 2, cancelled
Alpena, MI—Phelps-Collins Arpt., VOR Rwy 12, Amdt. 5
Alpena, MI—Phelps-Collins Arpt., VOR Rwy 18, Amdt. 6
Alpena, MI—Phelps-Collins Arpt., VOR Rwy 36, Amdt. 7
Hillsdale, MI—Hillsdale Municipal Arpt., VOR–A, Amdt. 3
Albany, NY—Albany County, VOR Rwy 19, Amdt. 14
New York, NY—John F. Kennedy Int'l Arpt., VOR Rwy 13L/13R, Amdt. 13
Lumberton, NC—Lumberton Muni Arpt., VOR Rwy 5, Amdt. 2
Lumberton, NC—Lumberton Muni Arpt., VOR Rwy 13, Amdt. 2
McAlester, OK—McAlester Muni Arpt., VOR–A, Amdt. 10
Tullahoma, TN—William Northern Field, VOR Rwy 32, Amdt. 4
Tullahoma, TN—William Northern Field, VOR/DME Rwy 14, Orig
Marlin, TX—Marlin Arpt., VOR/DME–A, Amdt. 2

* * * *effective January 6, 1977.*

Bemidji, MN—Bemidji Muni Arpt., VOR Rwy 13, Amdt. 9
Bemidji, MN—Bemidji Muni Arpt., VORTAC Rwy 31, Amdt. 5

* * * *effective December 8, 1976.*

Honolulu, HI—Honolulu Int'l Arpt., VOR Rwy 8L(TAC) Amdt. 12

2. Section 97.25 is amended by originating, amending, or canceling the following SDF–LOC–LDA SIAPs, *effective January 27, 1977.*

Mason City, IA—Mason City Muni Arpt., LOC (BC)/DME Rwy 17, Amdt. 1
Albuquerque, NM—Albuquerque Int'l Arpt., LOC(BC) Rwy 17, Amdt. 12, cancelled
Tyler, TX—Pounds Field, LOC (BC) Rwy 31, Amdt. 12

* * * *effective January 13, 1977.*

Merced, CA—Merced Muni Arpt., LOC (BC) Rwy 12, Amdt. 2
Dallas, TX—Redbird Arpt., LOC Rwy 31, Original

* * * *effective January 6, 1977.*

Glasgow, KY—Glasgow Muni Arpt., SDF Rwy 7, Original

* * * *effective December 23, 1976.*

Binghamton, NY—Broome County, LOC Rwy 16, Original

3. Section 97.27 is amended by originating, amending, or canceling the following NDB/ADF SIAPs, *effective January 27, 1977.*

Fort Huachuca, AZ—Libby AAF/Sierra Vista Arpt., NDB–B, Original
Tifton, GA—Henry Tift Myers Arpt., NDB Rwy 33, Amdt. 6
Mason City, IA—Mason City Municipal Arpt., NDB Rwy 35, Amdt. 1
Staples, MN—Staples Municipal Arpt., NDB Rwy 14, Amdt. 1
Albuquergue, NM—Albuquerque Int'l Arpt., NDB Rwy 35, Amdt. 5
Lumberton, NC—Lumberton Muni Arpt., NDB Rwy 13, Amdt. 3
Greeneville, TN—Greeneville Muni Arpt., NDB Rwy 5, Amdt. 1
Greeneville, TN—Greeneville Muni Arpt., NDB Rwy 23, Original, cancelled
Paris, TN—Henry County, NDB Rwy 1, Amdt. 5
Paris, TN—Henry County, NDB Rwy 19, Amdt. 4

4. Section 97.29 is amended by originating, amending, or canceling the following ILS SIAPs, effective January 27, 1977.

Mason City, IA—Mason City Muni Arpt., ILS Rwy 35, Amdt. 1
New Orleans, LA—Lakefront Arpt., ILS Rwy 17, Amdt. 2
Albuquerque, NM—Albuquerque Int'l Arpt., ILS Rwy 8, Original
Albuquerque, NM—Albuquerque Int'l Arpt., ILS Rwy 35, Amdt. 31, cancelled
Albany, NY—Albany County, ILS Rwy 1, Amdt. 3
Albany, NY—Albany County, ILS Rwy 19, Amdt. 13
Billings, MT—Billings Logan Int'l Arpt., ILS Rwy 9, Amdt. 21

* * * *effective December 23, 1976.*

Washington, DC—Dulles Int'l Arpt., ILS Rwy 12, Original

* * * *effective December 8, 1976.*

Honolulu, HI—Honolulu Int'l Arpt., ILS Rwy 8L, Amdt. 12

5. Section 97.31 is amended by originating, amending, or canceling the following RADAR SIAPs, effective January 27, 1977.

Fort Huachuca, AZ—Libby AAF/Sierra Vista, RADAR–1 Original
Albany, NY—Albany County, RADAR–1, Amdt. 9

* * * *effective December 30, 1976.*

Biddeford, ME—Biddeford Municipal Arpt., RADAR–1, Original

Portland, ME—Portland Int'l Jetport, RADAR-1, Original

6. Section 97.33 is amended by originating, amending, or canceling the following RNAV SIAPs, effective January 27, 1977.

Mason City, IA—Mason City Muni Arpt., RNAV Rwy 30, Amdt. 2

Correction: In Docket No. 16259, Amdt No. 1047, to Part 97 of the Federal Aviation Regulations, Published in the FEDERAL REGISTER dated Thursday, November 18, 1976 on page 50806, under § 97.23 effective December 30, 1976 * * * Manhattan, Ks—Manhattan Muni Arpt., VOR/NDB RWY 3, Amdt 8 Redesignated as VOR RWY 3, Amdt 8 * * * and on page 50807, under § 97.27, effective December 30, 1976 * * * Manhattan, Ks—Manhattan Muni Arpt., NDB/VOR-A, Amdt 11 Redesignated as NDB-A, Amdt 11.

(Secs. 307, 313, 601, 1110, Federal Aviation Act of 1958; 49 U.S.C. 1438, 1354, 1421, 1510, and sec. 6(c) Department of Transportation Act, 49 U.S.C. 1655(c).)

Issued in Washington, D.C., on December 9, 1976.

NOTE.—Incorporation by reference provisions in §§ 97.10 and 97.20 approved by the Director of the FEDERAL REGISTER on May 12, 1969, (35 FR 5610).

JAMES M. VINES,
Chief,
Aircraft Programs Division.

[FR Doc.76-37062 Filed 12-17-76;8:45 am]

[Docket No. 15855; Amdt. Nos. 1-25; 107-2; 121-131]

AIRCRAFT SECURITY

Release of Information

Correction

In FR Doc. 36128, appearing on page 53776, in the issue of Thursday, December 9, 1976, on page 53777, in § 191.7, the heading should read: "Records containing both available and unavailable information.".

Title 17—Commodity and Securities Exchanges

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-5782, 34-13068, 35-19806, 39-449, IC-9567, and IA-561]

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

Duties of the Secretary of the Commission and of the Director of the Office of Public Affairs

The Securities and Exchange Commission announced today that, effective on December 20, 1976, 17 CFR Part 200 is amended to revise the description of the duties of the Secretary of the Commission and add the description of the duties of the Director of the Office of Public Affairs. Section 200.13 redesignated as § 200.13a and revised and § 200.13b is added to read as follows:

§ 200.13a The Secretary of the Commission.

(a) The Secretary of the Commission is responsible to the Commission for the preparation and maintenance of the Minute Record of all official actions of the Commission. He is custodian of the official seal of the Commission and also has the responsibility for authenticating documents. In addition, he is responsible for the preparation of official releases announcing the various actions of the Commission.

(b) In addition, the Secretary has been delegated responsibilities relating to the Commission's rules of practice and other areas.

§ 200.13b Director of the Office of Public Affairs.

The Director of the Office of Public Affairs is the public information officer and the legislative officer of the Commission. He is the Commission's principal liaison with the news media and with the Congress and his responsibilities include establishing and maintaining effective lines of communication with the news media and with Members of Congress and their staffs. He is also responsible for disseminating information to the news media; responding to requests for information and assistance from the Congress, the news media, and the general public; and advising the Office of the General Counsel and the operating Divisions with respect to legislative proposals and coordinating the preparation of the Commission's comments on such proposals. In addition, he is responsible for coordinating the production of, and exercising editorial supervision over, publications and audio-visual materials explaining the work of the Commission, including the Annual Report to Congress.

The Commission finds that the foregoing amendment relates solely to agency organization, procedure or practice and that notice and procedures under 5 U.S.C. 533 are unnecessary. Accordingly, it is adopted, effective forthwith.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

DECEMBER 14, 1976.

[FR Doc.76-37220 Filed 12-17-76;8:45 am]

Title 18—Conservation of Power and Water Resources

CHAPTER I—FEDERAL POWER COMMISSION

[Docket Nos. CP 75-96, etc.; RM 77-6]

PART 2—GENERAL POLICY AND INTERPRETATIONS

Order No. 558; Order Prescribing Procedures Pursuant to the Provisions of the Alaska Natural Gas Transportation Act of 1976

DECEMBER 14, 1976.

The Federal Power Commission (FPC) pursuant to the provisions of the Alaska Natural Gas Transportation Act of 1976 ("Act"), Sections 3 and 5 (90 Stat. 2903, 2904, 2905, 2906; 15 U.S.C. 719a and 15 U.S.C. 719c) will add a new Section 2.100 to Part 2 (General Policy & Interpretation) of Subchapter A (General Rules) of Chapter I of Title 18 of the Code of Federal Regulations.[1] The purpose of this Act is to enable the President and the Congress to participate in the selection process of a transportation system for the delivery of Alaska natural gas to the lower forty-eight states and to expedite its construction and operation by limiting the jurisdiction of Court review of the transportation system selected pursuant to this Act and by imposing limitations upon administrative procedures that could also cause delay in the construction and operation of such a system.

Section 5 of the Act directs the Commission to suspend these proceedings at a time it determines to be practical after the enactment date of the Act. The Commission is also authorized thereunder to establish procedures to enable it to make a recommendation to the President, on or before May 1, 1977, with respect to its selection of the transportation system, if any; it finds best suited to meet the national interest. The Commission's recommendation to the President is to be accompanied by a report explaining the basis for its recommendation. The report is to be made available to the public.

The Commission believes that it can best serve all of its statutory obligations by permitting the above-styled proceedings to continue as prescribed by its Rules of Practice and Procedure and the Regulations under the Natural Gas Act (18 C.F.R. § 1, et seq.) until an Initial Decision is filed by the Judge. In order to assure that the Commission will have the benefit of an Initial Decision in ample time to prepare its report and recommendations to the President, the Commission will require in this order that the Judge file his Initial Decision on or before February 1, 1977. On February 1, 1977, or on such earlier date as the Initial Decision may issue, the normal proceedings will be suspended in order that the Commission may proceed to prepare its report and recommendations. The provisions of the Administrative Procedure Act, 5 U.S.C. 551, et seq., and the Commission's Rules and Regulations under the Natural Gas Act are to be fully observed at all times during the interim period of time prior to the suspension date provided for herein. The Commission believes that the aforementioned course of action will enable it to preserve the formal record developed in these proceedings.

The Commission further believes that the filing of exceptions in these proceedings is important and necessary. It will, therefore, require the Commission Staff and all of the parties to the aforementioned proceeding, who so desire, to file their brief on exceptions to the Initial Decision on or before March 1, 1977, in

[1] The Act was passed by the Congress of the United States on October 1, 1976, and officially enacted into law on October 22, 1976, when signed by the President.

the form and manner prescribed in Section 1.31 of the Rules. Section 1.31(b) (2) of the Commission's General Rules are hereby waived to permit the filing of briefs on exceptions in excess of fifty pages. The Commission will, however, due to the exigencies of the situation and the time constraints involved, make no provision for the filing of replies to exceptions. It specifically notes this here, so that all parties are fully apprised that their brief on exception will be the final filing.

Subsequent to February 1, 1977, the Commission will undertake the task of preparing the recommendation and report to the President required under this Act. During this interval of time the Commission may prescribe such additional procedures as it deems necessary to meet its statutory obligations under the law. The Commission may later provide for oral argument.

The Commission, in order to satisfy the requirements of this Act, will request assistance from Federal agencies and others in order to base its recommendation to the President on all of the factors specified in Section 5 of the Act.

It may become necessary and in the public interest to waive the rules concerning ex parte communications, 18 CFR 1.4(d), in order to implement the procedures required by the Alaska Natural Gas Transportation Act of 1976. If, subsequent to the issuance of the Judge's Initial Decision, the ex parte rules do have to be waived, the Commission will issue a further order notifying all parties of that occurrence.

The El Paso Alaska, et al. proceedings have been in formal hearing since April 7, 1975. The record was formally closed on November 12, 1976. The final briefs required by the Presiding Administrative Law Judge from staff and the parties in these proceedings are scheduled to be filed on December 15, 1976.

The procedural schedule provided for herein provides for a progression in the course of events to implement the Act which is as follows:

(1) On or before February 1, 1977, the filing with the Commission of an Initial Decision by the Administrative Law Judge;

(2) On February 1, 1977, or on such earlier date as the Presiding Administrative Law Judge may file his Initial Decision with the Commission, the suspension of the proceedings entitled El Paso Alaska Company, Docket Nos. CP75-96, et al. pursuant to the provisions of the Act;

(3) On or before March 1, 1977, the filing of briefs on exception by the Commission Staff and the parties to the currently pending El Paso Alaska Company proceedings, supra; and

(4) On or before May 1, 1977, the filing by the Commission of its recommendation and report to the President.

The Commission finds: (1) Prior notice and opportunity for public participation is not necessary in order to permit the Commission to implement the provisions of the Alaska Natural Gas Transportation Act of 1976, 15 U.S.C. 719, et seq. and to suspend the above-styled proceeding thereunder, either under the provisions of the Natural Gas Act, 15 U.S.C. 717(a) et seq., or the provisions of the Administrative Procedure Act, 5 U.S.C. 551, et seq.

(2) The provisions of the Alaska Natural Gas Transportation Act of 1976, 15 U.S.C. 719, et seq., direct the Commission to suspend the above-styled proceedings in order to enable it to fulfill its obligations under the latter Act.

(3) It is necessary and appropriate for purposes of the implementation of the provisions of the Alaska Natural Gas Transportation Act, 15 U.S.C. 719, et seq., and also necessary and appropriate pursuant to the provisions of the Natural Gas Act, 15 U.S.C. 717(a), et seq., to amend Part 2, General Policy and Interpretations, Subchapter A, General Rules, Chapter I, Title 18, Code of Federal Regulations, by the inclusion therein of Section 2.100, Statement of Procedures necessary for the implementation of the provisions of the Alaska Natural Gas Transportation Act of 1976, 15 U.S.C. 719, et seq.

The Commission, acting pursuant to the provisions of the Alaska Natural Gas Transportation Act of 1976, 15 U.S.C. 719, et seq., particularly Sections 3 and 5 thereof (90 Stat. 2903, 2904, 2905, 2906; 15 U.S.C. 719a and 719c) and pursuant to the provisions of the Natural Gas Act particularly Sections 4, 5, 7, 8, 10, 14, 15, 16 and 23 thereof (52 Stat. 822, 823, 824, 825, 826, 828, 829, 830; 56 Stat. 83, 84; 61 Stat. 459, 76 Stat. 72; 15 U.S.C. 717c, 717d, 717f, 717g, 717l, 717m, 717n, 717o and 717w), orders:

(A) Part 2, General Policy and Interpretations, Subchapter A, General Rules, Chapter I, Title 18, Code of Federal Regulations, is hereby amended by adding a new Section 2.100 to read as follows:

§ 2.100 STATEMENT OF PROCEDURES PRESCRIBED FOR THE IMPLEMENTATION OF THE ALASKA NATURAL GAS ACT OF 1976, 15 U.S.C. 719, ET SEQ.

(a) The proceedings entitled El Paso Alaska Company, et al., in Docket Nos. CP75-96, et al. are hereby suspended effective February 1, 1977, or such earlier date as the Presiding Administrative Law Judge may file his Initial Decision as hereinafter provided, pursuant to the provisions of the Natural Gas Act, 15 U.S.C. 717, et seq., and the provisions of the Alaska Natural Gas Transportation Act of 1976, 15 U.S.C. 719, et seq., until further order of this Commission.

(b) The Presiding Administrative Law Judge designated to preside over the proceedings more fully described in paragraph (a) of this Section shall on or before February 1, 1977, file his Initial Decision with the Commission.

(c) The Commission Staff and Parties to the proceedings described in paragraph (a) of this Section, if they so desire, will be permitted to file briefs on exceptions to the Initial Decision of the Presiding Administrative Law Judge provided for in paragraph (b) of this Section on or before March 1, 1977. Section 1.31(b) (2) of the Commission's General Rules is hereby waived in order to permit the Commission Staff and the parties the right to file briefs on exception in excess of fifty pages if they so desire.

(B) The amendment provided for herein shall be effective as of February 1, 1977, or on such earlier date as the Presiding Administrative Law Judge files his Initial Decision with the Commission. Such amendment shall expire upon the selection of a transportation system by the Congress, or upon the termination of the Alaskan Natural Gas Transportation Act of 1976 pursuant to Section 20 thereof, or as otherwise provided by law.

(C) The procedures promulgated herein are subject to further Commission order as may be necessary and appropriate.

(D) The Secretary of the Commission shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-37266 Filed 12-17-76;8:45 am]

SUBCHAPTER A—GENERAL RULES

[Docket No. RM77-5; Order No. 557]

PART 3—ORGANIZATION; OPERATION; INFORMATION AND REQUESTS; MISCELLANEOUS CHARGES; ETHICAL STANDARDS

Delegation of Final Authority

DECEMBER 10, 1976.

By this order, the Commission amends its rules to delegate to the Commission's Secretary final authority to act on certain matters which often require expeditious treatment. These delegations are being made pursuant to the Commission's broad administrative authority under Sections 2 and 309 of the Federal Power Act and Section 16 of the Natural Gas Act. The added delegations authorize the Secretary to issue temporary natural gas certificates to independent producers, grant petitions to intervene, accept for filing rate schedules requiring waiver of statutory notice periods, and increase authority to grant extension of time requests from six to nine months.

The delegations of authority will result in a significant reduction of Commission and Staff time in preparation for the Commission's weekly meetings as well as expedition of administrative processing of such matters. The authority delegated involves essentially administrative matters which can be performed effectively by the Secretary without diminishing the effectiveness of the Commission's administration of the Federal Power Act and the Natural Gas Act. The Secretary in his judgment and upon recommendations of the Staff will refer to the Commission those items which should be considered by the Commission. We note that, under § 1.7(d) of the Commission's rules, any action taken pursuant to authority delegated by the Commission may be appealed to the Commission by filing a petition within 15 days after such actions.

Section 3.5(a) of the Commission's rules is, therefore, amended by this order to delegate the following functions to the Secretary:

(1) Temporary natural gas certificates for independent producers. Temporary certificates under Section 7(c) of the Natural Gas Act may be issued "in cases of emergency, to assure maintenance of adequate service or to serve particular customers, without notice or hearing, pending the determination of an application for a certificate." The independent producer, filing under § 157.28 of the Commission's regulations, sets forth facts which constitute the emergency requiring the issuance of the temporary certificate. Delegation of this function to the Secretary will assist in the expedition of processing temporary certificates in order to assure maintenance of adequate service in an emergency.

(2) Petitions to intervene. Section 1.8 of the Commission's rules sets forth the requirements for petitions to intervene. Given the large number of intervention petitions which are determined to meet the requirements of § 1.8, the delegation of this function to the Secretary will significantly assist the Commission in the processing of such petitions. The delegation applies only to timely filed petitions to which no answer in opposition has been filed. The Secretary shall refer to the Commission for its consideration those petitions which do not appear to meet the requirements of § 1.8.

(3) Accept for filing rate schedules requiring waiver of the statutory notice period. A significant number of rate filings request waiver of the statutory notice period so that the effective date assigned may be less than thirty days after the filing. The delegation of authority to the Secretary to accept such filings is granted here where no rate increase other than for state gathering, production or similar tax is involved. Under Commission procedure, these filings are given public notice allowing time for protests, comments or interventions. After the expiration of the protest date and if no protests or interventions are received, the acceptance of the filing would be made along with waiver of the statutory notice requirement and designation of the rate schedule and effective date.

(4) Increase in authority to grant extension of time requests from six to nine months. The Secretary previously has had delegated authority to grant extensions of time of up to six months without referring them to the Commission. The increase in the Secretary's authority to grant extensions of nine months is for purposes of administrative expedition in the processing of such requests and does not represent a change in the Commission's standards for granting extensions. Under Section 1.13 of our rules, such extensions shall continue to be granted only when good cause can be shown to justify the extension.

(5) Specified reasonable rate of return in hydroelectric project license articles. This delegation of authority was approved by Order No. 550, issued June 24, 1976, which added § 2.15 to the Commission's policy statements. This order merely conforms § 3.5(a) to the policy statement of Order No. 550.

The Commission finds. (1) The amendments prescribed herein concern matters of agency organization and procedure which do not require notice or hearing under 5 U.S.C. 553.

(2) In view of the purpose, intent and effect of the amendments herein ordered, good cause exists for making them effective upon issuance of this order.

(3) It is appropriate and in the public interest in administering the Federal Power Act and the Natural Gas Act to adopt the amendments hereinafter set forth. *The Commission,* acting pursuant to the provisions of the Federal Power Act, as amended, particularly Sections 2 and 309 (46 Stat. 798, 49 Stat. 858–859, 63 Stat. 792; 16 U.S.C. 793, 825h), and the provisions of the Natural Gas Act, as amended, particularly Section 16 (52 Stat. 830; 15 U.SC.. 717o), *orders:*

(A) Paragraph (a) of § 3.5 in Part 3, Subchapter A of Chapter I, Title 18 of the Code of Federal Regulations is amended by revising paragraphs (a)(10), (a)(17), and by adding paragraphs (a)(28), (a)(29), and (a)(30) to read as follows:

§ 3.5 Delegations of final authority.

The Commission has authorized:

(a) The Secretary, or in his absence, the Acting Secretary, to:

* * * * *

(10) Pass upon questions of extending time for electric public utilities, licensees, natural gas companies, and other persons to file required reports, data, and information and to do other acts required to be done at or within a specific time by any rule, regulation, license, permit, certificate, or order of the Commission, not to exceed in any event an extension of nine months beyond the time or period originally prescribed: *Provided* That the Secretary may refer such requests for extension of time to the Commission when, in his judgment, such requests should be considered by the Commission.

* * * * *

(17) Accept for filing all initial rate schedules and rate schedule changes submitted by natural gas companies, public utilities and licensees, waive the requirement of statutory notice for good cause shown, advise the filing party of such acceptance, the designation of the rate schedule and the effective date thereof: *Provided, however,* That this authorization shall not apply to rate increases except where the rate increase is for state gathering, production or similar tax: *Provided further,* That this authorization shall not apply where protests or interventions are received upon the expiration of the date set for such protests or interventions by the Commission's public notice of such filings.

* * * * *

(28) Change the appropriate hydroelectric project license article upon application by the licensee to reflect the specified reasonable rate of return as provided in § 2.15 of this chapter.

(29) Issue temporary certificates to independent producers pursuant to Section 7 of the Natural Gas Act upon the finding that an emergency exists and based upon allegations presented in requests for temporary authorization to initiate the sale or transportation of natural gas in interstate commerce pursuant to § 157.28 of this chapter.

(30) Grant timely filed petitions to intervene if found to be in compliance with § 1.8 of this chapter and if no answer objecting to the granting of such intervention has been filed under § 1.8(c) of this chapter.

(B) The Amendments adopted herein shall be effective upon issuance of this order.

(C) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-37257 Filed 12-17-76;8:45 am]

Title 26—Internal Revenue

[T.D. 7446]

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Fifty-Percent Maximum Rate On Earned Income

By a notice of proposed rule making appearing in the FEDERAL REGISTER for Wednesday, December 15, 1971 (36 FR 23814), an amendment to the Income Tax Regulations (26 CFR Part 1) was proposed in order to provide regulations under section 1348 of the Internal Revenue Code of 1954, relating to maximum tax on earned income.

Section 1348 provides for a maximum marginal tax rate on earned taxable income of 50 percent. This maximum rate is applied to certain taxpayers who have earned taxable income of such an amount that they would pay tax on such income at a marginal rate in excess of 50 percent on such income. These taxpayers are eligible to use an alternative tax computation provided in section 1348.

Earned income is defined in section 1348 by reference to sections 911 and 401 of the Internal Revenue Code of 1954 and by specific exclusion of deferred compensation and certain other types of income. Earned taxable income, which is subject to section 1348, is determined by reducing earned income by the total of tax preference items which exceed $30,000.

These final regulations contain a number of changes from the notice of proposed rule making. One of the changes concerns the treatment of amounts realized on the exercise of nonstatutory stock options by a deceased employee's executor or beneficiary. Amounts so realized upon the exercise of such an option are to be treated under these final regulations as earned income if the exer-

cise occurs within one year after the decedent's death.

The proposed regulations limited an individual's earned taxable income to the excess of taxable income over 50 percent of the individual's net section 1201 gain. This limitation has been retained but is applicable only to those taxpayers who actually utilize both the section 1201 alternative tax and the section 1348 maximum tax.

Excess interest was included as a tax preference item under the proposed regulations. The final regulations limit such inclusion to only the excess investment interest for taxable years beginning before January 1, 1972.

The general definition of "earned income" has been expanded in these final regulations to deal with certain specific types of compensatory arrangements which were not covered by the proposed regulations. These arrangements include advance payments for personal services under certain circumstances.

Adoption of amendments to the regulations. By a notice of proposed rule making appearing in the FEDERAL REGISTER for Wednesday, December 15, 1971 (36 FR 23814), an amendment to the Income Tax Regulations (26 CFR Part 1) was proposed in order to provide regulations under section 1348 of the Internal Revenue Code of 1954, as added thereto by section 804 of the Tax Reform Act of 1969 (83 Stat. 685). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the following regulations are hereby adopted:

The Income Tax Regulations (36 CFR Part 1) are amended by adding the following new sections immediately after § 1.1347–1:

§ 1.1348 Statutory provisions; fifty-percent maximum rate on earned income.

Sec. 1348. *Fifty-percent maximum rate on earned income.*—(a) *General rule.* If for any taxable year an individual has earned taxable income which exceeds the amount of taxable income specified in paragraph (1), the tax imposed by section 1 for such year shall, unless the taxpayer chooses the benefits of part I (relating to income averaging), be the sum of—

(1) The tax imposed by section 1 on the lowest amount of taxable income on which the rate of tax under section 1 exceeds 50 percent,

(2) 50 percent of the amount by which his earned taxable income exceeds the lowest amount of taxable income on which the rate of tax under section 1 exceeds 50 percent, and

(3) The excess of the tax computed under section 1 without regard to this section over the tax so computed with reference solely to his earned taxable income.

In applying this subsection to a taxable year beginning after December 31, 1970, and before January 1, 1972, "60 percent" shall be substituted for "50 percent" each place it appears in paragraphs (1) and (2).

(b) *Definitions.* For purposes of this section—

(1) *Earned income.* The term "earned income" means any income which is earned income within the meaning of section 401 (c)(2)(C) or section 911(b), except that such term does not include any distribution to which section 72(m)(5), 402(a)(2), 402(e), or 403(a)(2)(A) applies or any deferred compensation within the meaning of section 404. For purposes of this paragraph, deferred compensation does not include any amount received before the end of the taxable year following the first taxable year of the recipient in which his right to receive such amount is not subject to a substantial risk of forfeiture (within the meaning of section 83(c)(1)).

(2) *Earned taxable income.* The earned taxable income of an individual is the excess of—

(A) The amount which bears the same ratio (but not in excess of 100 percent) to his taxable income as his earned net income bears to his adjusted gross income, over

(B) The amount by which the greater of—

(i) One-fifth of the sum of the taxpayer's items of tax preference referred to in section 57 for the taxable year and the 4 preceding taxable years, or

(ii) The sum of the items of tax preference for the taxable year, exceeds $30,000.

For purposes of subparagraph (A), the term "earned net income" means earned income reduced by any deductions allowable under section 62 which are properly allocable to or chargeable against such earned income.

(c) *Married individuals.* This section shall apply to a married individual only if such individual and his spouse make a single return jointly for the taxable year.

(Sec. 1348 as added by sec. 804 (a), Tax Reform Act 1969 (83 Stat. 685).)

§ 1.1348–1 Fifty-percent maximum tax on earned income.

Section 1348 provides generally that for taxable years beginning after December 31, 1971, the maximum tax rate applicable to the earned taxable income of an individual, estate, or trust is not to exceed 50 percent. In the case of an estate or trust, earned income includes only amounts which constitute income in respect of a decedent within § 1.1348–3 (a)(4). For taxable years beginning after December 31, 1970, and before January 1, 1972, the maximum rate is 60 percent. Section 1348 does not apply if the taxpayer chooses the benefits of income averaging under sections 1301 through 1305. Section 1348 does not apply to a married individual who does not file a joint return with his spouse for the taxable year. For purposes of section 1348, an individual's marital status shall be determined under section 153 and the regulations thereunder.

§ 1.1348–2 Computation of the fifty-percent maximum tax on earned income.

(a) *Computation of tax for taxable years beginning after 1971.* If, for a taxable year beginning after December 31, 1971, an individual has earned taxable income (as defined in paragraph (d) of this section) which exceeds the applicable amount in column (1) of Table A, the tax imposed by section 1 for such year shall be the sum of—

(1) The applicable amount in column (2) of Table A,

(2) 50 percent of the amount by which earned taxable income exceeds the applicable amount in column (1) of Table A, and

(3) The amount by which the tax imposed by chapter 1 on the entire taxable income exceeds a tax so computed on earned taxable income, such computations to be made without regard to section 1348 or 1301.

Table A

Status	(1)	(2)
Married individuals filing joint returns and surviving spouses	$52,000	$18,060
Heads of households	38,000	12,240
Unmarried individuals other than surviving spouses and heads of households	38,000	13,220
Trusts and estates	26,000	9,030

(b) *Computation of tax for taxable years beginning in 1971.* If, for a taxable year beginning after December 31, 1970, and before January 1, 1972, an individual has earned taxable income (as defined in paragraph (d) of this section) which exceeds the applicable amount in column (1) of Table B, the tax imposed by section 1 for such year shall be the sum of—

(1) The applicable amount in column (2) of Table B,

(2) 60 percent of the amount by which earned taxable income exceeds the applicable amount in column (1) of Table B, and

(3) The amount by which the tax imposed by chapter 1 on the entire taxable income exceeds a tax so computed on earned taxable income, such computations to be made without regard to section 1348 or 1301.

Table B

Status	(1)	(2)
Married individuals filing joint returns and surviving spouses	$100,000	$45,180
Heads of households	70,000	30,280
Unmarried individuals other than surviving spouses and heads of households	50,000	20,190
Trusts and estates	50,000	22,590

(c) *Short taxable periods.* If a taxpayer is required under section 443(a)(1) to make a return for a period of less than 12 months, the tax under section 1348 and this section shall be determined by placing his taxable income, earned net income, adjusted gross income, and items of tax preference on an annual basis in accordance with section 443 and the regulations thereunder. If a taxable year referred to in paragraph (d)(3)(i)(*a*) of this section is a period of less than 12 months for which a return is required under section 443(a)(1), the average described in such paragraph shall also be determined by placing the items of tax preference for such period on an annual basis in accordance with section 443 and the regulations thereunder. If a return for a period of less than 12 months is required under section 443(a)(3) for any taxable year referred to in paragraph (d)(3)(i)(*a*) of this section, section 1348 and this section shall not apply unless such period is reopened by the taxpayer as provided by section 6851(b).

(d) *Earned taxable income*—(1) *In general.* For purposes of section 1348 and this section, the term "earned tax-

able income" means the excess of (i) the portion of taxable income which, under subparagraph (2) of this paragraph, is attributable to earned net income over (ii) the tax preference offset (as defined in subparagraph (3) of this paragraph). For purposes of computing the alternative tax under section 1201, earned taxable income shall not exceed the excess of taxable income over 50 percent of the net section 1201 gain.

(2) *Taxable income attributable to earned net income.* The portion of taxable income which is attributable to earned net income shall be determined by multiplying taxable income by a fraction (not exceeding one), the numerator of which is earned net income, and the denominator of which is adjusted gross income. For purposes of this subparagraph the term "earned net income" means the excess of the total of earned income (as defined in § 1.1348–3(a)) over the total of any deductions which are required to be taken into account under section 62 in determining adjusted gross income and are properly allocable to or chargeable against earned income. Deductions are properly allocable to or chargeable against earned income if, and to the extent that, they are allowable in respect of expenses paid or incurred in connection with the production of earned income and have not been taken into account in determining the net profits of a trade or business in which both personal services and capital are material income producing factors (as defined in § 1.1348–3(a)(3)). Except as otherwise provided, deductions properly allocable to or chargeable against earned income include—

(i) Deductions attributable to a trade or business from which earned income is derived, except that if less than all the gross income from a trade or business constitutes earned income, only a ratable portion of the deductions attributable to such trade or business is allowable in respect of expenses paid or incurred in connection with the production of earned income,

(ii) Deductions consisting of expenses paid or incurred in connection with the performance of services as an employee,

(iii) The deductions described in section 62(7) and allowable by sections 404 and 405(c),

(iv) The deduction allowable by section 217,

(v) The deduction allowable by section 1379(b)(3), and

(vi) A net operating loss deduction to the extent that the net operating losses carried to the taxable year are properly allocable to or chargeable against earned income.

A net operating loss carried to the taxable year is properly allocable to or chargeable against earned income in such year to the extent of the excess (if any) of the deductions for the loss year which are properly allocable to or chargeable against earned income and which are allowable under section 172(d) in determining a net operating loss, over the earned income for the loss year. If the excess described in the preceding sentence is less than the entire net operating loss, such excess and the balance of such loss shall be deemed to reduce taxable income ratably for any taxable year to which such loss may be carried. See Examples (3) and (4) in subparagraph (4) of this paragraph.

(3) *Tax preference offset.* (i) For purposes of subparagraph (1) of this paragraph, the "tax preference offset" is the amount by which the greater of—

(A) The average of the taxpayer's items of tax preference for the taxable year and the four preceding taxable years, or

(B) The taxpayer's items of tax preference for the taxable year,

exceeds $30,000.

(ii) The items of tax preference to be taken into account under subdivision (i) of this subparagraph for any taxable year shall be those items of tax preference referred to in section 57(a) and the regulations thereunder for the taxable year, but excluding any amount not taken into account in computing the tax under section 56(a) and the regulations thereunder for such taxable year. The items of tax preference to be taken into account by an individual for any taxable year in which such individual is or was a nonresident alien shall not include items of tax preference which are not effectively connected with the conduct of a trade or business within the United States.

(iii) Taxable years ending before January 1, 1970 shall not be included in computing the average described in subdivision (i)(A) of this subparagraph. Thus, for example, the tax preference offset for a taxable year ending on December 31, 1973, is the amount by which the average of the taxpayer's items of tax preference for 1970, 1971, 1972, and 1973, or the taxpayer's items of tax preference for 1973, whichever is greater, exceeds $30,000. Taxable years during which the taxpayer was not in existence shall not be included in computing the average described in subdivision (i)(A) of this subparagraph. A fractional part of a year which is treated as a taxable year under sections 441(b) and 7701(a)(23) shall be treated as a taxable year for purposes of this subparagraph. See paragraph (c) of this section for special rules if a taxable year referred to in subdivision (i)(A) of this subparagraph is a period of less than 12 months for which a return is required under section 443(a)(1).

(iv) If for the current taxable year the taxpayer and his spouse (or the estate of such spouse) file a joint return together, the items of tax preference for a preceding taxable year taken into account under subdivision (i)(A) of this subparagraph shall be the sum of the items of tax preference of the taxpayer and his spouse for such preceding year even though a joint return was not, or could not have been, filed by the taxpayer and such spouse for such preceding taxable year. If for the current taxable year the taxpayer (A) is no longer married to a spouse to whom he was married for a preceding taxable year taken into account under subdivision (i)(A) of this subparagraph and files a return as a single person, head of household, or surviving spouse for such current taxable year, or (B) is married to a spouse other than the spouse to whom he was married for a preceding taxable year taken into account under subdivision (i)(A) of this subparagraph, his items of tax preference shall be computed as if he were not married during such preceding taxable year.

(v) The sum of the items of tax preference of an estate or trust shall, for purposes of this paragraph, be apportioned between the estate or trust and the beneficiary in the manner and to the extent provided by section 58(c)(1) and the regulations thereunder.

(vi) If an item of gross income in respect of a decedent is includible in the gross income of a taxpayer and is treated as earned income in the hands of the taxpayer by reason of § 1.1348–3(a)(4), the items of tax preference for a taxable year taken into account under subdivision (i) of this subparagraph shall be the sum of the taxpayer's items of tax preference for such taxable year and the decedent's items of tax preference for any taxable year of the decedent (including a short taxable year described in section 441(b)(3)) which ends with or within such taxable year of the taxpayer. For purposes of this subdivision, if a taxpayer (such as the estate of the decedent or a testamentary trust created by the decedent) has not been in existence for the number of preceding taxable years specified in subdivision (i)(A) or (iii) of this subparagraph, the items of tax preference for preceding taxable years taken into account shall be the taxpayer's items of tax preference for each of its preceding taxable years plus the decedent's items of tax preference for that number of the most recent taxable years of the decedent ending prior to the taxpayer's earliest taxable year which, when added to the taxpayer's preceding taxable years, equals such number of preceding taxable years specified in subdivision (i)(A), or (iii). The increase, if any, in the taxpayer's tax preference offset computed under this subdivision shall not exceed the amount by which the taxpayer's taxable income attributable to earned net income, computed as provided in § 1.1348–2(d)(2) and including the item of gross income in respect of a decedent, exceeds the taxpayer's taxable income attributable to earned net income computed without regard to such item of gross income.

(4) *Illustrations.* The provisions of this section may be illustrated by the following examples:

Example (1). (i) H and W, married calendar-year taxpayers filing a joint return, have the following items of income, deductions, and tax preference for 1976:

(a) Salary	$155,000	
(b) Dividends and interest	60,000	
Total	215,000	
(c) Deductible travel expenses of employee allocable to earned income	5,000	
(d) Adjusted gross income		$210,000
(e) Exemptions and itemized deductions		38,000
(f) Taxable income		172,000

In addition, the taxpayers have tax preference items for 1976 of $80,000 attributable to the exercise of a qualified stock option and total tax preference items of $300,000 for the years 1972 through 1975. Since the items of tax preference for 1976 exceed the average of the items of tax preference for the years 1972 through 1976, the tax preference offset for 1976 is $50,000 ($80,000 −$30,000).

(ii) H and W have earned taxable income of $72,857 determined in the following manner:

(a) Earned income		$155,000
(b) Earned net income ($155,000 −$5,000)		150,000
(c) Taxable income		172,000
(d) Adjusted gross income		210,000
(e) Taxable income attributable to earned net income:		
$172,000(c) × $\frac{\$150,000(b)}{\$210,000(d)}$ =	$122,857	
(f) Tax preference offset	50,000	
(g) Earned taxable income		72,857

(iii) The tax imposed by section 1 is $90,938, determined pursuant to section 1348 in the following manner:

(a) Applicable amount from col. (2) of table A, sec. 1.1348-2 (a)		$18,060
(b) 50 pct of amount by which $72,857 (earned taxable income) exceeds $52,000 (applicable amount from col. (1) of table A, sec. 1.1348-2 (a))		10,429
(c) Tax computed under sec. 1 on $172,000 (taxable income)	$91,740	
(d) Tax computed under sec. 1 on $72,857 (earned taxable income)	29,291	
(e) Item (c) minus item (d)		62,449
(f) Tax (total of items (a), (b), and (e))		90,938

Example (2). (i) H and W, married calendar-year taxpayers filing a joint return, have the following items of income, deductions, and tax preference for 1976:

(a) Salary	$210,000	
(b) Dividends and interest	20,000	
(c) Net long-term capital gains	100,000	
Total	330,000	
(d) Sec. 1202 deduction (½ of net long-term capital gains)	50,000	
(e) Adjusted gross income		$280,000
(f) Exemptions and itemized deductions		40,000
(g) Taxable income		240,000

The taxpayers' tax preference item for 1976 is one-half of the net long-term capital gains of $100,000, or $50,000. The taxpayers have no items of tax preference for the years 1972 through 1975. Accordingly, their tax preference offset for 1976 is $20,000 ($50,000−$30,000).

(ii) H and W have earned taxable income of $160,000, determined in the following manner:

(a) Earned net income		$210,000
(b) Taxable income		240,000
(c) Adjusted gross income		280,000
(d) Taxable income attributable to earned net income:		
$240,000(b) × $\frac{\$210,000(a)}{\$280,000(c)}$ =	$180,000	
(e) Tax preference offset	20,000	
(f) Earned taxable income		160,000

(iii) The tax imposed by section 1 is $122,560, determined pursuant to section 1348 in the following manner:

(a) Applicable amount from col. (2) of table A, sec. 1.1348-2(a)		$18,060
(b) 50 pct of amount by which $160,000 (earned taxable income) exceeds $52,000 (applicable amount from col. (1) of table A, sec. 1.1348-2(a))		54,000
(c) Tax computed under sec. 1201(b) on $240,000 (taxable income):		
(1) Tax under sec. 1201(b)(1) (tax under sec. 1 on $190,000 (taxable income excluding capital gains))	$104,089	
(2) Tax under sec. 1201(b)(2) 125 pct of subsec. (d) gain of $50,000	12,500	
(3) Tax under sec. 1201(b)(3) (tax under sec. 1 on $240,000 (taxable income) less tax under sec. 1 on $215,000 (amount subject to tax under sec. 1201(b)(1) plus 50 pct of subsec. (d) gain)) ($138,089−$121,489)	17,500	
Total	134,089	
(d) Tax computed under sec. 1 on $160,000 (earned taxable income)	83,550	
(e) Item (c)—item (d)		50,500
(f) Tax (total of items (a), (b), and (e))		122,560

Example (3). (i) A, an unmarried calendar year taxpayer engaged in the practice of law, has the following items of income and deductions for 1973 and 1976:

	1973	1976
Gross income from law practice	$240,000	$100,000
Dividends	60,000	20,000
Expense paid in law practice	50,000	160,000
Investment interest	30,000	10,000
Casualty loss on personal residence (amount in excess of $100)		50,000

(ii) For 1976, A's deductions exceed his gross income, and his taxable income is therefore zero. In addition, A has a net operating loss of $100,000 (i.e., the excess of his deductions of $220,000 over his gross income of $120,000), which may be carried back to 1973. In computing his taxable income and earned taxable income for 1973, $60,000 (i.e., the excess of the expenses paid in A's law practice of $160,000, over his gross income from his law practice of $100,000) of the net operating loss deduction is properly allocable to or chargeable against earned income.

(iii) A's recomputed taxable income and earned taxable income for 1973 are $119,250 and $103,350 respectively, determined in the following manner:

Gross income ($240,000+$60,000)	$300,000
Adjusted gross income ($300,000−$50,000−$100,000)	150,000
Taxable income ($150,000−$20,000−$750)	119,250
Earned net income ($240,000−$50,000−$60,000)	130,000
Earned taxable income $\frac{\$130,000}{\$150,000}$ × $119,250	103,350

Example (4). The facts are the same as in example (3) except that A's gross income from his law practice for 1973 is $40,000. Thus, for 1973, A's deductions (including the net operating loss deduction) exceed his gross income, and his recomputed taxable income is therefore zero. The taxable income subtracted from the net operating loss to determine the carryback to 1974 is $20,000 (i.e., $40,000+$60,000−$50,000−$30,000), and thus the net operating loss carryback from 1976 to 1974 is $80,000 (i.e., $100,000−$20,000). Of this amount, $48,000 ($80,000×$60,000 (the excess of the expenses paid in 1976 in A's law practice over his gross income from his law practice)÷$100,000 (A's net operating loss for 1976)]) is properly allocable to or chargeable against earned income, and must be taken into account in recomputing A's taxable income and earned taxable income for 1974.

Example (5). A, an unmarried calendar year taxpayer, receives a salary of $80,000 from Corporation X in 1975 and also owns and operates a laundry in which both his capital and services are material income producing factors. A incurs no section 62 expenses with respect to the salary income. In 1975 the laundry, a sole proprietorship, has gross income of $100,000 and business expenses deductible under section 62 of $80,000. A reasonable allowance as compensation for A's personal services rendered by him in his laundry business would be $12,000. The net profits of the laundry business were $20,000.

A's earned income from the laundry business is limited to $8,000 (20 percent of $20,000). A's total earned income is $88,000 ($80,000+$8,000). Since the section 62 deductions of the laundry business have already been taken into account in computing net profits, they are not again taken into account in computing earned net income. Accordingly, A's earned net income for 1975 is $88,000.

Example (6). The facts are the same as example (5) except that the gross income of the laundry is $120,000 and the net profits from the laundry are $20,000. A's earned income from the laundry is $12,000. Even though the 20-percent-of-net profits limitation has not resulted in a reduction of A's earned income from the laundry, the expenses deducted in computing net profits do not reduce earned income. Accordingly, both the earned income and the earned net income of A for 1975 are $92,000.

Example (7). The facts are the same as example (5) except that the gross income of the laundry is $60,000 and the laundry has a net loss of $20,000. A's earned income from the laundry is $12,000. Since the laundry does not have net profits, the expenses of the laundry have not been taken into account in computing the net profits limitation. Accordingly, a ratable portion of deductible expenses of the laundry must be allocated to the earned income from the laundry in accordance with § 1.1348-2 (d)(2): $10,000 of the expenses are allocated to the earned income ($12,000 $60,000×$80,000). A's total earned income for 1975 is $92,000, and his earned net income is $70,000 ($92,000 minus $10,000).

§ 1.1348-3 Definitions.

(a) *Earned income—(1) In general.* (i) For purposes of section 1348 and the regulations thereunder, the term "earned income" means any item of gross income which is earned income within the meaning of section 401(c)(2)(C) or section 911(b) unless the item constitutes deferred compensation as defined in paragraph (b) of this section or is otherwise excluded by application of this paragraph. Thus, subject to such exceptions, the term includes—

(A) Wages, salaries, professional fees, bonuses, amounts includible in gross income under section 83, commissions on sales or on insurance premiums, tips, and other amounts received, actually or constructively, as compensation for personal services actually rendered regardless of the medium or basis of payment.

(B) Compensatory payments for personal services made prior to the time such services are actually rendered, provided such advance payments are not made for a purpose of minimizing Federal income taxes by reason of the application of section 1348, and are either customary in the particular profession, trade, or business, or are made for a bona fide business purpose.

(C) Prizes and awards in recognition of personal services includible in gross income under section 74, amounts includible in gross income under section 79 (relating to group-term life insurance purchased for employees), and amounts includible in gross income under section 1379(b) (relating to contributions to qualified pension plans in the case of certain shareholder-employees); and

(D) Gains (other than gain which is treated as capital gain under any pro-

vision of chapter 1) and net earnings derived from the sale or other disposition of, the transfer of any interest in, or the licensing of the use of property (other than good will) by an individual whose personal efforts created such property.

The term does not include such income as dividends (including an amount treated as a dividend by reason of section 1373(b) and § 1.1373-1), other distributions of corporate earnings and profits, gambling gains, or gains which are treated as capital gains under any provision of chapter 1. The term also does not include amounts received for refraining from rendering personal services or engaging in competitive activity or amounts received as consideration for the cancellation of an employment contract.

(ii) In the case of a nonresident alien individual, earned income includes only earned income from sources within the United States which is effectively connected with the conduct of a trade or business within the United States.

(2) *Earned income and employed assistants.* The entire amount received as professional fees shall be treated as earned income if the taxpayer is engaged in a professional occupation, such as a doctor, dentist, lawyer, architect, or accountant, even though he employs assistants to perform part or all of the services, provided the patients or clients are those of the taxpayer and look to the taxpayer as the person responsible for the services performed.

(3) *Earned income from business in which capital is material.* (i) If an individual is engaged in a trade or business (other than in corporate form) in which both personal services and capital are material income-producing factors, a reasonable allowance as compensation for the personal services actually rendered by the individual shall be considered earned income, but the total amount which shall be treated as the earned income of the individual from such a trade or business shall in no case exceed 30 percent of his share of the net profits of such trade or business (which share shall include any guaranteed payment (as defined by § 1.707-1 (c)) received from a partnership). For purposes of the preceding sentence, the term "net profits of the trade or business" means the excess of gross income from such trade or business (including income from all sources, whether or not subject to Federal income tax, and without taking into account any deductions which may be allowable under section 1202) over the deductions attributable to such trade or business.

(ii) Whether capital is a material income-producing factor must be determined by reference to all the facts of each case. Capital is a material income-producing factor if a substantial portion of the gross income of the business is attributable to the employment of capital in the business, as reflected, for example, by a substantial investment in inventories, plant, machinery, or other equipment. In general, capital is not a material income-producing factor where gross income of the business consists principally of fees, commissions, or other compensation for personal services performed by an individual. Thus, the practice of his profession by a doctor, dentist, lawyer, architect, or accountant will not, as such, be treated as a trade or business in which capital is a material income-producing factor even though the practitioner may have a substantial capital investment in professional equipment or in the physical plant constituting the office from which he conducts his practice since his capital investment is regarded as only incidental to his professional practice.

(iii) This subparagraph does not apply to gains and net earnings derived from the sale or other disposition of, the transfer of any interest in, or the licensing of the use of property by an individual whose personal efforts created such property which are, by reason of subparagraph (1)(i) of this paragraph, treated as earned income. Thus, for example, a research chemist's substantial capital investment in laboratory facilities which he uses to produce patentable chemical processes from which he derives gains within the meaning of this subdivision would not be considered a material income-producing factor.

(4) *Income in respect of a decedent.* An item of gross income in respect of a decedent includible in the gross income of a person described in section 691(a)(1) shall be treated as earned income in the hands of such person for purposes of subparagraph (1) of this paragraph if such item of gross income would have constituted earned income of the decedent had he lived and received such amount. See § 1.1348-2(d)(3)(vi) for rules relating to attribution of tax preferences by reason of an item of income in respect of a decedent.

(5) *Exceptions to definition of earned income.* For purposes of section 1348 and the regulations thereunder, the term "earned income" does not include:

(i) Any distribution to which section 72(m)(5), relating to certain amounts received by owner-employees from a trust described in section 401(a) or under a plan described in section 403(a), applies,

(ii) Any distribution to which section 402(e), relating to the treatment of certain total distributions from a trust described in section 401(a) or under a plan described in section 403(a), applies,

(iii) Any distribution to which section 402(a)(2), relating to capital gains treatment of certain total distributions from a trust described in section 401(a), applies,

(iv) Any distribution to which section 403(a)(2)(A), relating to capital gains treatment for certain distributions under a plan described in section 404(a)(2), applies, or

(v) Any deferred compensation within the meaning of paragraph (b) of this section.

(6) *Examples.* The application of this paragraph may be illustrated by the following examples:

Example (1). A owns and operates an unincorporated laundering and dry cleaning business. A, assisted by his employees, devotes his entire time and attention to this business. Substantial capital is invested in the plant and equipment utilized in the laundering and dry cleaning of clothing for A's customers. Although personal services performed by A and his employees are a material income-producing factor in A's business, the capital investment in plant and equipment is not merely incidental to the performance of such services but is, as such, material to the production of business income. Therefore, A's laundering and dry cleaning business is one in which both personal services and capital are material income-producing factors within the meaning of paragraph (a)(3) of this section. A may treat as earned income for a taxable year a reasonable allowance as compensation for the personal services rendered by him in his business, but the amount so treated shall not exceed 30% of the net profits of his business for such year.

Example (2). In his unincorporated business as a real estate broker, which he conducts on a full-time basis, A performs substantial personal services, including solicitation of home buyers and sellers, escorting prospective buyers on house visits, arranging appraisal, financing, and legal services, and other related tasks. In the course of conducting such business, A often finances sales of real estate with his own capital, makes all the necessary arrangements incident to such financing, and a substantial portion of the gross income of the business consists of interest income from such financing. Under these facts and circumstances, both personal services and capital are material income-producing factors in A's real estate business within the meaning of paragraph (a)(3) of this section since the financing of real estate sales is an integral part of the entire business. Accordingly, A's earned income from his real estate business is limited to a reasonable allowance as compensation for the personal services A actually renders, but not in excess of 30% of the net profits from the business, including the interest income derived from financing sales of real estate.

Example (3). For his taxable year ending on December 31, 1973, A, a radiologist, reports fees of $100x for professional services rendered to his own patients during 1973. Since 1970, A has maintained his own office in a small building that he purchased for $60x. In addition, A owns X-ray equipment with an original cost of $300x which he uses in his professional practice. The entire $100x of professional fees earned by A during 1973 is treated as earned income, notwithstanding that A has a substantial capital investment in professional equipment and the office from which he conducts his medical practice, because such capital investment is only incidental to the rendition of personal services in A's professional practice.

(b) *Deferred compensation*—(1) *In general.* For purposes of section 1348 and the regulations thereunder, the term "deferred compensation" means, except as otherwise provided in subparagraph (2) of this paragraph, any compensation which is deferred within the meaning of that concept in section 404, including any deferred compensation to which the provisions of section 404 and the regulations thereunder apply and any other compensation taxation of which is deferred in a manner similar to the treatment applicable to deferred compensation to which such provisions apply. Thus, the term includes any amounts

includable in gross income as compensation for personal services pursuant to a plan, or method having the effect of a plan, deferring the taxation of such payment to a taxable year later than that in which such services were rendered. For purposes of section 1348, the term "deferred compensation" is not limited to payments to common-law employees but also includes payments to self-employed individuals; nor is it material that no deduction is allowable in respect of all or part of such payments or that a deduction in respect thereof is allowable under some provision of the Code other than section 404. For example, amounts received by a retired partner pursuant to a written plan of the partnership of the kind described in section 1402 (a) (10) constitute deferred compensation except as otherwise provided in subparagraph (2) of this paragraph. The term "deferred compensation," as defined in this paragraph, shall have no application to a determination of the deductibility of any amount under section 162, section 404, or any other provision of the Code.

(2) *Amounts not treated as deferred compensation.* Notwithstanding the provisions of subparagraph (1) of this paragraph, any amount includible in gross income as compensation before the end of the taxable year following the first taxable year of the taxpayer in which his right to receive such amount is not subject to any requirement or condition which would be treated as resulting in a substantial risk of forfeiture within the meaning of section 83 and the regulations thereunder does not constitute deferred compensation for purposes of section 1348 and the regulations thereunder. For purposes of this subparagraph, a fractional part of a year which is a taxable year under sections 441(b) and 7701(a)(23) shall be treated as a taxable year.

(3) *Application to certain compensation*—(i) *In general.* This subparagraph provides rules for the application of the principles of subparagraphs (1) and (2) of this paragraph to certain types of compensation.

(ii) *Pension, etc., plans.* (A) In accordance with subparagraph (1) of this paragraph, the taxable portion of distributions under a pension, annuity, profit-sharing, or stock bonus plan, whether or not such plan meets the requirements of section 401(a), or pursuant to a method having the effect of such a plan, generally constitutes deferred compensation. However, under subparagraph (2) of this paragraph, such portion constitutes earned income if includible in gross income before the end of the taxable year following the first taxable year of the taxpayer in which his right to receive such amount is not subject to a substantial risk of forfeiture. In the case of a distribution under a contributory plan, the preceding sentence applies only to that part of the taxable portion of the distribution which is attributable to employer contributions to the plan. For purposes of the preceding sentence, that part of the taxable portion of a distribution which is attributable to employer contributions is the amount of such part, multiplied by a fraction, the numerator of which is the employer contributions to the plan on behalf of the employee (determined in accordance with the principles of § 1.402(a)–2), and the denominator of which is the sum of such employer contributions and the net employee contributions to the plan (as defined in paragraph (a)(2) of § 1.402 (a)–2). Thus, if the employer does not contribute to the plan, no part of any distribution thereunder constitutes earned income. Amounts included in gross income under section 402(b), 403 (c), or 1379(b)(1) in respect of employer contributions to a plan described in this subdivision do not constitute deferred compensation.

(B) If a recipient's rights to receive amounts pursuant to a plan cease to be subject to a substantial risk of forfeiture in more than one of his taxable years, each payment pursuant to such plan shall be considered to consist of a ratable portion of all of the amounts which are not subject to a substantial risk of forfeiture at the time of such payment. Thus, for example, if an employment contract provides in part that an employee or his estate is to receive in each of the fifteen years after the year in which he attains or would have attained age 65 an amount equal to $2,000 times his years of service with the employer and if he had eighteen years of service with the employer, each $36,000 payment would be considered to consist of 18 payments of $2,000, his right to receive one of which ceased to be subject to a substantial risk of forfeiture upon completing his first year of service with the employer, his right to receive another of which ceased to be subject to a substantial risk of forfeiture upon completing his second year of service with the employer, etc. Therefore, if the employee's last year of service with the employer was completed in the year in which he attained age 65, $2,000 of the first payment in the next year would not be deferred compensation under subparagraph (2) of this paragraph, and the remaining $34,000 of that payment and all of the other fourteen payments of $36,000 would be deferred compensation. If the employee's last year of service was completed in an earlier year, all fifteen payments would constitute deferred compensation in full.

(iii) *Income attributable to options.* (A) Ordinary income realized by a taxpayer upon a disqualifying disposition of stock acquired pursuant to the exercise of a statutory option (as defined in § 1.421–7(b)) is not deferred compensation for purposes of subparagraph (1) of this paragraph and, therefore, constitutes earned income.

(B) Ordinary income realized by a taxpayer upon the transfer of property pursuant to the exercise, or sale or other disposition, of an option which is not a statutory option (as defined in § 1.421–7 (b)) and which was granted on or before December 15, 1971, is not deferred compensation for purposes of subparagraph (1) of this paragraph and, therefore, constitutes earned income. Ordinary income realized by a taxpayer upon the transfer of property pursuant to the exercise, or sale or other disposition, of an option which is not a statutory option (as defined in § 1.421–7(b)) and which is granted after December 15, 1971 constitutes earned income rather than deferred compensation if such option cannot, by its terms, be exercised more than three months after termination (for any reason other than death) of the grantee's employment by the grantor of the option. If the terms of such an option granted after December 15, 1971 permit the exercise of the option more than three months after termination (for any reason other than death) of the grantee's employment by the grantor, ordinary income realized by a taxpayer upon the transfer of property pursuant to exercise, or sale or other disposition, of the option constitutes earned income rather than deferred compensation only if such income is realized in a taxable year no later than that following the taxable year in which the option was granted. In the case of the grantee's death within a period during which ordinary income realized upon the transfer of property pursuant to his exercise, or sale or other disposition, of an option described in this subdivision would have constituted earned income as provided in this subdivision had the grantee lived, ordinary income realized subsequently upon the transfer of property pursuant to exercise, or sale or other disposition, of an option described in this subdivision, by the grantee's legal representatives or beneficiary constitutes earned income only if such exercise, or sale or other disposition, occurs on a date no later than the date twelve months following that of the grantee's death. For purposes of this subdivision, the term "employment by the grantor" includes employment by a related corporation as defined in § 1.421–7(i), and by a corporation which is considered a related corporation under § 1.421–7(h)(3). Therefore, the transfer of an employee from the grantor corporation to such a related corporation or from one related corporation to another related corporation or to the grantor corporation will not be treated as a termination of employment by the grantor.

(C) For purposes of (B) of this subdivision, if an option described therein and granted after December 15, 1971 is exercisable only following completion of a specified period of employment, the taxable year in which such period of employment is completed shall be treated as the taxable year in which the option was granted. Further, if the terms of an option described in (B) of this subdivision and granted after December 15, 1971 are modified, such modification shall not be considered as the granting of a new option for purposes of (B) in determining the taxable year in which such option was granted.

(D) For purposes of (B) of this subdivision, an option will not be considered

exercisable by its terms more than three months following termination (for any reason other than death) of the grantee's employment by the grantor solely because the terms of such option permit, in the event of such grantee's death within three months following termination of such employment, exercise of the option by the grantee's legal representative or beneficiary during or following such three-month period.

(4) *Examples.* The application of this paragraph may be illustrated by the following examples, in each of which it is assumed that any amounts paid as described therein constitute salaries or other compensation for personal services actually rendered rather than a distribution of earnings and profits:

Example (1). (i) On January 1, 1965, Corporation X and E, an individual, execute an employment contract under which E is to be employed by X for a period of 10 years. Under the contract, E is entitled to a stated annual salary and to additional compensation of $10x for each year. This additional compensation is to be credited as of December 31 of each year to a bookkeeping reserve account and will be deferred, accumulated, and paid only upon termination of the employment contract, E's becoming a part-time employee of X, or E's becoming partially or totally incapacitated. Under the terms of the contract, X is merely under a contractual obligation to make the payments when due, and neither X nor E intends that the amounts in the reserve be held by X in trust for E. The contract provides that if E shall fail or refuse to perform his duties, X will be relieved of any obligation to make further credits to the reserve but not of the obligation to distribute amounts previously credited to the reserve. In the event E should die prior to his receipt in full of the balance in the account, the remaining balance is distributed to his personal representative.

(ii) Having completed the terms of his employment contract, E retires from the employment of X on December 31, 1974, and on January 15, 1975, receives a total distribution of $100x from his reserve account. Of this distribution of $100x to E, only $10x, representing the credit made to E's reserve account in 1974, constitutes earned income. No other credits to E's reserve account are taken into account for this purpose because they were made to the reserve account and became nonforfeitable in a year earlier than the year preceding that in which the $100x distribution was made to E.

Example (2). (i) Corporation X follows a policy of permitting employees to elect before the beginning of any calendar year to defer the receipt of either 5 percent or 10 percent of their stated annual salary to be earned in that year. E, an employee, elects for each of 10 years of employment to defer receipt of $5x of his stated annual salary. The total so deferred, or $50x, is paid to E on January 15, 1974.

(ii) Since the salary which E elects to defer is includible in his gross income only in the taxable year in which actually received by him, then to the extent E receives any such deferred salary payment after the end of the taxable year following the taxable year from which such payment was deferred, such payment does not constitute earned income since such payment is deferred compensation under this paragraph (b). Accordingly, of the $50x distribution to E, only $5x, representing the salary deferral from 1973, constitutes earned income.

Example (3). (i) E is an officer of Corporation X, which has a plan for making future payments of additional compensation for current services to certain employees. The plan provides that a fixed percentage of the annual net earnings in excess of $400x is to be designated for division among the participants. This amount is not currently paid to the participants; but X has set up on its books a separate account for each participant, including E, and each year it credits thereto the dollar amount of his participation for the year. Distributions are to be made from the account when the employee reaches the age of 60, is no longer employed by X, including cessation of employment due to death, or becomes totally unable to perform his duties, whichever occurs first. X's liability to make these distributions is contingent upon the employee's refraining from engaging in any business competitive to that of X, making himself available to X for consultation and advice after retirement or termination of his services, unless disabled, and retaining unencumbered any interest or benefit under the plan. In the event of his death, either before or after the beginning of payments, amounts in an employee's account are distributable to his designated beneficiaries of heirs-at-law. Under the facts and circumstances, E's rights to distributions from his account pursuant to the terms of the plan are not subject to a substantial risk of forfeiture within the meaning of section 83(c)(1). Under the terms of the compensation plan, X is under a merely contractual obligation to make the payments when due, and the parties did not intend that the amounts in each account be held by X in trust for the participants.

(ii) Cash or property includable in gross income by E which is attributable to a credit to his account in a taxable year earlier than the year immediately preceding the year of inclusion does not constitute earned income since it is deferred compensation within the meaning of this paragraph (b). See subparagraph (3) of this paragraph (b) for rules for determining that portion of distributions from E's account which are attributable to credits to his account in a taxable year earlier than the year immediately preceding the year in which such distributions are made.

Example (4). (i) Corporation X has an annual incentive bonus plan for its employees. Under this plan, X has the sole discretion to defer all or any part of any employee's incentive bonus award. In addition, no employee has any right to receive any incentive bonus for any year (whether to be paid currently or to be deferred) until such time, if any, as X makes an award to him. No employee has any election as to the amount or time of payment of his award for any year. Furthermore, the last of any payments under an award must be paid no later than 10 years from the normal retirement date of the employee. In addition, the obligations of X under the plan are merely contractual and are not funded or secured. The awards are nonassignable. However, in the case of death the awards are payable to the employee's designated beneficiary. Once made, a bonus award under the plan is not subject to any substantial risk of forfeiture.

(ii) In each of the years 1967, 1968, 1969, and 1970, X awards E a deferred bonus of $100x. E retires on June 30, 1971. Beginning in 1971, X pays to E the total of $400x of deferred bonus awards in 5 annual installments of $80x each. With respect to the $80x payment made to E in 1971, $20x, representing the ratable portion of the payment ($100x/$400x x $80x) allocable to the 1970 bonus award, is earned income because it was received in a year no later than the year following that (1970) in which E's right to receive such amount was no longer subject to a substantial risk of forfeiture. The balance of the $80x payment made in 1971 and all payments made subsequently constitute deferred compensation.

Example (5). (i) Under the terms of a nonqualified bonus plan for its executive employees, Corporation M contributes each year to a bonus reserve a given percentage of its net earnings for the year. M makes bonus awards each year from the reserve in cash or stock of M, or a combination of both, to such executive employees, and in such amounts, as M may determine. The bonus award so determined to be made to a beneficiary is paid to him in installments: 20 percent of the award at the time that the award is made and the remaining installments in January of each succeeding year (until the full amount of the award is paid). Such amounts are payable in succeeding years but only if earned out by the employee by continuing service to M, at the rate of 1/12th of the amount of the first installment for each complete month of service beginning with the year of determination. If the beneficiary voluntarily terminates his employment, is discharged for cause, or conducts himself in a manner inimical to the best interests of M, he forfeits the rights to receive any portion of his bonus award previously earned out but undelivered to him and to continue earning out his bonus award. Upon retirement a beneficiary retains the right to earn out an unearned bonus award but forfeits the right to continue earning out the award if he conducts himself in a manner inimical to M's best interests or engages in an activity which is in competition with an activity of M. If a beneficiary dies while earning out a bonus award, any unpaid and undelivered portion of his award is paid and delivered to his estate or heirs at such time and in such manner as if the beneficiary were living.

(ii) On January 1, 1971, M makes a cash bonus award to A of $100x. On January 15, 1971, $20x, representing the first installment of the award, is paid to A. On January 15, 1972, $20x, representing the portion of the award earned out by A during the calendar year 1971 is paid to him. On January 1, 1973, A retires from employment with M and, having satisfied the conditions to continue earning out his bonus award, receives $20x on January 15, 1973, $20x on January 15, 1974, and $20x on January 15, 1975.

(iii) Under the facts and circumstances, the conditions that A not conduct himself in a manner inimical to the best interests of M and refrain from activity competitive to that of M are not considered to result in a substantial risk of forfeiture of the bonus award. The total installments of $40x paid to A in 1971 and 1972 constitute earned income. The installment of $20x earned out by A in 1972 and paid to him in 1973 also constitutes earned income for the taxable year 1973 because it was includible in gross income by A before the end of the taxable year of A following the first taxable year (the year of his retirement, i.e., 1972) in which his right to receive the installment was not subject to a substantial risk of forfeiture. The installments paid to A in 1974 and 1975, however, do not constitute earned income because they were paid in a year later than the year following the year of A's retirement. Had the conditions that A not conduct himself in a manner inimical to the best interests of M and refrain from activity competitive to that of M constituted a substantial risk of forfeiture, the installments paid to A in 1974 and 1975 would have constituted earned income.

Example (6). On January 15, 1968, Corporation M, under the terms of a nonqualified bonus plan for its employees, grants to A, an employee, 5,000 "dividend units", which entitle A to receive, for the period during which the award remains in effect, a cash payment equal to the dividends declared and

paid by M on the equivalent of 5,000 shares of its capital stock. The award remains in effect for A's lifetime but is subject to forfeiture if A is dismissed or leaves the service of M for any reason other than his death or retirement, or if A, following his retirement, engages in any activity which is harmful to the interests of M. Under the particular facts and circumstances, the condition that A not engage in any harmful activity is not considered to amount to a substantial risk of forfeiture within the meaning of section 83 (c) (1). A retires on January 1, 1971. In each of the calendar years 1971, 1972, 1973, and 1974, A receives cash payments of $5x under his bonus award. The payments totaling $10x to A in the years 1971 and 1972 constitute earned income because A received them before the end of the taxable year following the first taxable year (i.e., 1971, the year in which A retired) in which his right to receive such payments was not subject to a substantial risk of forfeiture. Payments totaling $10x to A in 1973 and 1974, however, constitute deferred compensation under paragraph (b) of this section.

Example (7). Corporation M maintains an employees' profit sharing trust which is not exempt from tax under section 501(a). Under the terms of the trust agreement, the interest of the trust beneficiaries in each contribution made to the trust by M is subject to a substantial risk of forfeiture for a period of 2 years from the date on which the particular contribution is made, except that upon a beneficiary's retirement, his entire interest in the trust vests immediately. Contributions are made on December 30 of each year. As of August 1, 1969, the total interest, forfeitable and nonforfeitable, of A, an employee of M, in the trust is $320x. On December 30 in each of the years 1969, 1970, and 1971, M makes a further contribution to the trust allocable to A's account equal to $60x. A retires on December 31, 1971, and becomes entitled to a total distribution from the trust of $500x, of which $320x represents M's contributions made prior to August 1, 1969, and $180x represents contributions made subsequent to such date. Beginning in 1972, the trust distributes to A $500x in 5 equal annual installments. Because M's contributions to A's account for the years subsequent to August 1, 1969, totaling $180x vested as of his retirement date, such contributions of $180x constitute earned income of A for the year 1971 by reason of § 1.402(b)–1(b). No portion of any annual installment of $100x which is includible in A's gross income constitutes earned income since it is attributable to the $320x, in all of which A's rights became nonforfeitable no later than December 30, 1970.

Example (8). Corporation M maintains a qualified noncontributory pension plan for the benefit of its employees. Under the terms of the plan, no employee has a vested right to receive any distribution under the plan prior to his retirement from the employment of M upon reaching the age of 65. A, an employee of M, reaches age 65 on June 15, 1972, and retires on June 30, 1972. Under the terms of the pension plan, A becomes entitled to receive a monthly pension of $5x, beginning on July 1, 1972. A receives pension payments totalling $30x in 1972, $60x in 1973, $60x in 1974, $60x in 1975, and $60x in 1976. The pension payments received by A in 1972 and 1973 constitute earned income within paragraph (b) (3) (ii) of this section. The pension payments received by A in 1974, 1975, and 1976 constitute deferred compensation.

Example (9). (i) A is a participant in X Corporation's noncontributory qualified pension plan. The plan provides an annual benefit upon attaining age 65 of 2 percent of average compensation for each calendar year of participation in the plan. Average compensation is defined as the average of an employee's annual compensation over the last 5 calendar years of service. The plan provides that an employee's rights in his accrued benefit are nonforfeitable after 15 years of participation in the plan. A attains age 65 on June 20, 1975, and begins to receive a pension on July 1, 1975. A's pension is based upon 30 years of participation in the plan. A's annual compensation for the period 1969 through 1974, is as follows:

Year:	*Annual compensation*
1969	$75,000
1970	80,000
1971	80,000
1972	85,000
1973	85,000
1974	90,000

(ii) Under the terms of the plan, A's accrued benefit as of December 31, 1974, and his pension are $50,400 (0.02 × 30 × 1/5 ($80,000 + $80,000 + $85,000 + $85,000 + $90,000)). A's accrued benefit as of December 31, 1973, is $46,980 (0.02 × 29 × 1/5 $75,000 +$80,000 + $80,000 + $85,000 + $85,000)). Since A's rights in $46,980 of his accrued benefit had ceased to be subject to a substantial risk of forfeiture before 1974, only $285 (1/12 × ($50,400–$46,980)) of each payment received during 1975 does not constitute deferred compensation. The balance of the amounts received during 1975 and all amounts received in 1976 constitute deferred compensation since they are paid after the end of the taxable year following A's first taxable year in which his right to receive any such amount was not subject to a substantial risk of forfeiture.

Example (10). On January 15, 1971, Corporation M grants to A, an employee, an option to purchase 100 shares of stock of M at a price of $10x per share. Such option constitutes a qualified stock option as defined in section 422(b). On August 1, 1971, A exercises his option, at which time the fair market value of the 100 shares of M stock is $15x per share. On April 24, 1972, A sells the 100 shares of M stock acquired pursuant to exercise of his option at a price of $25x per share. Because the sale constitutes a disqualifying disposition within the meaning of section 421(b), A realizes ordinary income of $500x and a capital gain of $1,000x in the taxable year 1972. The $500x of ordinary income so realized by A constitutes earned income.

Example (11). On November 30, 1972, Corporation M grants to A, an employee, a nonqualified stock option to which section 421 does not apply and which has no readily ascertainable fair market value on that date. The option may, by its terms, be exercised by A at any time during, or following termination of, his employment. On March 30, 1974, A, while still employed by M, exercises his option and realizes compensation income at that time. Such compensation does not constitute earned income because the option is exercisable within a period that may extend beyond three months after A's termination of employment (other than by reason of death). See paragraph (b) (3) (iii) (B) of this section. Had A exercised his option at any time prior to January 1, 1974, the compensation realized by him by reason of such exercise would have constituted earned income.

Example (12). On November 30, 1972, Corporation N grants to B, an employee, a nonqualified stock option to which section 421 does not apply and which has no readily ascertainable fair market value on that date. The option may by its terms, be exercised only within the period during which B is employed by N or within three months thereafter. On March 30, 1974, B exercises his option and realizes compensation at that time. Such compensation so realized by B constitutes earned income. See paragraph (b) (3) (iii) (B) of this section.

Example (13). On May 9, 1973, and in connection with the performance of services by E, an employee, Corporation X transfers to E 100 shares of X stock. Under the terms of the transfer, E is subject to a binding commitment to return the stock to X if E leaves X's employment for any reason prior to the expiration of a 3-year period beginning on the date of transfer. Since E must perform substantial services for X before he may keep the X stock, E's rights in the stock are subject to a substantial risk of forfeiture under section 83(c)(1). Consequently, if such restriction lapses on May 9, 1976, the compensation realized at such time constitutes earned income. Had E elected to include an amount in his gross income in 1973 pursuant to section 83(b) and the regulations thereunder, the amount so included would also have constituted earned income.

Example (14). On October 1, 1971, A, an author, and Corporation M, a publisher, executed an agreement under which A granted to M the exclusive right to print, publish and sell a book he had written. The agreement provides that M will pay to A specified royalties based on the actual cash received from the sale of the published work, render semiannual statements of the sales, and at the time of rendering each statement make settlement for the amount due. On the same day, another agreement was signed by A and M, mutually agreeing that, in consideration of, and notwithstanding, any contrary provisions contained in the first contract, M shall not pay A more than $100x in any one calendar year. Under this supplemental contract, sums in exeess of $100x accruing in any one calendar year are to be carried over by M into succeeding years. For the calendar year 1971, royalties payable to A under the basic agreement amount to $100x and this sum is paid to A. For the calendar year 1972, royalties of $120x are payable to A under the basic agreement, but by reason of the supplemental agreement, only $100x of this sum is actually paid to A. For each of the calendar years 1973 and 1974, royalties of $100x are payable to A under the basic agreement, and this sum is paid to A. For the calendar year 1975, royalties of $80x are payable to A under the basic agreement, and this sum, plus $20x carried over from 1972, or $100x, is paid to A. The $100x paid to A in each of the years 1971, 1972, 1973, and 1974, and $80x of the $100x paid to A in 1975 constitute earned income. The additional $20x carried over from 1972 and paid to A in 1975 constitutes deferred compensation under this paragraph (b) because it was paid to A later than the end of the year following the year (i.e., 1972) in which A's right to receive the amount was not subject to a substantial risk of forfeiture.

Example (15). Corporation M is the producer and owner of a feature length motion picture which is distributed to exhibitors by Corporation N pursuant to a distribution agreement between M and N providing for current payments to M of a given percentage of the current net profits derived by N from the exhibition and exploitation of the picture. A was employed by M as the leading actor in the picture for fixed compensation payable at the rate of $10x per week during the production period plus additional compensation equal to a given percentage of the net profits derived from the exhibition and exploitation of the picture. A's additional compensation is payable at the time that M receives payments from N under the terms of the distribution agreement. The additional compensation paid to A does not constitute deferred compensation since it is attributable

to and measured by current net profits derived from the use of property created in part by A's efforts.

Example (16). A, a boxer entered into an agreement with M boxing club to fight a particular opponent on June 19, 1971. The agreement provided in part, that for his performance A was to receive 16 percent of the gross receipts derived from the match. Simultaneously, A and M executed a separate agreement providing for payment of A's share of the receipts from the match as follows: 25 percent thereof not later than August 15, 1971, and 25 percent thereof during each of the years 1972, 1973, and 1974 in equal semi-annual installments. A's share of the gross receipts derived from the match was $100x, of which 25 percent was paid to him in 1971 and a total of $25x in each of the years 1972 1973, and 1974. Under the particular facts and circumstances, A and M are not acting as partners or joint venturers. Thus, A is taxable upon his share of such gross receipts only in the years in which such share is actually paid to him under the terms of the separate agreement. The payments of $25x in each of the years 1971 and 1972 constitute earned income. The payments of $25x in each of the years 1973 and 1974 would not constitute earned income because they constitute deferred compensation received later than the end of the first taxable year (i.e., 1972) following the year in which A's right to receive such amounts was not subject to a substantial risk of forfeiture.

(This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: December 14, 1976.

WILLIAM M. GOLDSTEIN,
Deputy Assistant Secretary of the Treasury.

[FR Doc.76-37203 Filed 12-17-76;8:45 am]

[T.D. 7445]

PART 7—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1976

Loss Deductions of Corporate Partners in a Partnership

This document contains Temporary Income Tax Regulations under the Tax Reform Act of 1976 (26 CFR Part 7) relating to loss deductions of corporate partners in a partnership.

Section 213(e) of the Tax Reform Act of 1976 (90 Stat. 1548) amended section 704(d) of the Code to provide that in certain cases, for the purpose of deducting losses, a partner's adjusted basis will not include any portion of the partnership's liability with respect to which the partner has no personal liability. This regulation sets forth the effect of this provision with respect to corporate partners.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

In order to provide immediate guidance with respect to the amendment of section 704(d), Temporary Income Tax regulations under the Tax Reform Act of 1976 (26 CFR Part 7) are added as follows:

The following section is inserted in the appropriate place:

§ 7.704–1 Partner's distributive share.

(a) [Reserved]
(b) [Reserved]
(c) [Reserved]
(d) *Limitation on allowance of losses.*
(1) [Reserved]
(2) [Reserved]

(3) (i) Section 213(e) of the Tax Reform Act of 1976 amended section 704 (d) of the Internal Revenue Code relating to the deductions by partners of losses incurred by a partnership. A partner is entitled to deduct the share of partnership loss to the extent of the adjusted basis of the partner's interest in the partnership. As amended, section 704(d) provides, in general, that the adjusted basis of a partner's interest in the partnership for the purpose of deducting partnership losses shall not include any portion of a partnership liability for which the partner has no personal liability. This restriction, however, does not apply to any activity to the extent that section 465 of the Code applies nor to any partnership whose principal activity is investing in real property, other than mineral property. Section 465 does not apply to corporations other than a subchapter S corporation or a personal holding company.

(ii) The restrictions in the amendment to section 704(d) will not apply to any corporate partner with respect to liabilities incurred in an activity described in section 465(c)(1). In all other respects the restrictions in the amendment will apply to all corporate partners unless the partnership's principal activity is investment in real property, other than mineral property.

Because of the need for immediate guidance with respect to the provisions contained in this Treasury decision, it is found impractical to issue it with notice and public procedure thereon under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitations of subsection (d) of that section.

(Section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).)

DONALD C. ALEXANDER,
Commissioner of Internal Revenue.

Approved: December 14, 1976.

WILLIAM M. GOLDSTEIN,
Deputy Assistant Secretary of the Treasury.

[FR Doc.76-37202 Filed 12-17-76;8:45 am]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 76-37]

PART 110—ANCHORAGE REGULATIONS

Establishment of an Anchorage Ground—Hampton Roads, Va.

On July 8, 1976, there was published in the FEDERAL REGISTER (41 FR 27974), a notice of proposed rulemaking to establish an Anchorage Ground west of Craney Island Reach, Hampton Roads, Virginia. This anchorage is for the exclusive use of floating equipment used in the construction of Pier 25 at the Naval Station, Norfolk, Virginia. The establishment of this anchorage would locate all construction equipment in one area, thereby enhancing safety.

No written objections have been received and the proposed regulations are hereby adopted without change as set forth below. Effective date: These regulations are effective January 20, 1977.

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

Dated: December 8, 1976.

D. J. RILEY,
Captain, U.S. Coast Guard, Acting Chief, Office of Marine Environment and Systems.

In consideration of the foregoing, a new paragraph (13) is added to §110.168 (a) of Title 33 of the Code of Federal Regulations to read as follows:

§ 110.168 Hampton Roads, VA and adjacent waters.

(a) * * *

(13) *Anchorage for construction equipment, T–6.* Anchorage T–6 is a circular area of radius 300 yards whose center is located at latitude 36°54'16" N., longitude 76°20'40" W. This anchorage is for the exclusive use of floating equipment used in the construction of Pier 25 at the Naval Station, Norfolk, Virginia.

* * * * * *

(Sec. 7, 38 Stat. 1053, as amended, sec. 6(g)(1)(A), 80 Stat. 937; (33 U.S.C. 471), (49 U.S.C. 1655(g)(1)(A); 49 CFR 1.46(c)(1), 33 CFR 1.05-1(c)(1).)

[FR Doc.76-37231 Filed 12-17-76;8:45 am]

[CGD 76-176]

PART 117—DRAWBRIDGE OPERATION REGULATIONS

Curtis Creek, Maryland

This amendment establishes regulations for the I-695 drawbridge across Curtis Creek, Baltimore, Maryland, to provide that the draws shall open on signal if at least one hour notice is given. This amendment was circulated as a public notice dated September 10, 1976, by the Commander, Fifth Coast Guard District, and was published in the FEDERAL REGISTER as a notice of proposed rulemaking (CGD 76–176) on September 2, 1976 (41 FR 37119). One comment was received which suggested closing the draws to the passage of vessels from 7–9 a.m. and 4–6 p.m. This was considered but was rejected at this time because of the projected limited openings for this bridge. If conditions warrant, these times may be included at a later date.

Accordingly, Part 117 of Title 33 of the Code of Federal Regulations is amended

by adding a new § 117.245(f) (6) to read as follows:

§ 117.245 Navigable waters discharging into the Atlantic Ocean south of and including Chesapeake Bay and into the Gulf of Mexico, except the Mississippi River and its tributaries and outlets; bridges where constant attendance of draw tenders is not required.

* * * * *

(f) * * *

(6) Curtis Creek, Md.; I-695 drawbridge. The draws shall open on signal if at least one hour notice is given to the Maryland Transportation Authority.

* * * * *

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5), 33 CFR 1.05-1(c)(4).)

Effective date: This revision shall become effective on January 21, 1977.

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

Dated: December 10, 1976.

A. F. FUGARO,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc.76-37232 Filed 12-17-76;8:45 am]

Title 40—Protection of the Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 659-2]

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

Control of Lead Additives In Gasoline; Correction

In FR Doc. 76-28541 appearing at page 42675 in the FEDERAL REGISTER of September 28, 1976, the following changes should be made:

1. The amendatory language to § 80.20 on page 42677 is corrected in the fourth line of that paragraph by adding the words, "and (b);" immediately following the words, "revoking paragraphs (a)(1)(i), (ii) and (iii)" and immediately before the word, "redesignating."

2. Paragraph (a)(4)(ii) of § 80.20 appearing on page 42677 is corrected in the seventh line of that paragraph by adding the words, "feedstock or blending component," immediately following the words, "or entering into," and immediately before the word, "process."

3. Paragraph (a)(4)(iv) of § 80.20 appearing on page 42677 is corrected in the fourth line of that paragraph by adding the words, "feedstock or blending component," immediately following the words, "and implementing," and immediately before the word, "process."

Dated: December 14, 1976.

STANLEY W. LEGRO,
Assistant Administrator for Enforcement (EN-329).

[FR Doc.76-37193 Filed 12-17-76;8:45 am]

Title 41—Public Contracts and Property Management

CHAPTER 114—DEPARTMENT OF THE INTERIOR

PART 114-35—TELECOMMUNICATIONS

Submission of Changes In New Installation

Pursuant to the authority of the Secretary of the Interior contained in 5 U.S.C. 301 and 40 U.S.C. 486(c), Subpart 114-35.2 of Chapter 114, Title 41 of the Code of Federal Regulations, is amended as set forth below.

This amendment relates only to matters of internal Department practice. It is, therefore, determined that the public rulemaking procedure is unnecessary and this amendment shall become effective December 20, 1976.

RICHARD R. HITE,
Deputy Assistant Secretary of the Interior.

DECEMBER 10, 1976.

Subpart 114-35.2—Major Changes and New Installations

§ 114-35.204 Submission of changes.

(a) All requests for major changes or new installations of telecommunications services, except radio services, shall be submitted through the Bureau Telecommunications Coordinator to the Chief, Division of Wire Communications Management, Office of ADP and Telecommunications Management, Department of the Interior, Washington, D.C. 20240, for transmittal to the General Services Administration as appropriate. In addition to the items listed in the Federal Property Management Regulations (FPMR 101-35.2), the following shall also be deemed major changes or new installations of telecommunications which shall be submitted to the Chief, Division of Wire Communications Management for review and approval prior to installation:

(1) Automatic Call Distributing Systems or any communication device which automatically distributes incoming calls.

(2) 20-40 Dial Paks or any automatic dial intercommunications system with more than one communicating path.

(3) Addition of switch or line capacity to any switchboard system, manual or dial, operated by a Bureau, Office or Service.

(4) Touch-tone service.

(5) Long Distance Xerography or similar graphic transmission systems or equipment.

(6) Requests for connection to the long distance voice network portion of the FTS where such service cannot be provided locally by the GSA Regional Office, or where provision of such service incurs consolidated switchboard common distributable charges.

(7) Installation of any wire telecommunication service, facility or equipment involving a minimum contract period of one year or more.

(8) Installation of any dictation system or equipment, e.g. MTST or MCST, which utilizes telephone facilities, services, or equipment, regardless of cost, contract period or supplier.

(9) Installation of any telephone station equipment which deviates from the standards provided in FPMR 101-35.308.

(10) Any key, button, or multiline telephone system consisting of more than 12 telephone instruments, served by more than four lines, and any intercommunicating line with more than one talking path, when all stations have access to all services.

(11) Installation of any telephone instrument having more than six buttons, or any special type of instrument carrying an additional monthly or one-time charge.

(12) The installation of any key, button, or multiline telephone equipment to a PBX or Centrex dial system that is equipped with dial station transfer, consultation hold and add-on.

The Chief, Division of Wire Communications Management will provide, upon request, assistance in any area of wire telecommunication services. Requests for such assistance should be submitted through the Bureau Telecommunications Coordinator, to the Director, Office of ADP and Telecommunications Management.

(b) Installations involving an extension or major change to existing radiocommunication systems, or the implementation of a new radiocommunication system, shall be submitted to the Chief, Division of Radiocommunications and Frequency Management, Office of ADP and Telecommunications Management, Department of the Interior, Washington, D.C. 20240, for review, frequency assignments, and coordination with other agencies, as appropriate.

[FR Doc.76-37289 Filed 12-17-76;8:45 am]

Title 45—Public Welfare

CHAPTER II—SOCIAL AND REHABILITATION SERVICE (ASSISTANCE PROGRAMS), DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAM

Penalty for Failure To Have an Effective Child Support Enforcement Program

• The purpose of this regulation is to implement the penalty provisions of sections 403(h) and 404(d) of the Social Security Act. The basis for this is the requirement in those sections for a reduction of 5 percent in the amount payable under title IV-A to any State found to

have failed to have an effective Child Support Enforcement program meeting the requirements of section 402(a)(27) of the Act after January 1, 1977.•

Part 305, published today (41 FR 55348) describes the audit to be conducted to determine program effectiveness, defines an effective program for purposes of this penalty, and establishes audit criteria for determining program effectiveness.

PUBLIC PARTICIPATION

Interested persons have been afforded an opportunity to participate in the making of these amendments. A Notice of Proposed Rulemaking (NPRM) was published in the FEDERAL REGISTER on October 1, 1976 (41 FR 43420), inviting written comment, suggestions, or objections from interested persons. In addition, OCSE conducted four workshops to discuss this NPRM, as well as the companion amendments to Part 305. Specifics about the input from this public participation are detailed in the preamble to Part 305 published today. Comments relevant to the imposition of the penalty are discussed below.

Two legal services organizations requested that the Department impose a requirement that a State may not pass through to the recipient any penalty imposed under this regulation. They fear that because the States are unable or unwilling to absorb the additional financial burden, any reduction in IV–A reimbursement to a State will result in a reduction of public assistance payments to recipients of Aid to Families with Dependent Children (AFDC). The Department recognizes that this unfortunate result is a possible consequence should the statutorily required penalty be imposed. However, the Department lacks the authority to prevent a pass-through of the penalty. Under the AFDC program, the States have discretion to raise or lower assistance levels (except for the floor established by Section 402(a)(23)), or to impose ratable reductions or maximums. Absent very clear statutory authority, the Department cannot mandate how the States must respond to the reduction in Federal reimbursement resulting from the imposition of any penalty.

Several comments questioned the correctness of the Department's interpretation that the statute requires that the penalty be imposed for the entire fiscal year during which the State is found by the Secretary not to have an effective child support program. The Department's interpretation is based on Section 403(h) of the Act which calls for imposition of the penalty if a State "is found by the Secretary as the result of the annual audit to have failed to have an effective program * * * in any fiscal year * * *" (emphasis added). After a careful reevaluation of its position, the Department continues to believe that its position is correct; and the final regulation makes it clear that the penalty will be imposed for an entire fiscal year.

One comment suggested that the 5 percent reduction should not be imposed against the entire AFDC reimbursement, but rather only the reimbursement for that part of the caseload which is not receiving the benefits of an effective child support program. This suggestion is not compatible with Section 403(h) of the Act, which specifies that the penalty shall be 5 percent of "the amount payable to any State under this part * * *".

Accordingly, after giving due consideration to all comments, the proposed regulations, as modified, are adopted.

Section 205.146 of Part 205, Chapter II, Title 45 of the Code of Federal Regulations is amended by recodifying paragraph (d) to (e), and adding a new paragraph (d) to read as follows:

§ 205.146 Specific limitations on Federal financial participation under title IV–A.

* * * * *

(d) *Penalty for failure to have an effective child support enforcement program.*—(1) *General.* Pursuant to section 403(h) of the Act, notwithstanding any other provision of this chapter, total payments to a State under title IV–A of the Act for any quarters in any fiscal year, shall be reduced by 5 percent of such payments (calculated without regard to any other reduction under this section), if for such fiscal year a State is found by the Secretary to have failed to have an effective child support enforcement program meeting the requirements of section 402(a)(27), as implemented by Parts 302 and 305 of this title.

(2) *Application of penalty.* (i) The penalty will be imposed for each fiscal year, beginning with F.Y. 77 (but in the case of F.Y. 77, only considering the second, third and fourth quarters thereof).

(ii) The penalty will be imposed on the basis of the results of the audit conducted pursuant to Part 305 of this title.

(iii) Any penalty imposed under this paragraph will be imposed for the entire fiscal year for which the State was found not to have an effective child support enforcement program.

(Section 1102, 49 Stat. 647 (42 U.S.C. 1302).)

Effective date: January 1, 1977.

(Catalog of Federal Domestic Assistance Program No. 13.761 Public Assistance—Maintenance Assistance (State Aid).)

NOTE.—The Social and Rehabilitation Service has determined that this document does not require preparation of an inflationary impact statement under Executive Order 11821 and OMB Circular A–107.

Answers to specific questions may be obtained by calling Steve Henigson at (202) 472–4510.

Dated: November 15, 1976.

ROBERT FULTON,
Administrator, Social and Rehabilitation Service.

Approved: December 10, 1976.

MARJORIE LYNCH,
Acting Secretary.

[FR Doc.76–37249 Filed 12–17–76;8:45 am]

CHAPTER III—OFFICE OF CHILD SUPPORT ENFORCEMENT (CHILD SUPPORT ENFORCEMENT PROGRAM), DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

CHILD SUPPORT ENFORCEMENT PROGRAM

Audit and Penalty

• *Purpose.* The purpose of this amendment is to implement several sections of the Social Security Act added by Pub. L. 93–647 relating to the requirement for an annual audit of each State's child support program and a possible penalty of 5 percent of a State's title IV–A reimbursement. Its basis is the statutory provisions and the Department's view of the optimum way of implementing these provisions in a manner which both fulfills the statutory requirements and recognizes that overly stringent audit standards would be unreasonable for a new program. •

SUMMARY

Under the amendment, the Office of Child Support Enforcement (OCSE) will audit each State's child support program annually to determine its effectiveness. If a State's program is found to be ineffective, the State's title IV–A reimbursement will be reduced by 5 percent for the period audited. The initial audits will examine the procedures which the State has developed to meet the various requirements of the Child Support Enforcement program and determine if the State is utilizing those procedures. Future audits could be based on more stringent standards of program effectiveness, based upon empirical data gathered through prior audit experiences.

STATUTORY BASIS

Section 452(a)(4) of the Act requires that, not less often than annually, the Office of Child Support Enforcement must "* * * conduct a complete audit of the program established under such plan in each State and determine for the purposes of the penalty provision of section 403(h) whether the actual operation of such programs in each State conforms to the requirements of this part, * * *."

Section 403(h) of the Act provides as follows:

(h) Notwithstanding any other provision of this Act, the amount payable to any State under this part for quarters in a fiscal year shall with respect to quarters beginning after December 21, 1976, be reduced by 5 per centum of such amount if such State is found by the Secretary as the result of the annual audit to have failed to have an effective program meeting the requirements of section 402(a)(27) in any fiscal year beginning after September 30, 1976 (but, in the case of the fiscal year beginning October 1, 1976, only considering the second, third, and fourth quarters thereof).

This amendment provides a regulatory basis for carrying out these statutory provisions and provides notice to the States, prior to the audit, of the standards and criteria to be used in auditing the State programs and if necessary, imposing the mandated penalty.

PUBLIC PARTICIPATION

Interested persons have been afforded extensive opportunity to participate in the adoption of this regulation.

On July 9, 1976, A Notice of Intent to Propose Regulations was published in the FEDERAL REGISTER (41 FR 28344) presenting the statutory requirements, discussing possible approaches to implementing the provisions and inviting comments and suggestions from interested States, organizations, and individuals.

On August 13, 1976, OCSE published a Notice in the FEDERAL REGISTER (41 F.R. 34346) announcing the availability to the public of a preliminary draft proposed regulation and over 100 copies were distributed.

On August 16, 1976, OCSE met with the Work Group on Child Support Enforcement of the National Council of State Public Welfare Administrators, American Public Welfare Association, at their request, to discuss the audit and penalty requirements and the draft proposed regulations.

On October 1, 1976, a notice of proposed rulemaking (NPRM) was published in the FEDERAL REGISTER (41 F.R. 43414) inviting written comments, suggestions, or objections from interested persons.

On October 18, 20, 21, and November 1, 1976, OCSE conducted workshops in San Francisco, Columbus, Atlanta, and Philadelphia, respectively, to discuss the NPRM and to receive comments and recommendations from interested persons. These workshops were announced in a notice published in the FEDERAL REGISTER on October 12, 1976 (41 F.R. 44726).

These workshops were attended by 176 individuals, representing 34 State IV-D agencies, District attorneys, State Attorneys General, Federal agencies, private citizens, business concerns and Congressional staff. In addition, written comments were received from 9 States, 2 legal services organizations, the City of New York, a public assistance advocate group, a District attorney and a private citizen.

Due consideration has been given to all comments received in response to the NPRM and the workshops as well as all workshop discussion. Many technical and editorial improvements in the regulation have been made as the result of this input. The substantive comments, and changes in the regulation are discussed below.

EFFECTIVE PROGRAM

One concerned private citizen suggested that the regulations and definition of an effective program be made more stringent. Her suggestions included multiple audits instead of one annual audit; changing the emphasis of the audit period to the first and second quarters of 1977 to force States into faster compliance with the Law; and, defining an effective program in terms of success in collection of child support. The Department carefully considered each of these approaches in drafting the proposed regulations, and they were not adopted because of the need to balance several factors. Title IV-D has been in effect slightly over one year and in a number of States is still in the initiation phase. Very stringent audit regulations could result in the majority of States being penalized, particularly those that did not have child support enforcement programs in operation prior to the enactment of title IV-D. This result would be counter-productive. On the other hand, Congress's intent is clearly that the States be held accountable for any failure to implement and conduct effective child support programs. HEW therefore adopted an approach reflected by these regulations that the audit and penalty regulations be less demanding at the beginning of the program and become more stringent as the program progresses.

DEFINITION OF PERSONNEL

Many comments and objections to the proposed regulation concerned the proposed definitions of "personnel" and "attorney or prosecutor" at § 305.1. The proposed regulations required, for each audited child support enforcement activity, that the State have "personnel" and, where appropriate, "attorneys or prosecutors" performing the function. The proposal defined those terms to make clear that these individuals were not required to be IV-D agency employees, but might also be court employees or law enforcement officials performing IV-D functions under a cooperative agreement or persons performing IV-D functions under a purchase of service agreement.

Several States objected to this definition as being too restrictive. In these States, certain title IV-D functions, such as establishment of paternity, are being carried out by public officials, such as District Attorneys, as part of their State statutory duties. Cooperative agreements have not been entered into in all cases, and the officials are not being reimbursed under the IV-D program. Also, in some instances, IV-D functions are being performed by a branch or agency of State or local government other than the IV-D agency without a cooperative agreement or purchase of service agreement. Examples of such activities are systems support and accounting and financial management services. In many instances, these activities would be reimbursed pursuant to the State's approved cost allocation plan. Under the proposed definition, States in either of these situations would not be able to meet the "personnel" requirement to be audited under the proposed rule.

The final regulations delete the proposed definitions of "personnel" and "attorney or prosecutor." The audit, under the final regulation, will examine whether there are individuals performing the required IV-D function. The audit will not examine the relationship of those individuals to the IV-D agency. Thus, the personnel performing the function could be IV-D agency staff, performing under cooperative agreement or purchase of service; or, have no direct relationship with the IV-D agency, but merely be carrying out a IV-D function under a statutory or other obligation.

This change is being made because the Department believes it would be counterproductive to penalize a State that is successfully carrying out the required title IV-D functions, but fails the audit due to organizational problems. However, this change in the final regulation in no way alters the State plan requirements of Part 302 concerning cooperative agreements and incentive payments, the standards for Program Operation of Part 303, or the requirements for Federal financial participation of Part 304.

AUDIT STANDARDS

Many comments recommended that the GAO standards for Audit of Governmental Organizations, Programs, Activities, and Functions would be more appropriate than the standards of the American Institute of Certified Public Accountants adopted by the proposed rule at § 305.10 (b). Commenters felt the GAO standards were more appropriate for an effectiveness type audit and that the States and counties were more familiar with them. The final regulation adopts these GAO standards in lieu of the C.P.A. standards.

ENTRANCE CONFERENCE

Several comments suggested that the Office conduct an audit entrance conference prior to beginning the actual audit of a State's program. The purpose of the conference is to clarify with IV-D agency officials the procedures to be used in conducting the audit, the political subdivisions to be audited, and the types of information that will be requested by the auditors. This is a standard auditing practice, which the Office had planned to use. The final regulation at § 305.12(a) now specifically includes a provision for such a conference.

IV-D AGENCY

One written comment and much workshop discussion was concerned with the use in the regulation of the terms "IV-D agency" and "State". "IV-D agency" is defined (at § 301.1, incorporated by § 305.1) as the single and separate organizational unit in the State that has responsibility for administration of the State plan under title IV-D of the Act. The term "State," however, includes all political subdivisions and is not used in the sense of State versus county, unless otherwise specified such as "State-level." The audit regulations generally impose requirements by detailing what the State must do or have to be found in compliance. These requirements are equally applicable to all political subdivisions.

AUDIT SCOPE

One comment suggested that the fiscal policies and accountability (§ 305.36) and safeguarding information (§ 305.37) requirements should not be audited. While admitting their importance to the IV-D program, the comment indicated that because those State plan requirements were not statutory requirements, the Department lacked authority to impose the

5 percent fiscal penalty for failure to comply with them.

Several other comments questioned the Department's authority to audit whether the IV–D agency receives notice from the IV–A agency as required by 45 CFR 235.70 and whether the State obtains assignments of rights to support as required by 45 CFR 232.11, 305.38 and 305.39, respectively, of the audit regulation.

The Act gives the Department wide discretion to define "effective program" for the purposes of the audit. The Act specifically authorizes the Secretary to establish standards for an effective program. The definition of effectiveness adopted by this regulation is a program that is in compliance with each of the IV–D plan requirements including fiscal policies and accountability, safeguarding information, and the two IV–A requirements mentioned. The importance of protecting the confidentiality of title IV–D case records from unauthorized disclosure justifies inclusion of the safeguarding requirement in the audit. Auditing compliance with the fiscal policies and accountability requirement is justified by the importance of this requirement in assuring proper and efficient administration of the State's program. Audit of the two IV–A requirements, prompt notice and assignments, is justified by the importance of these two requirements to the effectiveness of a State's child support program. If the IV–D agency does not receive prompt notice, it would have no AFDC cases upon which to act; and if the State fails to obtain assignment, the IV–D agency would have no support rights to enforce. The Department believes that the importance of these requirements provides an adequate basis upon which to include the penalty if a State is found not to be in compliance with any of these criteria.

INTERSTATE COOPERATION IN ESTABLISHING PATERNITY

The audit criteria for interstate cooperation (§ 305.32) requires that a State have established and be utilizing procedures for establishing paternity or assisting in establishing paternity when requested by another State. Several comments objected to this provision. The commenters indicated that they lacked the authority under their State statutes to accomplish interstate paternity establishment and requested that the Department delete this requirement. The Act at Section 454(9)(A) establishes interstate cooperation in paternity establishment as a State plan requirement. This statutory requirement is implemented at 45 CFR 302.36(a). While some States are unable to obtain a judicial order of paternity in an interstate case, every State can accept interstate requests for assistance in paternity cases and if nothing else, contact the alleged father and make an effort to establish paternity by acknowledgment. The audit criteria specifies that the State must have a procedure and that the State must be using it. Even if, under State law, the State is able to do nothing more than seek an acknowledgement, the Department's position is that they must take this minimal step to meet the audit criteria. No change has been made to the proposed audit criteria.

ASSIGNMENTS

One comment suggested that assignment of right to support (§ 305.39) does not recognize assignments by operation of law. This suggestion is incorrect. The requirement is that the "State must obtain assignments of support rights * * * as required by 45 CFR 232.11, * * *" 45 CFR 232.11(b) specifically recognizes assignment by operation of law. Thus, a State that receives an effective assignment by operation of law would meet the criteria of § 305.39.

PENALTY

An amendment to § 205.146 of Chapter II, Title 45 of the Code of Federal Regulations (published as FR Doc. 76–
in the Rules section of this issue) provides that a State's reimbursement under title IV–A will be reduced by 5 percent if the State is found, as a result of the audit, not to have an effective program. Several comments dealing with this aspect of the regulation are discussed in the preamble of that regulation.

REGULATION MONITORING

It is the policy of the Department that all regulations be monitored after enactment for their impact and effectiveness. These regulations will be monitored and assessed in two major ways: By conducting audits in all States and reviewing the results of those audits; and by Regional Office program staff assessment of States' ability to conform to the regulations both prior to and after the audit. The Department intends to use the knowledge gained through this process to improve the regulations in future rulemaking. Actual audit experience will be used to determine what other criteria the States can reasonably be expected to meet in operating an effective IV–D program.

Accordingly, after giving due consideration to all comments, the proposed regulations, as modified, are adopted.

PART 302—STATE PLAN REQUIREMENTS

1. Part 302, Chapter III, Title 45 of the Code of Federal Regulations is amended by revising § 302.39 to read as follows:

§ 302.39 Standards for program operation.

The State plan shall provide that the IV–D agency will comply with the standards for program operation and the organizational and staffing requirements prescribed by Part 303 of this chapter.

PART 303—STANDARDS FOR PROGRAM OPERATION

2. Part 303, Chapter III, Title 45 of the Code of Federal Regulations is amended by revising the heading and § 303.0 to read as follows:

§ 303.0 Scope and applicability of this part.

This part prescribes:

(a) The minimum organizational and staffing requirements the State IV–D agency must meet in carrying out the IV–D program effective July 1, 1975; and

(b) The standards for program operation which the IV–D agency must meet.

PART 305—AUDIT AND PENALTY

3. Chapter III, Title 45 of Code of Federal Regulations is amended by adding a new Part 305, reading as follows:

Sec.

305.0 Scope.
305.1 Definitions.
305.10 Audit.
305.11 Audit period.
305.12 State comments.
305.13 State cooperation in annual audit.
305.20 Audit criteria.
305.21 Statewide operation.
305.22 State financial participation.
305.23 Single and separate organizational unit.
305.24 Establishing paternity.
305.25 Support obligations.
305.26 Enforcement of support obligation.
305.27 Child support payments to the IV–D agency.
305.28 Distribution of child support payagency.
305.29 Payments to the family.
305.30 Incentive payments.
305.31 Individuals not otherwise eligible.
305.32 Cooperation with other States.
305.33 State parent locator service.
305.34 Cooperative agreements.
305.35 Reports and maintenance of records.
305.36 Fiscal policies and accountability.
305.37 Safeguarding information.
305.38 Prompt notice to child support agency.
305.39 Assignment of rights to support.
305.50 Penalty for failure to have an effective child support enforcement program.

§ 305.0 Scope.

This part implements the requirements in sections 452(a)(4) and 403(h) of the Social Security Act for an annual audit of the effectiveness of the State Child Support Enforcement Programs under title IV–D and for a possible reduction in Federal reimbursement for the States' title IV–A program pursuant to sections 403(h) and 404(d) of the Act. Sections 305.10 through 305.13 describe the annual audit. Sections 305.20 through 305.39 define an effective program for the purposes of this part, and establish audit criteria for determining program effectiveness. Section 305.50 provides for imposition of the penalty if a State is found by the Secretary not to have had an effective program.

§ 305.1 Definitions.

(a) The definitions found in § 301.1 of this chapter also are applicable to this part.

(b) As used in this part "procedures" means a written set of instructions which describe in detail the step by step actions to be taken by child support enforcement personnel in the performance of a specific function under the State's IV–D plan. The IV–D agency may issue general instructions on one or more functions, and delegate responsibility for the detailed procedures to the office, agency, or political subdivision actually performing the function.

§ 305.10 Audit.

The Office of Child Support Enforcement will conduct an annual audit of each State as required by Sections 452 (a) (4) and 403(h) of the Act for the purpose of determining whether the State has an effective IV–D program meeting the requirements of Section 402(a) (27) of the Act. The audit of each State's program will be a comprehensive review to determine that the State's program meets the criteria specified in §§ 305.20 through 305.39 of this part. During the course of the audit, the Office will:

(a) Make a critical investigation of the State's IV–D program through inspection, inquiries, observation, and confirmation; and

(b) Use the audit standards promulgated by the Comptroller General of the United States in the "Standards For Audit of Governmental Organizations, Programs, Activities, and Functions".

§ 305.11 Audit period.

The first period to be audited will be from January 1, 1977, through September 30, 1977. The second and following audits will be for the period October 1 through September 30 of each fiscal year.

§ 305.12 State comments.

(a) Prior to the start of the actual audit, the Office will hold an audit entrance conference with the IV–D agency. At that conference the Office will explain how the audit will be performed, inform the IV–D agency which political subdivisions of the State will be audited, and make preliminary arrangements for personnel and information to be made available.

(b) Prior to concluding the audit fieldwork, the Office will afford the State IV–D agency an opportunity for an audit exit conference at which time preliminary audit findings will be discussed and the IV–D agency may present any additional matter it believes should be considered in the audit findings.

(c) At the conclusion of the audit fieldwork, the Office will prepare and send to the IV–D agency a copy of its interim report on the results of the audit. Within 45 days from the date the report was sent by certified mail, the IV–D agency may submit written comments on any part of the report which the IV–D agency believes to be in error. The Office will incorporate such comments, if any, into the final audit report.

§ 305.13 State cooperation in annual audit.

(a) Each State shall make available to the Office such records or other supporting documentation as the Office's audit staff may request. The State shall also make available personnel associated with the State's IV–D program to provide answers which the audit staff may find necessary in order to conduct or complete the audit.

(b) Failure to comply with the requirements of this section may necessitate a finding that the State has failed to comply with the particular criteria being audited.

§ 305.20 Audit criteria.

For the purposes of this part and Section 403(h) of the Act, in order to be found to have an effective program meeting the requirements of section 402 (a) (27) of the Act;

(a) A State must be in compliance with each of the following title IV–D State plan requirements:

Statewide operation. (45 CFR 302.10)
State financial participation. (45 CFR 302.11)
Single and separate organizational unit. (45 CFR 302.12)
Establishing paternity. (45 CFR 302.31(a))
Support obligations. (45 CFR 302.50)
Enforcement of support obligation. (45 CFR 302.31(b))
Child support payments to the IV–D agency. (45 CFR 302.32)
Distribution of child support payments. (45 CFR 302.51)
Payments to the family. (45 CFR 302.38)
Incentive payments. (45 CFR 302.52)
Individuals not otherwise eligible. (45 CFR 302.33)
Cooperation with other States. (45 CFR 302.36)
State parent locator service. (45 CFR 302.35)
Cooperative arrangements. (45 CFR 302.34)
Reports and maintenance of records. (45 CFR 302.15)
Fiscal policies and accountability. (45 CFR 302.14)
Safeguarding information (45 CFR 302.18); and

(b) The IV–D agency must be receiving notice from the IV–A agency for cases in which AFDC is furnished with respect to a child who has been abandoned or deserted by a parent (45 CFR 235.70), and the State must be obtaining assignments of rights to support (45 CFR 232.11).

§ 305.21 Statewide operation.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement of Statewide operation (45 CFR 302.10), a State must have a IV–D agency that:

(a) Administers the plan uniformly throughout the State, or supervises the administration of the plan by its political subdivisions;

(b) Has established and is utilizing methods of informing staff of State policies, standards, procedures, and instructions;

(c) Has assigned IV–D staff at the State level to conduct regular, planned examination and evaluation of operation in local offices; and

(d) Makes available the services and functions as required by the approved State plan throughout the State.

§ 305.22 State financial participation.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement for State financial participation (45 CFR 302.11):

(a) A State must participate financially by incurring 25 percent of the cost of the program; and

(b) The funds representing the State's share must be appropriated to the IV–D Agency or transferred to the IV–D Agency, or certified by the contributing public agency as representing expenditures under the State's IV–D plan.

§ 305.23 Single and separate organizational unit.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement for a single and separate organizational unit to administer the IV–D plan (45 CFR 302.12), a State must have such a unit which:

(a) Is responsible and accountable for the operation of the IV–D plan and for no other program or activity;

(b) Is responsible for securing compliance with requirements of the IV–D plan delegated to any other State or local agency or official, performed under cooperative agreement or purchase of service agreement; and

(c) Has staff assigned to perform all of the required State level functions listed in § 303.20(b) of this chapter.

§ 305.24 Establishing paternity.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement that the State undertake the establishment of paternity (45 CFR 302.31(a) and 302.33), a State must:

(a) Have established and be utilizing written procedures for obtaining the identity of the putative father from the applicant or recipient;

(b) Have written procedures for establishing paternity:

(1) By court order or other legal process established by State law; and,

(2) By acknowledgment, if under State law such acknowledgment has the same legal effect as court ordered paternity, including the rights to benefits other than child support;

(c) Be utilizing such written procedures to establish the paternity of any child born out of wedlock whose paternity has not previously been established and with respect to whom there is an assignment in effect pursuant to § 232.11 of this title or with respect to whom there is an application for child support services pursuant to § 302.33 of this chapter;

(d) Have identified and made a list of all laboratories within the State which, in the opinion of the IV–D agency, per-

form legally and medically acceptable tests, including blood tests, which tend to confirm or refute the alleged paternity, and have made such list available to appropriate court and law enforcement officials, and to the public upon request;

(e) Have identified all State statutes and regulations that provide procedures to be used in determining the paternity of a child born out of wedlock as required by § 302.17 of this chapter;

(f) Have available attorneys or prosecutors to represent the State in court or administrative proceedings when necessary with respect to the establishment of paternity; and

(g) Have personnel, such as interviewers, investigators, clerical and other support staff performing paternity establishment functions.

§ 305.25 Support obligations.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement to establish support obligations (45 CFR 302.50 and 302.53), a State must:

(a) Have established and be utilizing written procedures for the establishment of a child support obligation for any child;

(1) With respect to whom there is an assignment in effect pursuant to § 232.11 of this title or with respect to whom there is an application for child support services pursuant to § 302.33 of this chapter; and

(2) Who has not previously had a child support obligation established by court order or by other legal process established under State law;

(b) If the support obligation is established by means other than a court order, utilize the State's formula, pursuant to § 302.53 of this chapter, for determining the amount of the support obligation;

(c) Have available attorneys or prosecutors to represent the State in court or administrative proceedings when necessary to establish the support obligation; and

(d) Have personnel, such as interviewers, investigators, clerical, and other support staff, establishing support obligations.

§ 305.26 Enforcement of support obligation.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement to enforce support obligations (45 CFR 302.31(b)), a State must:

(a) Have established and be utilizing written procedures for identifying as delinquent those cases in which there is a failure to comply with the support obligation;

(b) Have established and be utilizing written procedures for contacting delinquent obligors for the purpose of collecting the support obligation;

(c) Have identified and established the appropriate written procedures, including but not limited to those specified in § 303.6 of this chapter, to enforce child support obligations under the State's statutes or regulations;

(d) Have established written procedures for using reciprocal support enforcement arrangements that have been adopted with other States;

(e) Take appropriate action, using the procedures the State has established, to enforce support obligations;

(f) Have attorneys or prosecutors to represent the State in court or administrative proceedings when necessary to enforce delinquent support obligations; and

(g) Have personnel, such as interviewers, investigators, clerks and other support staff performing support obligation enforcement functions.

§ 305.27 Child support payments to the IV–D agency.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement of child support payments to the IV–D Agency (45 CFR 302.32) a State must:

(a) Have established and be utilizing written procedures for the receipt of child support payments by the IV–D agency with respect to cases in which there is an assignment of support rights pursuant to § 232.11 of this title;

(b) Have established and be utilizing written procedures for the receipt of child support payments by the IV–D agency with respect to cases in which there is an application for child support services pursuant to § 302.33 of this chapter; unless, receipt of such payment is not necessary because:

(1) The State, under its approved title IV–D plan, does not recover costs in excess of the application fee; and

(2) The IV–D agency has established a system, approved by the Regional Office, for insuring that the IV–D agency can accurately make collections reports as required by the Office;

(c) Have established and be utilizing written procedures to identity child support payments that are not being received by the IV–D agency and to take corrective action;

(d) Have established and be utilizing written procedures that meet the requirements of § 302.32(b) of this chapter for informing the State's IV–A agency of the amounts of collection so that the family's continued eligibility for assistance payments can be determined; and,

(e) Have personnel performing the activities described in this section.

§ 305.28 Distribution of child support payment.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement for distribution of child support collections (45 CFR 302.51 and 302.32), a State must:

(a) Have written procedures which, if properly applied, would result in a distribution of child support collections which is in accordance with §§ 302.51 and 302.32 of this chapter;

(b) Be making the distribution of child support collections pursuant to the procedures it has established; and

(c) Have personnel distributing child support collections.

§ 305.29 Payments to the family.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement for payment to the family (45 CFR 302.38), a State must distribute any payments required to be made to the family under §§ 302.32 and 302.51 of this chapter to the resident parent, legal guardian, or caretaker relative having custody of, or responsibility for, the child or children.

§ 305.30 Incentive payments.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement to make incentive payments (45 CFR 302.52), a State must:

(a) Have established and be utilizing written procedures for making incentive payments in the proper amounts to other States and, if appropriate, to political subdivisions within the State;

(b) Have established and be utilizing written procedures to account for child support collections received so the "amount retained by the State to reduce or repay assistance payments" can be properly determined;

(c) Have established and be utilizing written procedures for determining that the collection was made by a State or political subdivision operating pursuant to an approved IV–D plan and was made on behalf of an individual with respect to whom there is an assignment in effect pursuant to § 232.11 of this title;

(d) Have established and be utilizing written procedures for determining which collections represent payments on the first 12 months of support obligations;

(e) Have established and be utilizing written procedures for ensuring that the incentive payments are made as soon as administratively feasible;

(f) Have established and be utilizing written procedures (in accordance with instruction issued by the Office) for allocating the incentive payment among jurisdictions when more than one jurisdiction is involved in the enforcement or collection; and

(g) Have personnel performing the functions specified in this section.

§ 305.31 Individuals not otherwise eligible.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement for providing child support enforcement services to individuals not otherwise eligible (45 CFR 302.33), a State must:

(a) Have established and be utilizing written procedures for accepting signed, written applications on a Statewide basis for child support services from individuals not otherwise eligible under § 302.31 of this chapter.

(b) Have established and be utilizing written procedures for providing to applicants on a Statewide basis, all appropriate child support services available under the State's plan, including locating absent parents, establishing paternity and securing child support;

(c) Have established and be utilizing written procedures for collection of any fees and recovery of any costs authorized by the State's plan; and

(d) Have personnel performing child support enforcement services for applicants.

§ 305.32 Cooperation with other States.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement for interstate cooperation (45 CFR 302.36), a State must:

(a) Have established and be utilizing written procedures for accepting and processing requests for assistance from other States;

(b) Have established and be utilizing written procedures for using the State's PLS (both State and local locate sources) in an attempt to locate an absent parent upon request of another State;

(c) Have established and be utilizing written procedures for establishing paternity or assisting in establishing paternity when requested by another State;

(d) Have established and be utilizing written procedures for establishing court orders for support upon request by another State, including procedures for responding to a complaint under the Uniform Reciprocal Enforcement of Support Act (URESA);

(e) Have established and be utilizing written procedures for collecting support payments from an absent parent and forwarding such payments to the State where the obligation is owed;

(f) Have established and be utilizing written procedures for monitoring the status of cases upon which the State is taking action on behalf of another State;

(g) Have established and be utilizing written procedures that comply with the requirements for providing sufficient information to other States as specified in § 303.7 of this chapter;

(h) Have personnel at the State level coordinating activities pursuant to, and assuring compliance with, the requirements of the State's URESA; and

(i) Have personnel performing the functions specified in this section.

§ 305.33 State parent locator service.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement for a parent locator service (45 CFR 302.35), a State must:

(a) Have established and be utilizing a central State PLS office as required by § 302.35(a) of this chapter;

(b) Have identified and be utilizing major local locate data sources within the State such as those listed in § 303.3 (a) of this chapter;

(c) Have identified and be utilizing major State locate data sources such as those listed in § 303.3(c) of this chapter;

(d) Be utilizing the Federal PLS when necessary pursuant to § 302.35(a) (2) and (d) of this chapter;

(e) Have established written procedures for accepting from a person authorized under § 302.35(c) of this chapter, an application to use the PLS;

(f) Have established and be utilizing written procedures for collecting any fees required by § 302.35(e) of this chapter and the State's plan;

(g) Be using the names and other identifying information of absent parents, the State and local locate data sources and the Federal PLS, in an attempt to determine the actual whereabouts of the absent parent, or determine that the whereabouts of the absent parent cannot be ascertained;

(h) Have developed and be using the protective measures to safeguard information transmitted and received through use of the Federal PLS as required by § 302.70(e) (2) and (3) of this chapter and instructions issued by the Office; and

(i) Have personnel, such as interviewers, investigators, clerks and other support staff performing the functions described in this section.

§ 305.34 Cooperative arrangements.

(a) For the purposes of this part, in order to be found to be in compliance with the State plan requirement for cooperative arrangements (45 CFR 302.34), a State must utilize written cooperative agreements between the IV-D agency and appropriate courts and law enforcement officials to the extent necessary to establish paternity, establish and enforce child support obligations, collect child support, and cooperate with other States in these functions.

(b) This requirement will not be audited separately. However, cooperative agreements may be necessary in order for a State to meet the requirements of Part 302 of this chapter, if the IV-D agency does not have sufficient personnel and administrative procedures to accomplish these functions.

§ 305.35 Reports and maintenance of records.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement for reports and maintenance of records (45 CFR 302.15), a State must:

(a) Have established and be utilizing written procedures for maintaining the records necessary for proper and efficient operation of the plan including those listed in § 302.15(a) (1) (i) through (vii) of this chapter;

(b) Have established and be utilizing a system for insuring that reports required by the Secretary are provided when due, and are accurate and complete; and

(c) Have personnel performing the functions specified in this section.

§ 305.36 Fiscal policies and accountability.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement for fiscal policies and accountability (45 CFR 302.14), a State must:

(a) Have established and be maintaining and utilizing an accounting system and supporting fiscal records that assure that claims for Federal funds are in accord with applicable Federal regulations and instructions issued by the Office; and

(b) Have personnel performing the functions specified in this section.

§ 305.37 Safeguarding information.

For the purposes of this part, in order to be found to be in compliance with the State plan requirement for safeguarding information (45 CFR 302.18), a State must have established and be utilizing written procedures that restrict the use or disclosure of information concerning applicants or recipients of child support enforcement services to purposes listed in § 302.18(a) of this chapter.

§ 305.38 Notice to child support agency.

For the purposes of this part, the IV-D agency must be receiving notice from the IV-A agency (45 CFR 235.70) for cases in which AFDC is furnished with respect to a child who has been deserted or abandoned by a parent.

§ 305.39 Assignment of rights to support.

For the purposes of this part, a State must obtain assignments of support rights for AFDC applicants and have an assignment in effect for AFDC cases as required by 45 CFR 232.11, except where there has been a refusal to assign and the appropriate action under § 232.11 of this title was taken.

§ 305.50 Penalty for failure to have an effective child support enforcement program.

(a) Pursuant to sections 403(h) and 404(d) of the Act, if a State is found by the Secretary, on the basis of the results of the audit described in this part, to have failed to have an effective child support enforcement program meeting the requirements of Section 402(a) (27) of the Act, as implemented by Part 302 of this chapter and this part, total payment to the State under title IV-A of the Act shall be reduced by 5 percent of such payments.

(b) Any reduction required to be made under this section shall be made pursuant to § 205.146(d) of this title.

(c) The reconsideration of penalty imposition provided for by § 205.146(e) of this title shall be applicable to any reduction made pursuant to this section.

(Sec. 1102, 49 Stat. 647 (42 U.S.C. 1302))

Effective date: January 1, 1977.

(Catalog of Federal Domestic Assistance Program No. 13.679, Child Support Enforcement Program)

NOTE: The Office of Child Support Enforcement has determined that this document does not require preparation of an inflationary impact statement under Executive Order 11821 and OMB Circular A-107.

Answers to specific questions may be obtained by calling Steve Henigson at (202) 472-4510.

Dated: November 15, 1976.

ROBERT FULTON,
Director, Office of Child Support Enforcement.

Approved: December 10, 1976.

MARJORIE LYNCH,
Acting Secretary.

[FR Doc.76-37250 Filed 12-17-76;8:45 am]

Title 46—Shipping

CHAPTER I—COAST GUARD; DEPARTMENT OF TRANSPORTATION

(CGD 76-207)

PART 148—CARRIAGE OF SOLID HAZARDOUS MATERIAL IN BULK

Table for Permitted Cargoes; Correction

This amendment corrects the amendment published in the FEDERAL REGISTER (41 FR 23401) of June 10, 1976, by revising the Table for Permitted Cargoes in § 148.01-7(a) which listed ferrosilicon containing 30 percent or more but not more than 70 percent silicon as a solid hazardous material permitted to be carried on a vessel. Ferrosilicon with a silicon content of 45-70 percent liberates poisonous gases that are dangerous. The table is corrected to allow the carriage of ferrosilicon with a silicon content of less than 45 percent or greater than 70 percent.

Because there is an immediate need for this amendment to protect the health and safety of the crew and other persons on board a vessel, the Coast Guard finds that notice and hearing are contrary to the public interest under 5 U.S.C. 553(b)(3)(B) and this amendment is effective immediately under 5 U.S.C. 553(d)(3).

In consideration of the foregoing Part 148 of Title 46 Code of Federal Regulations is amended as follows:

In the first column of the table in § 148.01-7, by striking the entry "Ferrosilicon, containing 30 percent or more but not more than 70 percent silicon.", and inserting the entry "Ferrosilicon containing less than 45 percent or more than 70 percent silicon."

(49 U.S.C. 1804(a); 49 CFR 1.46(t).)

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

Effective date: This amendment is effective on December 20, 1976.

Dated: December 10, 1976.

O. W. SILER,
Admiral, U.S. Coast Guard Commandant.

[FR Doc.76-37233 Filed 12-17-76;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[FCC 76-905]

PART 21—DOMESTIC PUBLIC RADIO SERVICES (OTHER THAN MARITIME MOBILE)

Adoption of FCC Form 409

Adopted: September 28, 1976.

Released: December 17, 1976.

Order. In the matter of amendment of Part 21, Domestic Public Radio Services (Other than Maritime Mobile) and adoption of FCC Form 409.

1. Pursuant to the Commission's policy of reregulation and simplification of its application procedures, Part 21, Domestic Public Radio Services (other than Maritime Mobile) is herewith amended to require the use of new FCC Form 409 by applicants applying for individual mobile licenses in place of FCC Form 401. The new form will also be used for modification and renewal of individual mobile subscriber licenses, in place of FCC Forms 403 and 405, respectively. Specifically, § 21.9(c) of the rules is amended to substitute references to FCC Forms 401, 403 and 405 when applied to individual mobile applicants or licensees. Also §§ 21.15(i)(3) and 21.15(i)(3)(iii) are amended.

2. We think that the proposed Form 409 represents a significant improvement over forms currently in use. F.C.C. Forms 401, 403, and 405 are principally used for fixed base stations and therefore request information extraneous to individual mobile applicants. For example F.C.C. Form 401 solicits 53 items of information, collecting considerable technical data pertinent to the construction and operation of fixed base stations, and not individual mobile stations. More important the Form 401 does not clearly request information that is required for an Individual License. Consequently, the use of the Form 401 causes 30 percent of all Individual Mobile applications to be returned to the applicants for clarification or more information. This represents an undue burden on the public and unproductive work effort for the Common Carrier Bureau.

3. The basic intent of the new form is to eliminate the aforementioned difficulties and substantially reduce or eliminate defective applications resulting in greater efficiency in processing and better service to the public.

4. We conclude that for the reasons set forth above, adoption of the new Form and the proposed amendments will serve the public interest and convenience. In as much as the adoption of FCC Form 409 and the amendment of Part 21 involved matters of procedure, impose no additional burdens, and raise no issue upon which comments would serve any useful purpose, compliance with the prior notice and effective date provisions of U.S.C. 553 is unnecessary.

5. *Therefore, it is ordered,* That, pursuant to section 4(i) and 303 (g) and (r) of the Communications Act of 1934, as amended, Part 21 of the Commission's rules and regulations is amended as set forth below, effective December 20, 1976. The reporting requirement included herein is adopted subject to General Accounting Office clearance and, unless advised to the contrary, will be effective December 20, 1976.

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

FEDERAL COMMUNICATIONS COMMISSION,[1]
VINCENT J. MULLINS,
Secretary.

Part 21 of Chapter I, Title 47, of the code of Federal Regulations is amended to read as follows:

1. Section 21.9(c)(2) is amended to read as follows:

§ 21.9 Standard application forms for Domestic Public Land Mobile Radio, Rural Radio and Offshore Radio Telecommunications Services.

* * * * *

(c) License for mobile station—Since no construction permits are issued for mobile stations, applications shall be filed directly for license, subject to the following:

(1) * * *

(2) Applications for a license for land mobile or airborne stations submitted by persons who propose to become subscribers to a common carrier service for public correspondence shall be filed for on FCC Form 409. This form will also be used for the modification and renewal of such licenses. Such applications shall also be accompanied by the supplemental showing set forth in §§ 21.15(i)(2) and 21.15(i)(3).

* * * * *

2. Section 21.15(i)(3) and 21.15(i)(3)(iii) are amended to read as follows:

§ 21.15 Technical content of applications.

* * * * *

(i) * * *

* * * * *

(3) An application for land or airborne mobile units to be licensed in the name of a person who is not the licensee of the base station with the mobile units will be associated in the Domestic Public Land Mobile Radio Service shall be accompanied by an affirmative showing that:

(i) * * *

(ii) * * *

(iii) Specific arrangements have been made for installation, technical service and maintenance of the mobile units by licensed first- or second-class radio operators and

* * * * *

[1] Commissioners Fogarty and White not participating.

FCC Form 409
July 1976

Approved by GAO
B-180227 (R0415)

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

APPLICATION FOR INDIVIDUAL MOBILE RADIO TELEPHONE LICENSE IN THE DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

GENERAL INFORMATION

1. FCC Form 409 is to be used in applying for authority to operate a mobile radio telephone by individual users who intend to become subscribers to a common carrier service. Form 409 is also used as application for modification, or renewal, to an existing license.

2. The Form consists of two (2) pages of covering instructions and two (2) pages which comprise the application. Read and remove the covering instructions before completing the application.

3. Submit one (1) copy of the completed application to the Federal Communications Commission, Washington, D. C. 20554. PLEASE TYPE OR PRINT.

4. Enclose appropriate fee with application. DO NOT SUBMIT CASH. Make check or money order payable to Federal Communications Commission. (See Part I of FCC Rules to determine amount of fee to file with this application.) A fee is not required for applications filed by government entities.

INSTRUCTIONS

Item 1: A license may be issued to an individual or organization. Individual applicants enter name on 1st line. If applicant is a business (i.e., company, corporation, or partnership), association or government entity, enter organizational name on 2nd line. An individual doing business under a company name may list both names (e.g., James R. Brown; D/B/A Brown Aviation Co.).

Item 2: The use of a P.O. Box number is permissible only when no street address exists. In such cases give complete P.O. Box address and a geographical description of the actual location (e.g., 2 miles east of intersection of Main and Elm Streets.).

Item 3: Self-explanatory.

Item 4: If you now hold a current mobile telephone license, indicate if this application is for either a "Modification" or a "Renewal" by checking the appropriate box in part (a) and completing part (b). Complete remaining items as required, and item 12 (signature block).

Items 5 & 6: Self-explanatory.

Item 7: For land mobile users, the location specified in this item is the primary geographic area in which operations will be conducted.

Item 8 - 11: Self-explanatory.

Item 12: The application must be signed by the applicant, if the applicant is an individual; by one of the partners, if the applicant is a partnership; by an officer or duly authorized employee, if the applicant is a corporation; or by a member who is an officer, if the applicant is an unincorporated association.

DO NOT RETURN THESE INSTRUCTIONS

FCC Form 409

SUMMARY OF APPLICABLE RULES *(PART 21)*

1. This section contains a summary of rules applicable to Mobile Radio Telephone users. For more detailed and comprehensive information refer to Part 21 of the FCC's rules.

2. License period for mobile stations is five (5) years from date of issue.

3. Licensees are responsible for maintaining effective operational control over stations operating under their license.

4. Every operator of a mobile station is required to identify himself by use of call sign, telephone number or FAA registration number, at least once during the duration of each call.

5. Messages concerning the safety of life, or property which is in imminent danger, shall be afforded priority over other messages.

6. No person shall knowingly cause to be transmitted any false or fraudulent message concerning the safety of life or property, or refuse upon demand immediately to relinquish the use of a radio circuit to enable the transmission of messages concerning the safety of life or property which is in imminent danger, or knowingly interfere or otherwise obstruct the transmission of such messages.

7. All transmitters used in this service must be type accepted by the F.C.C. for use under Part 21 of the Commission's Rules. An executed transmitter identification card (F.C.C. Form 452-C), or a plate of metal or other durable substance, legibly indicating the station call sign and licensee's name and address, shall be affixed to the control equipment of the transmitter at the operating position, or posted adjacent thereto.

8. It is encumbent upon the licensed operator of the mobile radio telephone to have it maintained in proper working order to prevent interference with other radio transmission. Transmitters must be checked when initially installed and at intervals not to exceed one year. FCC rules require that specific arrangements be made for the installation, technical service, and maintenance of mobile transmitters by a person holding a valid FCC 1st or 2nd class radio operators license.

9. For each authorized station the licensee shall maintain a technical log of the station showing the results and dates of transmitter measurements and the identity of the person making or authenticating such measurements.

10. The mobile station license need not be posted, but shall be retained as a permanent part of the station records.

11. Any person receiving notice of violation of the Commission's rules or other applicable regulations shall respond in writing to the Office originating the notice within ten days.

12. For reference purposes, the licensee shall maintain and have available at the transmitter location, or maintenance center for the station, a current copy Part 21 (available at the Superintendent of Documents, Government Printing Office, Washington, D. C. 20554).

13. A transmitter may consist of an exciter plus a radio frequency power amplifier provided that such a combination is type accepted by the Commission. The power output of land mobile station transmitters shall not exceed 60 watts. The power output of airborne station transmitters shall not exceed 25 watts.

RETAIN THIS SUMMARY OF THE RULES FOR YOUR FILES

FCC Form 409
November 1976

Approved by GAO
B-180227 (R0415)

FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554

APPLICATION FOR INDIVIDUAL MOBILE RADIO TELEPHONE LICENSE
DOMESTIC PUBLIC LAND MOBILE RADIO SERVICE

(Please print or type)

1. APPLICANT'S NAME *(Last)* *(First)* *(MI)*

ORGANIZATIONAL NAME – IF OTHER THAN INDIVIDUAL

2.(a) APPLICANT'S ADDRESS *(Number and Street)*

(b) CITY | (c) STATE | (d) ZIP

(e) LOCATION DESCRIPTION *(If required)*

THIS BLOCK FOR FCC USE

FILE NUMBER

CALL SIGN

FCC CODE

3. TELEPHONE NUMBER
(AREA CODE)
( )

4.(a) THIS APPLICATION IS FOR: *(Check only one box)*

- ☐ A new license
- ☐ A modification of or an addition to an existing license
- ☐ Renewal of License

(b) For an existing license, indicate the following:

FILE NUMBER | CALL SIGN

5.(a) Will the licensed radio telephone be installed in an aircraft?

☐ YES ☐ NO

(b) If "Yes," give FAA Registration Number

6.(a) Name of communication common carrier who will provide applicant with service.

(b) Attach as Exhibit A the original letter provided to you by the carrier offering to render service. (Name & address on letter must be identical with information provided in Items 1 & 2 above.)

7. Location of Base Station or City of Registry (as shown in Exhibit A).

8.(a) Has the applicant or any party to this application had a Federal Communications Commission radio license or permit revoked, renewal denied, or is there any such action pending?

☐ YES ☐ NO

(b) If "Yes," submit as an Exhibit a statement giving call sign and all other details.

9.(a) Number of transmitters on this application. ☐ ENTER NUMBER	(b) If more than one transmitter, submit as an Exhibit, statement which describes the need for multiple units.

10. Transmitter Data:

(a) Unit Number	(b) Manufacturer	(c) FCC Type Acceptance No.	(d) Power Output (Watts)	(e) Frequency Band (MHZ)
1				
2				
3				
4				
5				

Use continuation sheet for additional transmitters

11. Exhibits (List all required exhibits which are attached to this application)
A – Letter from Common Carrier /See item 6(b)/
B –
C –
D –

12. CERTIFICATION

The undersigned hereby certifies that the statements made in this application are true, complete and correct to the best of his knowledge and belief, and are made in good faith. Willful false statements made on the application are punishable by law under 18 U.S.C. 1001.

The undersigned further affirms that:

(a) The authorization is sought for applicant's own use;

(b) The unit(s) will be operated primarily in the geographical area shown in item 7 above;

(c) Specific arrangements have been made for the installation and maintenance of the mobile units by licensed First or Second-class radio operators.

(d) The applicant is not a foreign government or a representative of a foreign government.

Dated _____

Applicant _____
(must correspond with that shown in Item 1.),

By _____
(Signature, See Instruction 12)

Title _____
(position held by person signing for applicant)

NOTIFICATION TO INDIVIDUALS UNDER PRIVACY ACT OF 1974

The information requested by this form will be used by Federal Communications Commission staff to determine eligibility for issuing authorizations in the use of frequency spectrum and to effect the provisions of regulatory responsibilities rendered the Commission by the Communications Act of 1934, as amended. Information requested by this form will be available to the public.

THE FOREGOING NOTICE IS REQUIRED BY THE PRIVACY ACT OF 1974, P.L. 93-579, DECEMBER 31, 1974.

[FR Doc.76-37246 Filed 12-17-76;8:45 am]

Title 50—Wildlife and Fisheries

CHAPTER I—U.S. FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 26—PUBLIC ENTRY AND USE

Bombay Hook National Wildlife Refuge; Dela.

The following special regulation is issued and is effective during the period January 1, 1977 through December 31, 1977.

§ 26.34 Special regulations concerning public access, use and recreation for individual wildlife refuges.

DELAWARE

BOMBAY HOOK NATIONAL WILDLIFE REFUGE

Travel by motor vehicle, bicycle, or on foot, is permitted from sunrise to sunset on designated routes unless prohibited by posting, for the purpose of nature study, photography, hiking, and sightseeing. Pets are permitted if on a leash not over 10 feet in length.

The refuge area, comprising 15,135 acres, is delineated on maps at refuge headquarters or from the Regional Director, U.S. Fish and Wildlife Service. One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

The provisions of this special regulation supplement the regulations which govern recreation on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 26, and are effective through December 31, 1977

WILLIAM C. ASHE,
Acting Regional Director,
U.S. Fish and Wildlife Service.

DECEMBER 10, 1976.

[FR Doc. 76-37281 Filed 12-17-76;8:45 am]

PART 26—PUBLIC ENTRY AND USE

Pond Island National Wildlife Refuge; Maine

The following special regulations are issued and are effective during the period January 1, 1977 through December 31, 1977.

§ 26.34 Special regulations concerning public access, use, and recreation for individual wildlife refuges.

MAINE

POND ISLAND NATIONAL WILDLIFE REFUGE

Pond Island National Wildlife Refuge is closed to the general public during the nesting season from March 1 through July 31, 1977; however, it is open during daylight hours for environmental education, nature study, and photography from August 1 through February 28, 1977. Camping is prohibited. Pets are permitted if on a leash not over 10 feet in length.

Information about the refuge is available from the Refuge Manager, Parker River National Wildlife Refuge, Northern Boulevard, Plum Island, Newburyport, Massachusetts 01950 or from the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

The provisions of this special regulation supplement the regulations governing public use on wildlife refuges generally, which are set forth in Title 50, Code of Federal Regulations, Part 26, and are effective through December 31, 1977.

WILLIAM C. ASHE,
Acting Regional Director,
U.S. Fish and Wildlife Service.

DECEMBER 10, 1976.

[FR Doc.76-37282 Filed 12-17-76;8:45 am]

PART 26—PUBLIC ENTRY AND USE

Barnegat National Wildlife Refuge; NJ

The following special regulations are issued and are effective during the period January 1, 1977 through December 31, 1977.

§ 26.34 Special regulations concerning public access, use, and recreation for individual wildlife refuges.

NEW JERSEY

BARNEGAT NATIONAL WILDLIFE REFUGE

Foot and vehicular access is permitted on designated travel routes during daylight hours, for the purposes of nature study, wildlife observation, photography and hiking. Pets are allowed if on a leash not exceeding 10 feet in length.

Refuge public use areas, comprising more than 7,500 acres, and respective permissible activities, are designated on maps available at refuge headquarters, Oceanville, New Jersey or from the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

The provisions of this special regulation supplement the regulations governing recreation on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 26, and are effective through December 31, 1977.

WILLIAM C. ASHE,
Acting Regional Director,
U.S. Fish and Wildlife Service.

DECEMBER 10, 1976.

[FR Doc.76-37283 Filed 12-17-76;8:45 am]

PART 26—PUBLIC ENTRY AND USE

Brigantine National Wildlife Refuge, N.J.

The following special regulations are issued and are effective during the period January 1, 1977 through December 31, 1977.

§ 26.34 Special regulations concerning public access, use, and recreation for individual wildlife refuges.

NEW JERSEY

BRIGANTINE NATIONAL WILDLIFE REFUGE

Foot and vehicular access is permitted on designated travel routes during daylight hours, for the purposes of nature study, wildlife observation, photography and hiking. The refuge beach has no lifeguards. Swimming will be at the visitor's own risk. Pets are allowed if on a leash not exceeding 10 feet in length.

Refuge public use areas, comprising more than 20,200 acres, and permitted activities, are designated on maps available at refuge headquarters, Oceanville, New Jersey or from the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

The provisions of this special regulation supplement the regulations governing recreation on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 26, and are effective through December 31, 1977.

WILLIAM C. ASHE,
Acting Regional Director,
U.S. Fish and Wildlife.

DECEMBER 10, 1976.

[FR Doc.76-37284 Filed 12-17-76;8:45 am]

PART 26—PUBLIC ENTRY AND USE

Tinicum National Environmental Center

The following special regulation is issued and is effective during the period January 1, 1977 through December 31, 1977.

§ 26.34 Special regulations concerning public access, use, and recreation for individual wildlife refuges.

PENNSYLVANIA

TINICUM NATIONAL ENVIRONMENTAL CENTER

Public access into the center is permitted from the 86th Street and Lindbergh Blvd. entrance gate for the purpose of bicycling, hiking, nature study, sightseeing, and photography from dawn to dusk. Registered motor vehicles are permitted on the center entrance road and the parking lot at the visitor contact station. School groups, college and university groups may enter certain areas with registered motor vehicles to transport students and equipment for the purpose of conducting environmental exercises and using the center as an outdoor-classroom by obtaining a vehicle permit from the center manager. Trail bikes, dirt bikes, threewheel bikes, snowmobiles, all-terrain vehicles and all other motorized recreational vehicles are prohibited from entering any lands owned or controlled by the center. Visitors are prohibited from entering any center impoundment or pond waters by foot or by boat unless involved in an organized environmental education group which has obtained a permit from the center manager.

Pets and alcoholic beverages are prohibited on the center.

A map of the center is available from the Center Manager, Tinicum National Environmental Center, Suite 104, Scott Plaza 2, Philadelphia, Pennsylvania 19113 and from the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

The provisions of this special regulation supplement the regulations which

govern recreation on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 26, and are effective through December 31, 1977.

WILLIAM C. ASHE,
Acting Regional Director,
U.S. Fish and Wildlife Service.

DECEMBER 13, 1976.

[FR Doc.76-37285 Filed 12-17-76;8:45 am]

PART 33—SPORT FISHING

Mackay Island National Wildlife Refuge; NC & Va.

The following special regulations are issued and are effective during the period January 1, 1977 through December 31, 1977.

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

NORTH CAROLINA AND VIRGINIA

MACKAY ISLAND NATIONAL WILDLIFE REFUGE

Sport fishing on the Mackay Island National Wildlife Refuge is permitted only on the areas designated by signs as open to fishing. Sport fishing shall be in accordance with State regulations subject to the following special conditions:

(1) Fishing is permitted in Corey's Ditch and in the canal adjacent to the Knotts Island Causeway, on a year-round basis, for bank fishing only. The remainder of the Refuge is open to sport fishing from March 15 to October 15.

(2) Fishing is permitted during daylight hours only.

(3) No limitations in size of motors used on boats. Airboats are prohibited.

The refuge, comprising 7,024 acres, is delineated on a map available from the Refuge Manager, Back Bay National Wildlife Refuge, Pembroke Office Park, Pembroke Two Bldg., Suite 218, Virginia Beach, Virginia 23462, or from the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

The provisions of this special regulation supplement the regulations on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 31, 1977.

WILLIAM C. ASHE,
Acting Regional Director,
U.S. Fish and Wildlife Service.

DECEMBER 13, 1976.

[FR Doc.76-37286 Filed 12-17-76;8:45 am]

PART 33—SPORT FISHING

Erie National Wildlife Refuge, Pa.

The following special regulations are issued and are effective during the period January 1, 1977 through December 31, 1977.

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

PENNSYLVANIA

ERIE NATIONAL WILDLIFE REFUGE

Sport fishing on the Erie National Wildlife Refuge, Pennsylvania, is permitted on areas designated by signs as open to fishing in accordance with State regulations. Boats are permitted in Lake Creek above Sugar Lake and above the Pool 9 dike where designated by signs. Fishing in Pools 9 and K is permitted from July 1 to September 15 only. Pools 9 and K will be open to ice fishing at the discretion of the refuge manager by daily permit. All fishing areas are shown on maps available from the Refuge Manager, Erie National Wildlife Refuge, RD 2, Box 191, Guy Mills, Pennsylvania 16327 or from the Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuges generally, which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 31, 1977.

WILLIAM C. ASHE,
Acting Regional Director,
U.S. Fish and Wildlife Service.

DECEMBER 10, 1976.

[FR Doc.76-37287 Filed 12-17-76;8:45 am]

proposed rules

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 917]

FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

Proposed Qualification Requirements and Nomination Procedure for Public Members of Commodity Committees

Notice is given of a proposal to establish qualification requirements and nomination procedures for public members of the Pear, Plum, and Peach Commodity Committees.

The Pear, Plum, and Peach Commodity Committees are established under the marketing agreement, as amended, and Order No. 917, as amended (7 CFR Part 917; 41 FR 17528). The order regulates the handling of fresh pears, plums, and peaches grown in California and is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

A recent amendment of the marketing order provided that each Commodity Committee may be increased by one public member nominated by the respective committee and selected by the Secretary. The recommended decision in that amendatory proceeding concluded that it would be appropriate for the Control Committee (the agency established under the order to administer its terms and provisions) to submit such rules and regulations to the Secretary for approval which would specify qualification requirements and nominating procedures for public members for the respective Commodity Committees. The Control Committee, at its November 10, 1976, meeting recommended such requirements and procedures contained in the proposal hereinafter set forth.

All persons who desire to submit written data, views, or arguments in connection with this proposal should file them, in quadruplicate, with the Hearing Clerk, United States Department of Agriculture, Room 112A, Washington, D.C. 20250, not later than December 31, 1976. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The proposal is to amend Subpart—Rules and Regulations (7 CFR 917.100–917.179) by adding a new § 917.122 reading as follows:

§ 917.122 Qualification requirements and nomination procedure for public members of Commodity Committees.

(a) Public members shall not have a direct financial interest or be closely associated with the production, processing, financing, or marketing (except as consumers) of California agricultural commodities.

(b) Public members should be able to devote sufficient time and express a willingness to attend committee activities regularly, and to familiarize themselves with the background and economics of the industry.

(c) Public members must be residents of California.

(d) Public members should be nominated by each Commodity Committee and should serve a two-year term which coincides with the term of office of grower members of Commodity Committees.

Dated: December 14, 1976.

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

[FR Doc.76-37268 Filed 12-17-76;8:45 am]

Farmers Home Administration

[7 CFR Parts 1803, 1821, 1822, and 1832]

Proposed Amendments Miscellaneous

On October 23, 1975, the Farmers Home Administration (FmHA) published a Notice of Proposed Rulemaking (40 FR 49577) which announced that it was considering the implementation of a new method of disbursing loan and grant funds. This new method is referred to as the Loan Disbursement System (LDS). This Notice, supplemented by a Supplemental Notice of Proposed Rulemaking published on November 13, 1975, (40 FR 52854), indicated that a multiple advance feature of LDS for certain loan types would be field tested before its nationwide implementation.

Notice is hereby given that FmHA is considering revising 7 CFR Part 1803 and numerous miscellaneous amendments to various Parts 1821, 1822, and 1832 of Title 7, Chapter XVIII to implement the multiple advance feature of LDS nationwide. As proposed, this multiple advance feature will apply to the following loan types: Sections 502 and 504 Rural Housing loans for construction and repair work, Farm Ownership, Individual Soil and Water, Recreation, and Emergency.

Adoption of the multiple advance feature will enable FmHA to disburse loan funds as they are needed rather than disbursing them in a lump sum and allowing them to remain idle in a supervised bank account.

The multiple advance feature will greatly reduce the need for supervised bank accounts now required by 7 CFR Part 1803. However, supervised bank accounts may still be used when needed.

Interested persons may submit written comments, suggestions, data, or arguments to the Office of the Director, Program Evaluation Staff, Farmers Home Administration, United States Department of Agriculture, Room 5319, South Building, Washington, DC 20250, on or before January 19, 1977. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Director, Program Evaluation Staff, during regular business hours (8:15 a.m. to 4:45 p.m.).

As proposed, Part 1803 and various sections of Parts 1821, 1822, and 1832 read as follows:

1. As proposed, Part 1803 is revised to read as follows:

PART 1803—LOAN AND GRANT DISBURSEMENT

Sec.

1803.1 General.
1803.2 Policies governing disbursement of funds.
1803.3 Procedures to follow in fund disbursement.
1803.4 Establishing supervised bank accounts.
1803.5 Pledging collateral for deposit of funds in supervised bank account.
1803.6 Authority to establish supervised bank accounts, deposit loan checks and other funds, countersign checks, close accounts, and execute all forms in connection with supervised bank account transactions.
1803.7 Deposits.
1803.8 Withdrawals.
1803.9 County office records.
1803.10 Reconciliation of accounts.
1803.11 Closing accounts.
1803.12 Request for withdrawals by State Director.

AUTHORITY: 7 U.S.C. 1989, 42 U.S.C. 1480, 42 U.S.C. 2942, 5 U.S.C. 301, sec. 10 Pub. L. 93-357, 88 Stat. 392, delegation of authority by the Secretary of Agriculture, 7 CFR 2.23, delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70, delegations of authority by Director, OEO 29 FR 14764, 33 FR 9850.

§ 1803.1 General.

This Part prescribes the policies and procedures of the Farmers Home Administration (FmHA) to be followed in the disbursement of funds under the Loan Disbursement System (LDS) and in establishing and using supervised bank accounts. The LDS system provides for funds on an as needed basis to substantially reduce interest costs to FMHA borrowers, U.S. Treasury, and FmHA.

(a) *Form FMHA 440-1*, "Request for obligation of Funds," provides for: (1)

The obligation only, (2) obligation and check request for the full amount of the loan or grant, and (3) obligation and check request for a partial amount of the loan or grant. The instructions on when and how to use this form are contained in the Forms Manual Insert (FMI) for this form.

(b) *Form FMHA 440–57,* "Acknowledgement of obligated Funds/Check Request," provides for: (1) The inital loan amount check, (2) all subsequent loan checks, (3) making corrections on the data in the loan account as reflected on the form, (4) notifying the Finance Office of the loan closing date and the loan amortization effective date, and (5) providing requested information from the Finance Office. The instructions on when and how to use this form are contained in the Forms Manual Insert for this form.

(c) See applicable regulations for procedures to follow if checks are lost or destroyed.

(d) Borrowers as referred to in this Part include both loan and grant recipients. They are referred to as depositors in the deposit agreements hereinafter described. References herein and in deposit agreements to "other lenders" include lenders and grantors other than FmHA.

(e) Banks referred to in this Part are those in which deposits are insured by the Federal Deposit Insurance Corporation (FDIC).

(f) Supervised bank accounts referred to in this Part are bank accounts established through deposit agreements entered into between either (1) the borrower, the United States of America acting through the FmHA, and the bank on Form FmHA 402–1, "Deposit Agreement," or (2) the borrower, FmHA, other lenders, and the bank on Form FmHA 402–5, "Deposit Agreement (Non-FmHA Funds)."

(g) Form FmHA 402–1 provides for the deposit of funds in a supervised bank account as security for payment of the borrower's indebtedness to FHA and to assure the performance of the borrower's obligations to FHA in connection with a loan and grant.

(h) Form FmHA 402–5 provides for the deposit of funds advanced by other lenders as security for payments of the indebtedness to them and to assure the performance of the borrower's obligation to them in connection with a loan and grant are made in a separate supervised bank account.

(i) "Interest-Bearing Deposit Agreement," available in all FmHA offices provides for the deposit of loan or grant funds that are not required for immediate disbursement in specified interest-bearing deposits, and it is executed in conjunction with Form FmHA 402–1 or Form FmHA 402–5.

§ 1803.2 Policies governing disbursement of funds.

(a) The partial advance feature of the LDS will be utilized whenever possible in accordance with the specific program procedures, except where prohibited by State statutes. The capability to request Treasury Checks on an as needed basis reduces the need for supervised bank accounts. Therefore, supervised bank accounts will be used only in rare instances, e.g.: (1) When a construction loan is made and the construction is substantially complete, but a small amount is being withheld pending completion of landscaping or some similar item, or a small amount of funds usually not to exceed $2,000, is not disbursed at loan closing. In this case, the amount of funds not disbursed will be requested from the Finance Office using Form FmHA 440–57, or issued by the Finance Office when the predetermined amortization effective date occurs, and placed in a supervised bank account for future disbursement as appropriate.

(2) When a large number of checks will be issued in the construction of a dwelling or other development, as for example under the "borrower method" of construction or in Operation (OL) loans and Emergency (EM) loans. In such cases, installment checks will continue to be requested from the Finance Office as necessary and deposited in a supervised bank account and disbursed to suppliers, sub-contractors, etc. as necessary. When the construction process requires several checks to be issued at one time the LDS system can still be utilized. Those County Offices authorized to request checks by telephone may request more than one check at a time. The offices not authorized to use the telephone method for requesting checks will use Form FmHA 440–57 to request one check at a time. If more than one check is required, a Form FmHA 440–57 will be prepared for each check.

(3) Association loan and grant funds made on a multiple advance basis need not be deposited in a supervised bank account unless required by State statutes or otherwise determined necessary by the State Director.

(4) Supervised bank accounts will be used only when necessary to assure the correct expenditure of all or a part of loan and grant funds, borrower contributions, and borrower income. Such accounts will be limited in amount and duration to the extent feasible through the prudent disbursement of funds and the prompt termination of the interests of FmHA funds and other lenders when the accounts are no longer required.

(5) Income from the sale of security property or Economic Opportunity (EO) property or the proceeds from insurance on such property will be deposited in a supervised bank account under Form FmHA 402–1 when the County Supervisor determines that it is necessary to do so to assure that the funds will be available for replacement of the property.

(6) When a borrower has clearly demonstrated inability to handle his financial affairs, all or part of his income or other funds may be deposited in the supervised bank account under Form FmHA 402–1 or Form FmHA 402–5 if the County Supervisor determines that such an arrangement is necessary to provide guidance in major financial management practices essential to the borrower's success, subject to the following requirements.

(i) This supervisory technique will be used for a temporary period to help the borrower learn to properly manage his financial affairs. Such a period will not exceed one year unless extended by the District Director; and

(ii) The borrower is agreeable to such an arrangement.

(7) In exceptional cases when the unincorporated EO cooperative or association borrower cannot obtain a position fidelity bond, its income may be deposited as provided for in §§ 1803.5 and 1803.2(f) if another lender is involved.

(b) For all construction loans, and those loans to be advanced in increments, only the actual amount to be disbursed at loan closing will be requested either through the initial submission of Form FmHA 440–1 or through Form FmHA 440–57. Subsequent checks will be ordered as needed by submitting Form FmHA 440–57 to the Finance Office.

(c) Program instructions and FMI's provide information as to the type of note to be utilized and the method of handling advances and the interest accrued thereon. For individual loan programs, interest will accure from date of the check or date of loan closing whichever occurs later. For association type loans, interest will accrue from date of check delivery.

(d) For all loan accounts, when the total amount has not been advanced at the amortization effective date, as defined in the forward the remaining balance to the County Supervisor for appropriate action, unless the County Supervisor notifies the Finance Office of other arrangements.

(e) When a check cannot be negotiated within 20 working days from the date of the check, the County Supervisor will return the check(s) with Form FmHA 440–10, "Cancellation of Loan or Grant Check and/or Obligation," in accordance with applicable regulations.

(f) Funds provided to an FmHA borrower by another lender (through subordination agreements by the FmHA or under other arrangements between the borrower, FmHA, and other lender) that are not used immediately after the loan or grant closing will be deposited in a supervised bank account under Form FmHA 402–5, provided: (1) The County Supervisor determines such action is necessary to protect FmHA's interest and to assure that the funds will be used for the purposes planned,

(2) The other lender is unwilling to control the use of such funds, and

(3) The other lender is agreeable to the use of the FHA supervised bank account.

§ 1803.3 Procedures to follow in fund disbursement.

(a) The County Supervisor will determine during loan approval the amount(s) of loan check(s)—full or partial—and forward such request to the Finance Office by complying with the FMI for Form FmHA 440–1 and Form FmHA 440–57.

(b) *Counties using the telephone to request subsequent advances* will call the designated telephone number provided by the Finance Office and request all subsequent checks by providing the information required on a Form FmHA 440–57.

(c) When check(s) are delivered to the County Office, the County Supervisor will assure himself that the name of the borrower and the amount(s) of check(s) coincide with the request on file. The County Supervisor should assure himself that the check is properly endorsed to insure payment to the intended recipient. An example of such a restrictive endorsement is:

Pay to the order of (3rd party payee)—(Contractor, Developer, Sub-Contractor, Building Supply House, etc.), for the purpose of _____.

(d) *When necessary and only under the circumstances* as listed in paragraph II the County Supervisor will establish or cause to be established a supervised bank account.

§ 1803.4 Establishment supervised bank accounts.

(a) Each borrower will be given an opportunity to choose the bank in which his supervised bank account will be established, provided the bank is a member of the FDIC.

(b) When accounts are established, it should be determined that: (1) The bank is fully informed concerning the provisions of Form FmHA 402–1 and/or Form FmHA 402–5, and

(2) Agreements are reached with respect to the services to be provided by the bank including the frequency and method of transmittal of bank statements, and

(3) Agreement is reached with the bank regarding the place where the counter-signature will be on checks, particularly those drawn on banks under electronic checking systems.

(c) When possible, County Supervisors will make arrangements with banks which are members of the FDIC under which they will waive service charges in connection with supervised bank accounts established in such banks. However, there is no objection to the payment by the borrower of a reasonable charge for such service.

(d) If the amount of Association, Watershed (WS), Rural Rental Housing (RRH), Rural Renewal (RN), Resource Conservation and Development (RCD), EO loans to a Cooperative Association, Rural Cooperative Housing (RCH), or Labor Housing (LH) loan funds and grant funds plus any borrower contributions and funds from other sources to be deposited in the supervised bank account will exceed $40,000 the bank will be required to pledge collateral for the excess over $40,000 before the deposit is made (see § 1803.5 of this Chapter). In addition, a pledge of collateral for any excess over $40,000 in a supervised bank account may be required for other types of loans or grants in amounts in excess of the State Director's approval authorization when determined necessary by the National Office on an individual case basis.

(e) Only one supervised bank account will be established for any borrower regardless of the amount or source of funds, except for RRH loans separate accounts will be established for each project.

(f) When a supervised bank account is established, an original and two copies of Form FmHA 402–1 or Form FmHA 402–5, and the Interest-Bearing Deposit Agreement available in all FmHA offices, when applicable, will be executed by the borrower, the bank, and a County Office employee. The original will be retained in the borrower's case file, one executed copy will be delivered to the bank, and one executed copy to the borrower. An extra copy of the Interest-Bearing Deposit Agreement will be prepared and attached to the certificate passbook, or other evidence of deposit representing the interest-bearing deposit.

(1) If an agreement on Form FmHA 402–1 or Form FmHA 402–5 has previously been executed and Form FmHA 402–6, "Termination of Interest in Supervised Bank Account," has not been executed with respect to it, a new agreement is not required when additional funds are to be deposited unless requested by the bank.

(2) When the note and security instrument are signed by two joint borrowers or by both husband and wife, a joint survivorship supervised bank account will be established from which either can withdraw funds if State laws permit such accounts. In such cases both parties will sign the Deposit Agreement(s).

§ 1803.5 Pledging collateral for deposit of funds in supervised bank account.

(a) Funds in excess of $40,000 for borrowers referred to in § 1803.4(d) deposited in supervised bank accounts, must be secured by pledging acceptable collateral with the Federal Reserve Bank in an amount not less than the excess.

(b) As soon as it is determined that the loan will be approved and the applicant has selected or tentatively selected a bank for the supervised bank account, the County Supervisor will contact the bank to determine: (1) That the bank selected is a bank that is insured by the FDIC.

(2) Whether the bank is willing to pledge collateral with the Federal Reserve Bank under Treasury Circular No. 176 to the extent necessary to secure the amount of funds being deposited in excess of $40,000.

(c) If the bank is agreeable to pledging collateral, the County Supervisor should complete a form letter available in all FmHA offices in an original and three copies, the original and one copy for the National Office, the second copy for the State Office, and the third copy for the County Office. The form letter should be forwarded to the National Office at least 30 days before the date of loan closing.

(d) The National Office will arrange for the Treasury Department have the bank designated as a depositary unless already designated, and to have collateral pledged.

(e) If, two days before loan closing, the State Director has not received a copy of the Treasury Department's letter to the bank confirming the pledge of collateral, he should contact the National Office, Attention: Financial Support Division.

(f) When the amount of the deposit in the supervised bank account has been reduced to a point where the bank desires part or all of its collateral released, it should write to the Treasury Department, Domestic Banking Staff Bureau of Government Operations, Washington, D.C. 20226, requesting the release and stating the balance in the supervised bank account.

§ 1803.6 Authority to establish supervised bank accounts, deposit loan checks and other funds, countersign checks, close accounts, and execute all forms in connection with supervised bank account transactions.

County Supervisors are authorized to establish supervised bank accounts, deposit loan checks and other funds, countersign checks, close accounts, and execute all forms in connection with supervised bank account transactions and redelegate this authority to authorized collection officers under their supervision who are considered capable of exercising such authority. State Directors will make written demand upon the bank for withdrawals as outlined in § 1803.12 of this Chapter.

§ 1803.7 Deposits.

(a) *Deposits by FmHA Personnel.* (1) Checks made payable solely to the Federal Government, or any agency thereof, and a joint check when the Treasurer of the United States is a joint payee, may not be deposited in a supervised bank account.

(2) FmHA personnel will accept funds for deposit in a borrower's supervised bank account ONLY in the form of a check or money order endorsed by the borrower "For Deposit Only," or a check drawn to the order of the bank in which the funds are to be deposited or a loan check drawn on the U.S. Treasury.

(i) A joint check that is payable to the borrower and FmHA will be endorsed by the County Supervisor as provided in Part 1862 of this Chapter.

(ii) Ordinarily, when deposits are to be made from funds which are received as the result of consent or subordination agreements or asignments of income, the check should be drawn to the order of the bank in which the supervised bank account is established or jointly to the order of the borrower and the FmHA.

All such checks should be delivered or mailed to the County Office.

(iii) If direct or insured loan funds (other than OL, EM, or EO loan funds) or borrower contributions are to be deposited in a supervised bank account, such funds will be deposited on the date of loan closing after it has been determined that the loan can be closed. However, if it is impossible to deposit the funds on the day the loan is closed due to reasons such as distance from the bank or banking hours, the funds will be deposited on the first banking day following the date of loan closing.

(iv) Grant funds will be deposited when such funds are delivered.

(vi) A loan or grant check drawn on the U.S. Treasury may be deposited in a supervised bank account without endorsement by the borrower when it will facilitate delivery of the check and is acceptable to the bank. The borrower will be notified immediately of any deposit made and will be furnished a copy of the deposit slip. When a deposit of this nature is made, the following endorsement will be used:

For deposit only in the supervised bank account of _____ in the (name of borrower)
_____
(name of bank and address when necessary for identification) pursuant to Deposit Agreement dated _____

(vii) Accounts established through the use of an Interest-Bearing Deposit Agreement will be in the name of the depositor and the Government.

(b) *Deposits by borrowers.* Funds in any form may be deposited in the supervised bank account by the borrower if authorized by the FmHA *provided the bank has agreed* that when a deposit is made to the account by other than FmHA personnel, the bank will promptly deliver or mail a copy of the deposit slip to the FmHA County Office.

(1) A loan or grant check drawn on the U.S. Treasury may be deposited in a supervised bank account by a borrower, provided the following endorsement is used and is inserted thereon prior to delivery to the borrower for signature:

For deposit only in my supervised bank account in the _____ (name of bank and address
_____
when necessary for identification) pursuant to Deposit agreement dated _____

(2) Funds other than loan or grant funds may be deposited by the borrower in those exceptional instances where an agreement is reached between the County Supervisor and the borrower whereby the borrower will make deposits of income from any source directly into the supervised bank account. In such instances the borrower will be instructed to prepare the deposit slip in the manner described in § 1803.6(a)(v) of this Chapter.

§ 1803.8 Withdrawals.

(a) The County Supervisor will not countersign checks on the supervised bank account for the use of funds unless the funds deposited by the borrower from other sources were cash deposits or checks which the County Supervisor knows to be good or until he knows that the deposited checks have cleared.

(b) Withdrawals of funds deposited under Form FmHA 402–1 or Form FmHA 402–5 are permitted only by order of the borrower and countersignature of authorized FmHA personnel or upon written demand on the bank by the State Director of the FmHA.

(c) Upon withdrawal or maturity of interest-bearing accounts established through the use of an Interest-Bearing Deposit Agreement, such funds will be credited to the supervised bank account established through the use of Form FmHA 402–1 or Form FmHA 402–5.

(d) The issuance of checks on the supervised bank account will be kept to the minimum possible without defeating the purpose of such accounts. When major items of capital goods are being purchased, or a limited number of relatively costly items of operating expenses are being paid, or when debts are being refinanced, the checks will be drawn to the vendors or creditors. If minor capital items are being purchased or numerous items of operating and family living expenses are involved as in connection with a monthly budget, a check may be drawn to the borrower to provide the funds to meet such costs.

(1) A check will be issued payable to the appropriate payee but will never be issued to "cash". The purpose of the expenditure will be clearly shown on Form FmHA 402–2, "Statement of Deposits and Withdrawals," and indicated on the face of the check. When checks are drawn in favor of the borrower to cover items too numerous to identify, the expenditure will be identified on the check if space permits as "miscellaneous."

(2) Normally, OL and EM loan funds will not be withdrawn from the supervised bank account until the lien search has been made and the determination reached that the required security has been obtained. This applies also to withdrawal of funds in secured individual loan cases. However, in those instances when the applicant is unable to pay for the lien search and filing fees from his own funds, a check for this purpose may be drawn on the supervised bank account to meet these loan making requirements.

(3) Ordinarily, a check will be countersigned before it is delivered to the payee. However, in justifiable circumstances such as when excessive travel on the part of the borrower or the County Supervisor would be involved or purchases would be prevented, and the borrower can be relied upon to select goods and services in accordance with the plans, a check may be delivered to the payee by the borrower before being countersigned.

(i) When a check is to be delivered to the payee before being countersigned, the County Supervisor must make it clear to the borrower and to the payee, if possible, that the checks will be countersigned only if the quantity and quality of items purchased are in accordance with approved plans.

(ii) Checks delivered to the payee before countersignature will bear the following legend in addition to the legend for countersignature: "Valid only upon Countersignature of Farmers Home Administration."

(iii) The check must be presented by the payee or his representative to the County Office of the FHA servicing the account for the required countersignature.

(iv) Such check must be accompanied by a bill of sale, invoice, or receipt signed by the borrower identifying the nature and cost of the goods or services purchased or similar information must be indicated on the check.

(4) For real estate loans or grants, whether the check is delivered to the payee before or after countersignature, the number and date of the check will be inserted on all bills of sale, invoices, receipts, and itemized statements for materials, equipment, and services.

(5) Bills of sale, and so forth, may be returned to the borrower together with the canceled check for the payment of the bill.

(6) Checks to be drawn on a supervised bank account will bear the legend:

Countersigned, not as co-maker or endorser.

_____
_____
(Title)

FARMERS HOME ADMINISTRATION.

§ 1803.9 County Office Records.

A record of funds deposited in a supervised bank account will be maintained on Form FHA 402–2 in accordance with instructions for its preparation available at all FmHA Offices. The record of funds provided for operating purposes by another creditor or grantor will be on a separate Form FHA 402–2 so that they can be clearly identified.

§ 1803.10 Reconciliation of accounts.

(a) A bank statement will be obtained periodically in accordance with established banking practices in the area. If requested by the bank, a supply of addressed, franked envelopes will be provided for use in mailing bank statements and canceled checks for supervised bank accounts to the County Office. Bank statements will be reconciled promptly with County Office records. The persons making the reconciliation will initial the record and indicate the date of the action.

(b) All bank statements and canceled checks will be forwarded immediately to the borrower when bank statements and County Office records are in agreement. If a transmittal is used, Form FHA 140–4, "Transmittal of Documents," is prescribed for that purpose.

§ 1803.11 Closing accounts.

When FmHA loan or grant funds or those of another lender have all been properly expended or withdrawn, Form FmHA 402–6 may be used to give the consent of FmHA (and of another lender, if involved) to close the supervised bank account in the following situations:

(a) When FHA loan funds in the supervised bank account of a borrower have been reduced to $100 or less, and a check for the unexpended balance has been issued to the borrower to be used for authorized purposes.

(b) For all loan accounts, except association loans, after completion of authorized loan fund expenditures, and after promptly refunding any remaining unexpended loan funds on the borrower's loan account with FmHA or another lender, as appropriate.

(c) For association loan and grant accounts, when the funds have been expended in accordance with the requirements of Subparts A and I of Part 1823 of this Chapter the supervised bank account will be closed within 90 days following completion of development unless an extension of time is authorized in writing by the District Supervisor. If the borrower will not agree to closing the account, the County Supervisor will request the State Director to make demand upon the bank in accordance with § 1803.12 of this Chapter.

(d) Promptly (1) upon the death of a borrower, except when the loan is being continued with a joint debtor, or (2) when a borrower is in default and it is determined that no further assistance will be given, or (3) when a borrower is no longer classified as "active."

(1) *Deceased borrowers.* (i) Ordinarily, upon notice of the death of a borrower, the County Supervisor will request the State Director to make demand upon the bank for the balance of deposit and apply all of the balance after payment on any bank charges to the borrower's FmHA indebtedness. When the State Director approves continuation with a survivor, the Supervised bank account of a deceased borrower may be continued with a remaining joint debtor who is liable for the loan and agrees to use the unexpended funds as planned, provided:

(A) The account is a joint survivorship supervised bank account, or

(B) If not a joint survivorship account, the bank will agree to permit the addition of the surviving joint debtor's name to the existing signature card and Form FmHA 402–1 and/or Form FmHA 402–5 and continue to disburse checks out of the existing account upon FmHA's countersignature and the joint debtor's signature in place of the deceased borrower, or

(C) The bank will permit the State Director to withdraw the balance from the existing supervised bank account with a check jointly payable to the FHA and the surviving joint debtor and deposit the money in a new supervised bank account with the surviving joint debtor, and will disburse checks from this new account upon the signature of such survivor and the countersignature of an authorized FHA official.

(ii) The State Director, before applying the balance remaining in the supervised bank account to the FmHA indebtedness, is authorized upon approval by the Office of the General Counsel (OGC) to release any unobligated balances thereof made by other lenders to the FmHA borrower for specific operating purposes in accordance with subordination agreements or other arrangements between the FmHA, the lender, and the borrower.

(iii) The State Director, upon the recommendation of an authorized representative of the estate of the deceased borrower and the approval of the OGC, is authorized to approve the use of deposited funds for the payment of commitments for goods delivered or services performed in accordance with the deceased borrower's plans approved by FmHA.

(2) *Borrowers in Default.* Whenever it is impossible or impractical to obtain a signed check from a borrower whose supervised bank account is to be closed, the County Supervisor will request the State Director to make demand upon the bank for the balance on deposit in the borrower's supervised bank account for application as appropriate:

(i) To the borrower's FHA indebtedness, or

(ii) As refunds of any unobligated advances provided by other lenders which were deposited in the account, or

(iii) For the return of FmHA grant funds to the FmHA Finance Office, or

(iv) For the return of grant funds to other grantors.

(3) *Reclassified Borrowers.* When a borrower's loan has not been paid in full, but the borrower is no longer classified as "active."

(4) *Paid up Borrowers.* A paid up borrower is one who has a balance remaining in the supervised bank account and has repaid his entire indebtedness to FmHA and has properly expended all funds advanced by other lenders. In such cases the County Supervisor will (a) notify the borrower in writing that the interests of in the account FmHA and the other lender, if any, in the account have been terminated, and (b) inform the borrower of the balance remaining in the bank account.

§ 1803.12 Request for withdrawals by State Directors.

When the State Director is requested to make written demand upon the bank for the balance on deposit in the supervised bank account, or any part thereof, the request will be accompanied by the following information:

(a) Name of borrower as it appears on Form FHA 402–1 and/or Form FHA 402–5.

(b) Name and location of the bank.

(c) Amount to be withdrawn for refund to another lender of any balance that may remain of funds received by the borrower from such lender as a loan or grant or under a subordination agreement or other arrangement between the FmHA, the other lender, and the borrower.

(d) The amount to be withdrawn, excluding any bank charges, for a refund of FmHA's or other lender's loans or grants.

(e) Other pertinent information including reasons for the withdrawal.

PART 1821—FARM PURCHASE AND DEVELOPMENT LOANS TO INDIVIDUALS

2. As proposed, the introductory paragraph to § 1821.16 paragraph (b) are revised to read as follows:

§ 1821.16 Deferred payments.

Payments may be deferred when income is not available to meet regular installments. Deferment may be up to the end of the second full crop year from the date of the loan providing there is:

* * * * *

(b) A new system of farming or nonfarm enterprise is being established that will require substantial improvements, such as land clearing, draining, leveling, irrigating, basic fertilizing, seeding, other land development, soil improvement, and extensive nonfarm facilities. Deferred payment alternates I or III on Form FmHA 440–16, "Promissory Note," are authorized for FO loans. Refer to the Forms Manual insert for preparing the form.

3. As proposed in § 1821.22, paragraph (a) is revised and paragraphs (a) (1) and (a) (2) are added and read as follows:

§ 1821.22 Actions subsequent to loan approval.

(a) *Requesting check.* If real estate will not be taken as security or if real estate is taken as security and satisfactory title evidence is obtained prior to loan approval, or when the County Supervisor is reasonably certain that satisfactory title evidence can be obtained so the loan can be closed within 15 days from the date of the check request, loan funds may be requested at the time of loan approval by entering the amount needed in block 21 of Form FmHA 440–1. If funds are not requested when the loan is approved, advances in the amount needed will be requested by using Form FmHA 440–57 in accordance with the FMI. The original 440–57 will be retained in the County Office and a copy sent to the Finance Office. The initial loan advance will be requested when loan approval conditions can be met, satisfactory title to real estate security can be provided, and a date has been set for loan closing.

(1) When all loan funds can be disbursed at or within 15 days after loan closing or if the amount of funds that cannot be disbursed does not exceed $2,000, the total amount of the loan will be requested in a single advance.

(2) When loan funds cannot be disbursed as outlined in subparagraph 1 above, the amount needed to meet the needs of the borrower will be requested by submitting a copy of Form FmHA 440–57 to the Finance Office. The amount of the advances should be as near as possible to meet the needs of borrowers so that the amount in the supervised bank account will be kept at a minimum. The Finance Office will continue to supply Form FmHA 440–57 until the entire loan has been disbursed. The County Supervisor should inform borrowers of their responsibility of notifying the County

Office of amounts needed on a timely basis.

* * * * *

PART 1822—RURAL HOUSING LOANS AND GRANTS

4. As proposed § 1822.7, paragraph (n) is revised to read as follows:

§ 1822.7 Special requirements.

* * * * *

(n) *Mutual self-help housing loans.* Applicants who are unable to build modest dwellings by customary methods, because of limited income and repayment ability, may build their homes by participating in a mutual self-help housing project. The County Supervisor will not approve RH loans or proceed in the development of a self-help project without prior approval of the State Director. He will, therefore, submit complete information about each family in the proposed self-help project to the State Office for review and request authority to proceed. Information submitted will include items such as the family's size, income, age or family members who will work on the dwelling, the size and cost of the planned dwelling, estimated savings, and the amount of the needed loan. Exhibit A, "Mutual Self-Help Housing Guidelines," will be used as a guide for developing self-help projects and counseling with participating families. The County Supervisor, in counseling with families participating in self-help housing projects, will determine the anticipated time required for construction and the extent to which the borrower will be able to meet loan payments during this period. If the applicants will not have enough income to meet payments of interest accruing at the note rate of interest, or regular amortized loan payments during the construction period, interest and principal payments will be deferred and interest accruing during the construction period will be added to the principal and scheduled for repayment in regular amortized installments over the remaining term of the loan.

* * * * *

5. As proposed §-1822.13, paragraphs (c) (3) (i) (A) and (c) (3) (ii) are revised to read as follows:

§ 1822.13 Loan approval.

* * * * *

(c) * * *
(3) * * *
(i) * * *
(A) *Form FmHA 440–1.* (copy)

* * * * *

(ii) *To the State Office.* If the loan is approved by the County Supervisor, an unsigned copy of form FmHA 440–1 will be sent to the State Office unless exempted by State instructions, and a copy of Form FmHA 444–2 will be sent to the State Office. If the loan is approved in the State Office, an unsigned copy of Form FmHA 440–1 and a copy of Form FmHA 444–2 will be retained in the State Office.

* * * * *

6. As proposed in § 1822.14, paragraph (a) is revised and paragraphs (a) (1) and (a) (2) are added to read as follows:

§ 1822.14 Actions subsequent to loan approval.

(a) *Requesting check.* When the loan has been approved, approval conditions can be met, any necessary curative actions have been taken to provide a satisfactory title to any real estate security, and a tentative date has been set for loan closing, the County Supervisor or his delegate will complete the original and copy of Form FmHA 440–57 in accordance with the Forms Manual Insert (FMI) and send the copy to the Finance Office. If real estate will not be taken as security or if real estate is taken as security and satisfactory title of evidence is obtained prior to loan approval, or when the County Supervisor is reasonably certain that satisfactory title evidence can be obtained so the loan can be closed within 15 days from the date of the check request, the loan check may be requested at the time of loan approval by entering the amount of the check requested in block 21 of Form FmHA 440–1.

(1) If all the loan funds will be disbursed at or within 15 days after loan closing or in cases where the amount of funds that cannot be disbursed at loan closing does not exceed $2,000, the total amount of the loan will be requested in a single advance.

(2) If loan funds cannot be disbursed in accordance with time frame in paragraph (a) (1) above, the County Supervisor will enter in block 21 of Form FmHA 440–1 the amount of the loan funds to be disbursed at loan closing. Additional loan funds will be requested when and in amounts needed by submitting a completed copy of Form FmHA 440–57 to the Finance Office. The County Supervisor should work with developers and others to be sure that funds will be available when needed and, at the same time, to keep the future advances to a reasonable minimum. Any loan funds not requested by the date reported to the Finance Office as the "amortization effective date" for the loan will be disbursed by the Finance Office to the County Office by check dated on the amortization effective date. The check will be deposited in the borrower's supervised bank account if it cannot be endorsed directly to a payee within 20 working days from the date of the check.

* * * * *

7. As proposed, § 1822.15, paragraphs (b) (2) and (b) (3) are revised and completely restructured to read as follows:

§ 1822.15 Loan closing actions.

* * * * *

(b) * * *

* * * * *

(2) *Promisory note.* Form FmHA 440–16, "Promissory Note," will be used for loans made under this Instruction. The note will be prepared and signed in accordance with Part 1807 of this chapter, concerning cosigners, § 1822.10(b) (5) of this subpart, and the FMI.

(i) The payment alternatives of the note will be completed in accordance with the FMI and the following:

(A) Payments of principal and interest or principal only may be deferred during the period the dwelling is not expected to be suitable for occupancy as a residence because of construction or repairs to be made. Such deferments are authorized provided the County Supervisor determines, based upon the family's repayment ability that the borrower cannot meet installments that would otherwise be due during the deferment period and also meet his other necessary obligations without experiencing an undue hardship or impairing his standards of living. Both principal and interest payments should be deferred and accrued interest added to principal and repaid in regular amortized installments (payment alternative II) unless the borrower clearly will have funds available to repay accrued interest when due, in installments or by lump sum payment.

(B) Payments will not be deferred if the dwelling is or will be occupied as the borrower's residence when the loan is closed or if the borrower has sufficient available income to make regular amortized payments as they become due without deferment.

(ii) The payment provision of the note will be completed in accordance with the FMI and the following:

(A) The monthly payment provision will be used for all borrowers who regularly receive monthly income and who can repay the loan in 12 equal monthly payments.

(B) The annual payment provision will be used only for borrowers who do not regularly receive monthly income. If interest and/or principal installments are not to be deferred, the following provisions apply.

(*1*) The amount of the first installment will be determined by the County Supervisor after considering the immediate debt-paying ability of the borrower. The amount of the first installment may be less, but not more, than a regular annual installment.

(2) The amount of the first installment may not be less than the amount equal to interest on the loan from the date of loan closing to January 1 of the calendar year following the calendar year in which the loan is closed.

(3) Form FmHA 440–9 should be used to supplement this payment provision to facilitate servicing of loans for borrowers who pay more than one time a year.

(3) *Collection of first installment.* If the annual payment provision of the note is used and payments are not deferred, the first installment of a loan closed during December will be collected at the time of loan closing.

* * * * *

8. As proposed § 1822.74, paragraph (b) (1) is revised to read as follows:

§ 1822.74 Actions subsequent to loan approval.

* * * * *

(b) *Handling the loan check.* (1) Any loan check to be deposited in the super-

vised bank account will be deposited in accordance with Part 1803 of this chapter.

* * * * *

9. As proposed § 1822.75, paragraphs (c) (1), (2), (3), (4), and (5) are revised to read as follows:

§ 1822.75 Loan closing.

* * * * *

(c) *Promissory note and insurance endorsement.* (1) The total amount to be shown in the note will be the amount of the loan appearing on Form FmHA 440–1.

(2) Payments on LH loans will be scheduled in accordance with the FMI for Form FmHA 440–16, "Promissory Note." Any funds included in the loan for the payment of interest will be collected and applied as a regular payment at the time of loan closing. Scheduled principal installments during the first or first and second years after loan closing may be deferred. Interest payments may not be deferred.

(3) Form FmHA 440–16, "Promissory Note," will be used. Preparation will be in accordance with the FMI.

(4) For a loan to a public body whose obligations bear interest exempt from Federal income taxation, the forms of obligation and insurance endorsement will be determined in accordance with Part 1811 of this chapter.

(5) The note will be signed in accordance with Part 1807 of this chapter.

* * * * *

10. As proposed § 1822.88, paragraph (b) is revised to read as follows:

§ 1822.88 Special conditions.

* * * * *

(b) *Deferred principal payments.* When necessary and advisable, smaller than regular payments of principal or no payments of principal may be provided for the first and second year after loan closing. However, accrued interest must be paid according to the regular installment schedule.

* * * * *

11. As proposed § 1822.95, paragraphs (c) (1), (2), (3), (4), and (5) are revised to read as follows:

§ 1822.95 Loan closing.

* * * * *

(c) *Promissory note.* (1) The total amount to be shown in the note will be shown on Form FmHA 440–1. The note will be dated the date of loan closing except as authorized in § 1807.2(f)(8) of Part 1807 of this chapter.

(2) Payments on RRH loans will be scheduled on the note in accordance with the Forms Manual Insert (FMI). Monthly payments wil be implemented. As provided in § 1822.88(b) of this chapter, the monthly principal installments during the first or the first and second years after loan closing may be deferred. Interest payments may not be deferred.

(3) Form FmHA 440–16, "Promissory Note," will be used. Instructions for preparation for monthly installments in the FMI will be followed.

(4) The note(s) will be signed in accordance with the FMI and Part 1807 of this chapter.

(5) Any funds included in the loan for the payment of interest will be collected and applied as a regular payment at the time of loan closing.

* * * * *

12. As proposed, § 1822.272, paragraph (a) (1) is revised to read as follows:

§ 1822.272 Approval or disapproval of a loan.

(a) * * *

(1) Sign the original and one copy of completed Form FmHA 440–1 and insert his title in the space provided.

* * * * *

13. As proposed, § 1822.274, paragraph (c) is revised and restructured to read as follows:

§ 1822.271 Loan closing.

* * * * *

(c) *Promissory note.* Form FmHA 440–16, "Promissory Note," will be used. Instructions for preparation will be in accordance with the FMI and the following: (1) The total amount to be shown in the note will be the amount of the loan shown on Form FmHA 440–1. The note will be dated the date of the loan closing. Items (1) through (6b) will be completed in accordance with the FMI for the note. Immediately after the item (6b) following the words "PER ANNUM" delete the period and type, "SHALL BE PAID AT THE END OF TWO YEARS FROM DATE OF THIS NOTE," except that prepayments may be made as provided herein below.

(2) The note will be signed in accordance with Part 1807 of this chapter and the FMI for the Form FmHA 440–16.

(3) The note will be signed in accordance with Part 1807 of this chapter and the FMI Form FmHA 440–16, FMI.

(4) Payments shall not be deferred.

* * * * *

14. As proposed, § 1822.278, paragraphs (e) and (f) are revised to read as follows:

§ 1822.278 Special requirements for RHS section 523 loans (loans to organizations providing sites for self-help housing).

* * * * *

(e) *Multiple advances.* These loans may be disbursed over a period not to exceed 18 months from the date of the first advance.

(f) *Note forms.* Form FmHA 440–16, "Promissory Note" will be used. See § 1822.274(c).

* * * * *

PART 1832—EMERGENCY LOANS

15. As proposed, § 1832.36, paragraph (c) is revised to read as follows:

§ 1832.36 Loan closing.

* * * * *

(c) *Supervised bank accounts.* EM loan funds will only be deposited in a supervised bank account as provided in Part 1803 of this chapter.

(7 U.S.C. 1989, 42 U.S.C. 1480, 42 U.S.C. 2942, 5 U.S.C. 301, sec. 10 Pub. L. 93-357, 88 Stat. 392, delegation of authority by the Secretary of Agriculture, 7 CFR 2.23, delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70, delegations of authority by Director, OEO 29 FR 14764, 33 FR 9850.)

Date: December 14, 1976.

FRANK W. NAYLOR, Jr.,
Administrator,
Farmers Home Administration.

[FR Doc.76-37195 Filed 12-17-76;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 39]

[Airworthiness Docket No. 76-SW-58]

AIRWORTHINESS DIRECTIVE

Bell Model 205A–1 Helicopters

The Federal Aviation Administration is considering amending Part 39 of the Federal Aviation Regulations by adding an airworthiness directive applicable to Bell Model 205A–1 helicopters to improve the alignment of the engine-to-transmission drive shaft.

Failures of this shaft have been reported which resulted in complete loss of power to the rotor drive system and a subsequent emergency landing. These failures have been determined to be caused by excessive misalignment between the engine and the main transmission during operations with high rotor loads. Since this condition is likely to exist or develop in other helicopters of the same design, this proposed airworthiness directive would require readjustment of the position of the engine to improve the capability of the engine-to-transmission drive shaft to transmit power under maximum rotor loading conditions, including external load operations.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or comments as they may desire. Communications should identify the docket number and be submitted in triplicate to the Regional Counsel, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101.

All communications received on or before January 28, 1977, will be considered by the Director before taking action upon the proposed rule. The proposals contained in this notice may be changed in light of comments received. All comments will be available, both before and after the closing date for comments, in the office of the Regional Counsel for examination by interested persons.

(Sec. 313(a), 601, and 603 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423) and of sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).)

This notice has been reviewed and does not require an inflation impact statement.

In consideration of the foregoing, it is proposed to amend § 39.13 of Part 39 of the Federal Aviation Regulations by add-

ing the following new airworthiness directive:

BELL: Applies to Model 205A-1 helicopters, Serial Numbers 30001 through 30232, certificated in all categories.

For helicopters certificated and operated pursuant to Part 133 of the FAR's (Class B rotorcraft load combination or Class C rotorcraft load combinations as defined by Part 1 of the FAR's), compliance is required within the next 100 hours cumulative time in service involving external load combinations as defined above, or 300 hours total time in service, whichever occurs first, after the effective date of this airworthiness directive, unless previously accomplished.

For Standard Category helicopters not approved for external load operations as defined above, compliance is required within the next 300 hours time-in service after the effective date of this airworthiness directive, unless previously accomplished.

To prevent failure of the engine-to-transmission drive couplings due to excessive angularity under high loading conditions, adjust the engine-to-transmission alignment as described below:

(a) Remove the engine-to-transmission drive shaft assembly, P/N's 205-040-004-3, -11, or -17, in accordance with instructions in the appropriate maintenance and overhaul manuals.

(b) Using instructions and special tools prescribed by the maintenance and overhaul manuals, establish the engine-to-transmission alignment prescribed by the manual except as follows:

(1) Index the target plate inner scale to 8.0 (instead of 3.5) and index the target plate outer scale to 35.6 (instead of 1.75).

NOTE.—Transmission position must be adjusted and leveled to Maintenance Manual specifications. Engine position adjustment procedures must follow Maintenance Manual instructions.

(2) Establish angularity as follows: Install dial indicator in accordance with instructions in the Maintenance Manual at 2.5 inch radius. Read zero at 12 o'clock position; read $+0.030 \pm 0.004$ at 6 o'clock position. Reset dial indicator to zero at the 3 o'clock position; read $+0.006 \pm 0.004$ at 9 o'clock position. Plus reading on dial indicator means that flange on transmission is closer to flange on engine.

(c) Shim engine support fittings to obtain required alignment. If total laminated shim thickness (P/N 205-060-137-1 or 205-060-138-1), required under any engine support fittings, exceeds 0.188 inches, fabricate a plate of 2024-T4 aluminum alloy 0.100 thick, same outside dimensions as shim stock, and structurally bond the plate to the engine service deck with EC 934. Total thickness of shims and plate under any engine mount fitting must not exceed 0.288 inches. Verify that the engine support fittings are reinstalled with the same fore and aft orientation as before.

(d) Interference between the engine and the aft upper firewall at the 9 o'clock position (looking forward) may result with this realignment. If this condition occurs, accomplish the following:

Remove the aft upper firewall assembly P/N 205-060-909-27 and disassemble by removing the sixteen (16) screws.

Remove the aft section of the firewall web P/N 204-060-909-13 and enlarge the sixteen holes by drilling to 5/16 inch.

Deburr the drilled holes. Reassemble the firewall assembly using P/N AN970-3 washers over the enlarged holes and under the 16 screw heads.

(e) Check engine deck fitting screws and bolts for proper length and thread engagement.

(f) Check fuel control and governor linkage for proper rigging and cushion.

(g) Reinstall the drive shaft assembly. Reinstall transmission 5th mount assembly. Follow Maintenance Manual instructions for details of reinstallation of access panels, firewall attachments, and related cleanup, as required.

(h) Bell Helicopter Textron Service Bulletin No. 205-76-9 pertains to this subject and provides approved instructions for this activity.

Issued in Fort Worth, Texas on December 7, 1976.

HENRY L. NEWMAN,
Director, Southwest Region.

[FR Doc.76-37064 Filed 12-17-76;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Parts 239, 240, 270, 275]

[Release Nos. 33-5772, 34-13024, IC-9547, IA-554; File No. S7-660]

DISCLOSURE OF BROKERAGE PLACEMENT PRACTICES BY INVESTMENT MANAGERS

Proposed Rulemaking

Correction

In FR Doc. 76-35719 appearing at page 53356 in the issue for Monday, December 6, 1976, on page 53359, the last line of § 240.28c2-1(d)(4), should read as follows: "dollar amount of transactions into the total dollar amount of commissions paid."

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

[29 CFR Part 1601]

PROPOSED DESIGNATION OF 706 AGENCIES

Deferrals to State and Local Authorities

Pursuant to § 1601.12(i), Title 29, Chapter 14 of the Code of Federal Regulations as revised and published in the FEDERAL REGISTER (40 FR 3210M, January 20, 1975), the Equal Employment Opportunity Commission (hereinafter referred to as the Commission) proposes that the agencies listed below be designated as "706 Agencies" (§ 160.12(c)). There are three (3) purposes for such designation: First, that the agencies receive charges deferred by the Commission pursuant to section 706 (c) and (d) of Title VII of the Civil Rights Act of 1964, as amended; second, that the Commission accord "substantial weight" to the final findings and orders of those agencies pursuant to § 1601.19b(e); and third, to commence the 15-day period within which any person or organization may file written comments as provided for under § 1601.12(i)(1). At the expiration of the 15-day period, the Commission may effect designation of each of the agencies by publishing them as an amendment to § 1601.12(m).

The proposed "706 Agencies" are as follows:

§ 1601.12 Deferrals to State and local authorities.

* * * * *

(m) * * *

Fort Worth (Texas) Human Relations Commission.

Lexington—Fayette Urban County Human Rights Commission.

Written comments pursuant to this notice must be filed with the Commission on or before January 5, 1977.

Signed at Washington, D.C. this 14th day of December 1976.

ETHEL BENT WALSH,
Vice Chairman, Equal Employment Opportunity Commission.

[FR Doc.76-37206 Filed 12-17-76;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 110]

[CGD 76-45]

SPECIAL ANCHORAGE AREA, MONTEREY HARBOR, CALIFORNIA

Proposed Special Anchorage

The Coast Guard is considering amending the anchorage regulations by changing the width and orientation of the fairway passing through the special anchorage in Monterey Harbor, California. The need for the proposed amendment has developed over the years as a result of increased boat traffic and an increase in the number of vessels regularly using and mooring in the harbor. The widening and realignment of the fairway and subsequent establishment of fairway markers will provide for safer, more direct passage from the breakwater to the marine entrance inside the harbor. In special anchorage areas, vessels under 65 feet in length, when at anchor, are not required to carry or exhibit anchor lights.

Interested persons may participate in this proposed rulemaking by submitting written data, views, or arguments concerning the proposal to the Commander, Twelfth Coast Guard District, 630 Sansome St., San Francisco, California 94126. Each person submitting comments should include his name and address and organization, if any, identify the notice number (CGD 76-45), and give reasons for any recommended changes in the proposal. Copies of all written comments will be available for examination by interested persons at the office of the Commander, Twelfth Coast Guard District.

The Commander, Twelfth Coast Guard District will forward all comments received before February 3, 1977, and his recommendations to the Chief, Office of Marine Environment and Systems, U.S. Coast Guard Headquarters, who will evaluate all communications received and take final action on the proposal. The proposed regulations may be changed in the light of comments received.

In consideration of the foregoing, it is proposed that section 110.126 of part 110 of Title 33 of the Code of Federal Regulations be revised to read as follows:

§ 110.126 Monterey Harbor, California.

The waters of Monterey Harbor between the shoreline and the following coordinates: Beginning at point on the Coast Guard Wharf at latitude 36°36' 33.2" N, longitude 121°53'29.8" W, thence to latitude 36°36'32.4" N, longitude 121°53'31" W, thence in an easterly direction to latitude 36°36'27.8" N, longitude 121°53'16" W, thence to latitude 36°36'20" N, longitude 121°52'58" W, thence to the shoreline at latitude 36°36'04" N, longitude 121°52'54" W, excluding from this area a fairway 125 feet wide whose centerline begins at latitude 36°36'27.8" N, longitude 121° 53'16" W, and extend 205°, approximately 405 feet to latitude 36°36'24" N, longitude 121°53'18.3" W, thence 225° approximately 850 feet to the Monterey Marina entrance. Also excluded are the waters between this fairway and the north end of Municipal Wharf No. 2 and the eastern most part of Municipal Wharf No. 1.

(Sec. 1, 30 Stat. 98, as amended, sec. 6(g)(1)(B), 80 Stat. 937; 33 U.S.C. 180, 49 U.S.C. 1655(g)(1)(B), 49 CFR 1.46(c)(2)).

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

Dated: December 10, 1976.

A. F. FUGARO,
Rear Admiral U.S. Coast Guard, Chief, Office of Marine Environment and Systems.

[FR Doc.76-37234 Filed 12-17-76;8:45 am]

[33 CFR Part 117]

[CGD 76-228]

DRAWBRIDGE OPERATION REGULATIONS

AIWW, New Smyrna Beach, Florida

At the request of the City of New Smyrna Beach, the Coast Guard is considering revising the regulations for the Harris Saxon bridge, AIWW, New Smyrna Beach, Florida, to provide that from March 15 through October 15, from 3 p.m. to 6 p.m., on Saturdays, Sundays, and holidays, the draw need open only on the hour and half-hour. At all other times the draw would open on signal. The draw is presently required to open on signal at all times. This change is being considered because of a significant increase in vehicular traffic during the proposed periods of closure.

Interested persons may participate in this proposed rule making by submitting written data, views, or arguments to the Commander (oan), Seventh Coast Guard District, Room 1018, Federal Building, 51 S. W. 1st Avenue, Miami, Florida 33130. Each person submitting comments should include his name and address, identify the bridge, and give reasons of any recommended change in the proposal. Copies of all written communications received will be available for examination by interested persons at the office of the Commander, Seventh Coast Guard District.

The Commander, Seventh Coast Guard District, will forward any comments received before January 25, 1977, with his recommendations to the Chief, Office of Marine Environment and Systems, U.S. Coast Guard Headquarters, Washington, D.C., who will evaluate all communications received and take final action on this proposal. The proposed regulations may be changed in the light of comments received.

In consideration of the foregoing, it is proposed that Part 117 of Title 33 of the Code of Federal Regulations, be amended by adding a new § 117.433a immediately after § 117.433 to read as follows:

§ 117.433a Harris Saxon bridge, AIWW, New Smyrna Beach, Florida.

(a) On Saturdays, Sundays, and national holidays, from March 15 through October 15, from 3 p.m. to 6 p.m., the draw need not open for the passage of vessels except on the hour and half-hour. At all other times the draw shall open on signal.

(b) The draw shall open at any time for passage of public vessels of the United States, tugs with tows, and vessels in distress. The opening signal from these vessels is four blasts of a whistle, horn, or by shouting.

(c) The owner of or agency controlling this bridge shall conspicuously post notices containing the substance of these regulations, both upstream and downstream, in such a manner that they may be easily read from an approaching vessel.

(Sec. 5, 28 Stat. 362, as amended, sec. 6(g)(2), 80 Stat. 937; 33 U.S.C. 499, 49 U.S.C. 1655(g)(2); 49 CFR 1.46(c)(5), 33 CFR 1.05(c)(4)).

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

Dated: December 14, 1976.

D. J. RILEY,
Captain, U.S. Coast Guard, Acting Chief, Office of Marine Environment and Systems.

[FR Doc.76-37235 Filed 12-17-76;8:45 am]

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[37 CFR Part 1]

INTERFERENCE PRACTICE

Extension of Deadline for Comments

The deadline for comments on the proposed rules relating to interference practice announced in the notice published November 30, 1976 (41 FR 52486) is hereby extended through March 4, 1977.

Dated: December 13, 1976.

C. MARSHALL DANN,
Commissioner of Patents and Trademarks.

Approved:

BETSY ANCKER-JOHNSON, Ph.D.,
Assistant Secretary for Science and Technology.

Dated: December 15, 1976.

[FR Doc.76-37245 Filed 12-17-76;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[46 CFR Part 151]

[CGD 73-271PH]

INSPECTION OF BARGES

Withdrawal of Notice of Proposed Rulemaking

The purpose of this notice is to announce that the Coast Guard is closing Docket No. CGD 73-271PH without further action.

On March 11, 1974, a notice of proposed rulemaking was published in the FEDERAL REGISTER (39 FR 9455) to amend 46 CFR 151.01-25(c) by requiring barges constructed in conformance with 46 CFR Parts 36, 38, 39, 40 and 98, at the time of their construction or conversion, to meet the inspection requirements of Subparts 151.04 and 151.05 of Title 46. Specifically, the proposal would have required that the below listed items on these barges be examined or tested every two years instead of every four years:

(a) Safety relief valves.

(b) Tank externals (visual examination).

(c) Cargo hose visual examination and 1½ hydrostatic test).

(d) Quick closing valves (operating the emergency shutoff).

(e) Excess flow valves (visual examination or testing).

(f) Pressure vacuum relief valves (visual examination).

All comments received before the closing date for comments, April 30, 1974, were evaluated.

A total of 6 comments were received. All of these comments questioned the need and justification for the proposed change. One comment indicated that if it is the desire of the Coast Guard to make inspection requirements for the above items (a) through (f) uniform, a four year inspection interval should be allowed. The Coast Guard will gather data to determine which of the two inspection intervals is more consistent with the goal of promoting safety without unnecessary burden. When the results have been evaluated, the inspection requirements will be made uniform for barges carrying dangerous cargoes regardless of the age of the barge.

In the interim, Docket No. (CGD 73-271PH) is closed.

Dated: December 8, 1976.

W. M. BENKERT,
Rear Admiral, U.S. Coast Guard, Chief, Office of Merchant Marine Safety.

[FR Doc.76-37236 Filed 12-17-76;8:45 am]

National Highway Traffic Safety Administration

[49 CFR Part 523]

[Docket No. FE 76-05; Notice 1]

AUTOMOTIVE FUEL ECONOMY

Vehicle Classification

The purpose of this notice is to propose determination of the vehicles that will be subject to Title V of the Motor Vehicle Information and Cost Savings Act, as amended, 15 U.S.C. 2001 et seq. Title V already specifies which vehicles with a gross vehicle weight rating (GVWR) of not more than 6,000 lbs. are automobiles. Those vehicles are passenger cars, multipurpose passenger vehicles, and trucks. The proposal would add passenger cars with a GVWR of more than 6,000 pounds and less than 10,000 pounds to the automobile category. The notice would then divide the automobile category into two subcategories; i.e., passenger automobiles and nonpassenger automobiles. Passenger cars would be placed in the passenger automobile category, and multipurpose passenger vehicles and trucks in the nonpassenger automobile category.

Statutory background. Title V was added to the Cost Savings Act by the Energy Policy and Conservation Act, Pub. L. 94-163. The Title directs the Administrator of the National Highway Traffic Safety Administration (delegation of authority at 41 FR 25015, June 22, 1976) to establish a program for requiring automobile manufacturers to improve the average fuel economy of their automobiles. The Title also directs the Environmental Protection Agency (EPA) to promulgate regulations requiring manufacturers to provide fuel economy information to consumers. Section 501 (1) of the Title defines an "automobile" as:

> Any 4-wheeled vehicle propelled by fuel which is manufactured primarily for use on public streets, roads, and highways (except any vehicle operated exclusively on a rail or rails), and
>
> (A) which is rated at 6,000 pounds gross vehicle weight or less, or
>
> (B) which—(i) is rated at more than 6,000 pounds gross vehicle weight but less than 10,000 pounds gross vehicle weight,
>
> (ii) is a type of vehicle for which the Secretary determines, by rule, average fuel economy standards under this part are feasible, and
>
> (iii) is a type of vehicle for which the Secretary determines, by rule, average fuel economy standards will result in significant energy conservation, or is a type of vehicle which the Secretary determines is substantially used for the same purposes as vehicles described in subparagraph (A) of this paragraph.

The Title divides automobiles into two categories, "passenger automobiles," and automobiles other than passenger automobiles (hereafter referred to as "nonpassenger automobiles"). Section 501(2) defines "passenger automobile" as "any automobile (other than an automobile capable of off-highway operation) which the Secretary determines by rule is manufactured primarily for use in the transportation of not more than 10 individuals." There is no statutory definition of the nonpassenger automobile class, other than language in section 502(b) stating that it is a residual category. However, section 501(3) does define one type of nonpassenger automobile, the "automobile capable of off-highway operation." Such an automobile must have a significant feature (other than 4-wheel drive) that is designed to equip the automobile for off-highway operation and have either 4-wheel drive or a GVWR greater than 6,000 pounds.

Passenger automobile standards for model years 1978-1980 are specified in section 502(a) of the Title. The Administrator is required to establish standards for subsequent model years by rule. An advance notice of proposed rulemaking on passenger automobile standards was published on September 23, 1976, at 41 FR 41713. Section 502(b) requires the Administrator to promulgate nonpassenger automobile standards for model years 1979 and thereafter. A standard for model year 1979 was proposed on November 26, 1976, at 41 FR 52087. Fuel economy testing, labeling and information disclosure procedures and requirements for model year 1977 and thereafter were published by EPA pursuant to sections 503 and 506 of the Title on November 10, 1976, at 41 FR 49752.

Some vehicles will be automatically subject to the standards and other requirements. Other vehicles will be subject to them only upon the making of certain determinations by the Administrator.

> Any 4-wheeled vehicle propelled by fuel which is manufactured primarily for use on public streets, roads, and highways (except any vehicle operated exclusively on a rail or rails), and * * * which is rated at 6,000 lbs. gross vehicle weight or less * * *

is automatically an automobile under the terms of the Title. For vehicles with a GVWR of more than 6,000 and less than 10,000 pounds to be treated as automobiles, the Administrator must first determine that standards are feasible for those vehicles and either that the standards will result in significant energy savings or that the vehicles are used for substantially the same purposes as vehicles with a GVWR of 6,000 pounds or less. Then the Administrator must determine whether the automobiles, both those that are automatically automobiles and those that were determined to be automobiles, are passenger automobiles or nonpassenger automobiles.

Automobiles. To be classified as an automobile, section 501(1) requires that a vehicle must (1) be 4-wheeled, (2) be propelled by fuel, (3) be manufactured primarily for use on public streets, roads, and highways, (4) not be operated exclusively on a rail or rails, and (5) have a GVWR of less than 10,000 pounds. Vehicles with a GVWR greater than 6,000 pounds and less than 10,000 pounds must meet certain additional statutory criteria that will be discussed later in this preamble.

The first four automobile criteria exclude a wide variety of vehicles from the class. The 4-wheel criterion excludes, for example, 2-wheeled vehicles such as motorcycles, 3-wheeled vehicles such as the Harley-Davidson GE Servi-car, and 6-wheeled vehicles such as pickup trucks with dual rear wheels. Trailers are excluded from the automobile category because they are not propelled by fuel; i.e., they do not have motive power that relies upon the combustion of gasoline, diesel oil, or other type of fuel. The House report excludes "agricultural and construction equipment and vehicles manufactured primarily for off-road use rather than highway use" as not satisfying the third criterion. H.R. Rep. No. 340, 94th Cong., 1st Sess. 90 (1975). Thus, vehicles such as tractors and loaders are not automobiles. Trolley cars are excluded by the fourth criterion.

Vehicles that satisfy the first four automobile criteria and have a GVWR of not more than 6,000 pounds are automobiles. These vehicles include passenger cars, multipurpose passenger vehicles, and trucks (as defined in 49 CFR Part 571 pursuant to the National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1381 et seq.) with such a GVWR.

To determine whether vehicles that meet the four criteria and have a GVWR greater than 6,000 pounds and less than 10,000 pounds would be automobiles, the Administrator must determine that setting standards for such vehicles is feasible and either that the standards will result in significant energy conservation or that the vehicles are used for substantially the same purpose as automobiles having a GVWR of 6,000 pounds or less.

This notice sets forth the Administrator's proposed determination that passenger cars with a GVWR greater than 6,000 pounds and less than 10,000 pounds be included in the automobile class since they are vehicles for which average fuel economy standards are feasible and which are used for substantially the same purposes as passenger automobiles with a GVWR of 6,000 pounds or less. The Administrator's determination regarding multipurpose passenger vehicles and trucks in that weight class will be contained in a subsequent notice.

In model year 1976, there were approximately 600,000 passenger cars produced that had a GVWR greater than 6,000 pounds and less than 10,000 pounds. These passenger cars included the larger station wagons (e.g., Buick Estate Wagon V-8, Chevrolet V-8 Wagon, and Plymouth Gran Fury Wagon) and larger sedans (e.g., Cadillac (except the Seville), Chrysler New Yorker, and Lincoln Continental). The agency proposes to determine that these heavy (i.e., having a

GVWR greater than 6,000 pounds and less than 10,000 pounds) passenger cars are automobiles.

It has been tentatively determined that the heavy passenger car is a type of vehicle for which average fuel economy standards are feasible. The feasibility of standards for light (i.e., having a GVWR of 6,000 pounds or less) passenger cars is evidenced by the Congress' establishment of fuel economy standards to which they are automatically subject. The correctness of Congress' judgment in that matter is confirmed by the availability of a variety of means, including reducing engine size, use of lighter weight materials, and changing axle ratios, for improving the fuel economy of those passenger cars. Since the designs and techniques of the heavy passenger cars, are similar to those of the light passenger cars, the fuel economy of the heavy passenger cars can be improved by the same means used to improve the fuel economy of light passenger cars. Therefore, standards for the heavy passenger cars are also considered feasible.

Further, the passenger automobile standards specified in the statute for model years 1978–1980 and for model year 1985 and thereafter were based upon figures in the DOT–EPA study, "Potential for Motor Vehicle Fuel Economy Improvement," concerning the potential for improving the fuel economy of all passenger cars, not just the light ones. H.R. Rep. No. 340, 94th Cong., 1st Sess. 88 (1975). Congress' reliance on those figures indicates its expectation that the heavier passenger cars would be regulated under Title V.

Both the heavy and the light passenger cars are designed and advertised for substantially the same purpose; i.e., primarily transporting people.

The effect of the determination regarding heavy passenger cars, if finally adopted, may be shortlived. One of the methods by which the manufacturers will be improving the fuel economy of the heavy passenger cars is through downsizing to reduce their weight. General Motors has begun taking this step in the 1977 model year. As a result, the number of passenger cars with a GVWR greater than 6,000 pounds is likely to be approximately 300,000 this model year as compared to 600,000 in model year 1976. By the 1979 model year, General Motors plans to have reduced the weight of all of its passenger cars to under 6,000 pounds GVWR. The other major producers of the heavy passenger cars appear to be moving in the same direction.

Passenger automobiles and nonpassenger automobiles. This notice proposes to define "passenger automobile" as an automobile manufactured primarily for use in the transportation of not more than 10 individuals that is not an automobile capable of off-highway operation. "Nonpassenger automobile" would be defined as an automobile designed either for off-highway operation or to perform any of a list of functions considered characteristic of nonpassenger automobiles.

The requirement that a passenger automobile must be manufactured primarily for use in transporting 10 or fewer people is clearly met by some automobiles and failed by others. By definition (49 CFR 571.1), passenger cars meet the requirement. Typical examples of passenger cars are station wagons that are built on a passenger car chassis, sedans, coupes and sports cars.

Examples of automobiles that fail the requirement appear in the House and Conference reports on Pub. L. 94–163. In discussing the categories of automobiles, the House report states that:

> The passenger automobile category would exclude vehicles not manufactured primarily for transportation of individuals—such as light duty trucks, mobile homes (probably meaning motor homes), and multipurpose vehicles not manufactured primarily for transportation of individuals. H.R. Rep. No. 340, 94th Cong., 1st Sess. 90 (1975).

The Conference report supports the House view by stating that examples of automobiles that are not considered passenger automobiles include "certain light duty trucks, recreational vehicles, and other multipurpose vehicles." S. Rep. No. 516, 94th Cong., 1st Sess. 153 (1975).

More specifically, the automobiles that fail to satisfy the definition of "passenger automobile" include a variety of vehicles that, although designed to transport people, are not manufactured primarily for that purpose. Some of these automobiles are manufactured primarily for transporting property and, as such, possess certain distinct design characteristics. For example, automobiles designed to transport property on an open cargo bed (e.g., pickup trucks) and automobiles designed to provide greater cargo-carrying than passenger-carrying volume (e.g., cargo vans and multistop vehicles) would be excluded from the passenger automobile category since these design characteristics are commonly associated with the function of carrying cargo as a primary purpose. The NHTSA selected the characteristic of greater cargo-carrying than passenger-carrying space as one of the criteria identifying automobile as a nonpassenger automobile since this was considered a convenient and objective way to discriminate between automobiles that should be classified as nonpassenger automobiles and automobiles that should be classified as passenger automobiles.

The cargo-carrying volume of an automobile is defined in the regulation as the volume of that portion of a vehicle intended primarily for carrying cargo. Specifically, the regulation describes that area as either an enclosed space not accessible from the passenger compartment (e.g., trunk) or an enclosed space that is accessible from the passenger compartment whose boundaries are typically the vehicle's rearmost seat (including the third seat in a station-wagon) and its floor, roof, sides, and rearmost interior surface. This latter type of cargo-carrying space is found in the rear of station wagons and cargo vans. There may be situations in which the cargo-carrying space is not bounded in the way described. In such cases, the volume of the space specifically designed by the manufacturer to carry cargo would be computed, using as boundaries those interior surfaces that define the space.

Passenger-carrying volume is defined in the regulation as the sum of a vehicle's front and rear seating volumes. Passenger-carrying volume of a seating area is determined by calculating the product of head room, shoulder room, and leg room dimensions.

The proposed cargo volume and passenger volume have definitions differing in several instances from those that have been defined by EPA in its fuel economy labeling regulation (41 FR 39752) as factors to be used in determining vehicle comparability for labeling purposes. The proposed cargo volume definition differs from EPA's definition in that EPA prescribes different cargo volume dimensions for station wagons and hatchbacks. In measuring the cargo volume of station wagons, EPA uses the rear of the second seat as the forward boundary, while NHTSA proposes to use the rear of the rearmost seat. In some cases, the rearmost seat in a station wagon is the third seat. In those station wagons, the NHTSA method would yield almost no cargo volume. In measuring the cargo volume of hatchbacks, EPA uses the top of the second seat as the upper boundary of the cargo volume. NHTSA proposes to use the ceiling as the upper boundary. Thus, the NHTSA method would yield more cargo volume than the EPA method.

Despite these differences in the NHTSA and EPA measurement techniques, the existence of both cargo space definitions would not necessarily mean that an automobile's cargo volume would have to be measured twice, once under each definition. In the case of a station wagon with a third seat, it would be so obvious that the passenger-carrying volume that the automobile manufacturer would not actually have to measure the interior volume to determine whether the automobile falls into the passenger or nonpassenger category.

The proposed passenger volume definition differs from the EPA definition with respect to large station wagons with front, middle, and rear seats. Although the proposed definition would provide for measuring the passenger volume of all three seats; the EPA definition would provide for measuring only the front and middle seats.

The differences in the EPA and NHTSA definitions arise largely from the different purposes of those definitions and the different constraints placed on the specification of the definitions. The NHTSA must have a single definition that applies to all automobiles in order to distinguish passenger automobiles from nonpassenger automobiles. Thus, the definition must be suited to measuring the cargo and passenger volumes of a wide range of vehicle configurations; e.g. station wagons, hatchbacks, and vans. The EPA definitions apply only to passenger automobiles.

The NHTSA invites comments on the use of cargo and passenger volume defi-

nitions that differ slightly from those used by the EPA. The agency is especially interested in information regarding the possible consequences of using the different definitions and regarding methods, including use of the EPA definitions, for reducing those differences while serving NHTSA's broader purposes.

Other types of automobiles not manufactured primarily to transport individuals are those manufactured for a specific recreational purpose and those equipped with sleeping surfaces, such as beds, and household conveniences, such as a sink, stove, refrigerator, or toilet to provide temporary living quarters. Vehicles designed for these purposes include motor homes, campers, and other recreational vehicles. Such vehicle types would be specifically excluded from the passenger automobile category. Many of these vehicles, such as campers and utility vehicles, would qualify as automobiles capable of off-highway operation and on that basis too would be excluded from the passenger automobile category.

More difficult to categorize are the hybrid vehicles that are derived from another vehicle type. The most common example is the van equipped with rear seats of which there are approximately 12,000 with a GVWR of 6,000 pounds or less manufactured and sold each model year (this figure is based upon information furnished by manufacturers and presently in this docket, in addition to data contained in *Wards' Automotive Yearbook*, 1976). It is derived from the cargo van. Other examples are the El Camino/Sprint, which is derived from the Chevelle, and the Ranchero, which is derived from the Torino. About 58,000 of these vehicles were manufactured in model year 1975.

The purposes for which these, or any other automobiles, are manufactured are not solely dependent upon the manufacturer's subjective state of mind. The purpose for which an automobile is manufactured may be discerned from the manufacturer's conduct in light of the surrounding circumstances. The surrounding circumstances include the design capabilities of the automobile, the uses for which it is advertised, and the uses to which it is actually put. The two most important circumstances are the design capabilities and actual uses of an automobile. In the case of passenger vans, El Caminos/Sprint, and Rancheros, the agency possesses definitive information on their designed capabilities and advertised uses only. Based on this information, the agency proposes these automobiles be categorized as nonpassenger automobiles and subjected to the fuel economy standard(s) applicable to that vehicle type.

Thus, the proposed categorization scheme would parallel the scheme used under the Vehicle Safety Act. Further, the differences between the proposed scheme and the Clean Air Act scheme are minor. The passenger automobile category would be slightly less inclusive than the light duty vehicle category and the nonpassenger automobile category would be slightly more inclusive than the light duty truck category. The difference lies in the treatment of passenger car derivatives; i.e., the El Camino/Sprint and Ranchero. The proposed scheme would place those derivatives with multipurpose passenger vehicles and trucks in the nonpassenger automobile category; while the Clean Air Act scheme places the derivatives with passenger cars in the light duty vehicle category.

The NHTSA published an NPRM (41 FR 52087) on November 26, 1976, proposing that nonpassenger automobiles be required to meet and average fuel economy level of 18.5 mpg during model year 1978. Although all nonpassenger automobiles manufactured during that model year would, under the proposal, be required to meet a single fuel economy level, the agency has the authority under section 502(b) of Title V to establish classes of nonpassenger automobiles and to set separate standards for each class. The November 26, 1976, NPRM asks that comments be submitted concerning the benefits and other effects of establishing multiple classes of nonpassenger automobiles. Depending upon the information acquired by the agency in response to its request, vans and other types of nonpassenger automobiles could at some future date be regulated as individual vehicle classes with individual average fuel economy standards.

Vans equipped with rear seats are designed for the purpose of transporting property as well as for transporting people. They are generally equipped with strong suspension components that enable them to carry heavy loads, loads significantly heavier than those carried by even large station wagons built on a passenger car chassis. Vans with a single row of rear seats have cargo-carrying space very similar in size to that of a standard pickup truck. Further, the rear seats in a van can be fairly easily removed to increase the cargo-carrying space. General Motors equips the rear seats of its vans with quick-release mechanisms that allow instant removal. Other manufacturers install rear seats either with quick-release mechanisms or in a manner that permits their removal with simple home tools.

Removal of the rear seats from these vans would also enable them to serve a recreational purpose. With the rear seats removed, users may place sleeping bags and other camping equipment in the available space.

Vehicles whose design permits easy conversion to accommodate more than one primary function, as in the case of vans with rear seats, are not manufactured primarily to transport individuals. The single feature that enables a vehicle to be converted so that it can be primarily used for more than one purpose is removable seats. Vehicles whose rear seats can be removed by means installed for that purpose by the manufacturer or with simple home tools, creating a flat, floor level, cargo area, have the capability of satisfying transportation needs when the seats are in place, and recreational and cargo-carrying needs when the seats are removed. Automobiles with such a feature are therefore excluded from the passenger automobile category.

Although station wagons built on passenger car chassis have a convertibility feature, fold-down rear seats, somewhat similar to the removable van seat, this characteristic would not be sufficient to exclude them from the passenger automobile category. In contrast to vans, station wagons are designed so that their seats are not removable. Since the basic seat structure is permanently installed, the additional cargo space made available when the rear seat backs are collapsed is significantly smaller than the additional space made available by the removal of van seats. Station wagons built on passenger car chassis have a limited amount of available cargo area and are not equipped to carry heavy loads. Vans, which are constructed on truck chassis, have far greater cargo space at their disposal and are designed to carry heavier weight. For these reasons, station wagons built on passenger car chassis are considered to be most properly classified as passenger automobiles.

For similar reasons, the agency proposes to treat pickup vehicles constructed on passenger car frames as nonpassenger automobiles. From a design standpoint, El Caminos/Sprints and Rancheros appear to be manufactured at least as much for the carrying of property as for the carrying of people. Their similarity to pickup trucks built on truck chassis is indicated by their classification in the EPA/FEA 1977 Gas Mileage Guide as standard pickup trucks. These vehicles differ from their passenger car counterparts in that the former provide seating space for 3 persons while the later provide space for 6 persons. They differ also in that their property carrying capacity is substantially greater than that of their counterparts.

The procedures prescribed by the EPA for testing the fuel economy of passenger automobiles are the procedures used for testing light duty vehicle emissions under the Clean Air Act, 42 U.S.C. 1857f. The EPA appears likely to use the light truck emissions test procedures for testing the fuel economy of nonpassenger automobiles. If that approach is adopted, simultaneous testing of El Caminos/Sprints and Rancheros for emissions and fuel economy purposes may not be feasible. These vehicles are placed in the same category, light duty vehicles, as passenger cars and thus are tested as light duty vehicles for emissions purposes. This notice proposes, however, to place the El Caminos/Sprints and Rancheros with multipurpose passenger vehicles and trucks; vehicles which EPA classifies as light trucks. If extra testing tasks are required, the effort, time, and cost should be minimal.

The agency wishes to reemphasize that the proposal to place vans with rear seats and the El Camino/Sprint and Ranchero in the nonpassenger automo-

bile category is primarily based upon the design capabilities of those automobiles. If those capabilities change or if information is received showing that these vehicles are used for substantially different purposes than those suggested by their design, the agency will reconsider its categorization.

Implementation of the requirement that passenger automobiles not be capable of off-highway operation is dependent upon identification of a feature or features, other than 4-wheel drive, that equips automobiles for off-highway operation. Such a feature must distinguish the automobile with off-highway capability from automobiles lacking that capability. The NHTSA examined data from a large number of automobiles to identify characteristics that enable some automobiles to negotiate and withstand off-highway terrain. The agency was able to identify a variety of these characteristics.

The most common characteristic was high ground clearance. This characteristic enables automobiles to be operated over uneven terrain without their undercarriage or bumpers becoming grounded. The agency proposes to establish high ground clearance as a feature design to enable automobiles to operate off highways. After comparing the ground clearance of automobiles used on highways only with automobiles used off as well as on the highway, the agency derived a list of dimensions that comprise high ground clearance. Any automobile that has at least 4 of the following 5 dimensions would be considered to have high ground clearance:

(1) Approach angle of not less than 28 degrees;

(2) Breakover angle of not less than 14 degrees;

(3) Departure angle of not less than 20 degrees;

(4) Running clearance of not less than 8 inches; and

(5) Axle clearance of not less than 7 inches.

Automobile approach and departure angles represent the steepest grades a vehicle is capable of entering and traveling up from a flat surface without the portion of the automobile forward of the front tires, or rearward of the rear tires, respectively, contacting the ground. The breakover angle of an automobile describes the steepest incline which an automobile can travel up, then move onto a flat surface without its undercarriage between the front and rear wheels contacting the ground. An automobile's running clearance and axle clearance describe the distance between the ground and the two points on the automobile, other than its wheel and suspension assemblies, that are closest to the ground. The running and axle clearances dictate the height of ground obstacles an automobile is capable of passing over.

High ground clearance is the only feature proposed as being designed to equip an automobile for off-highway operation. Treating other characteristics that might enable a vehicle to operate off-road as off-highway features does not appear necessary since automobiles possessing one or more of them generally have high ground clearance as well. The agency specifically invites comments on the sufficiency of that single feature for identifying off-highway automobiles. If treating other design characteristics as off-highway features appears appropriate, the agency will consider initiating further rulemaking.

In consideration of the foregoing, it is proposed that Title 49, Code of Federal Regulations, be amended by adding a new Part 523, *Vehicle Classification*, to read as set forth below.

Interested persons are invited to submit comments on the proposal. 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 10 copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

In accordance with Executive Order 11821, a review of this action was undertaken to determine whether it met the criteria for a "major action" requiring preparation of an Inflationary Impact Statement. The review indicated that the costs and economic impacts of this action are less than a "major" action and that therefore no IIS is needed.

Comment closing date: January 19, 1977.

Proposed effective date: Date of publication of the final rule.

(Sec. 301, Pub. L. 94-163, 80 Stat. 901 (15 U.S.C. 2001))

Issued on December 15, 1976.

JOHN W. SNOW,
Administrator.

Part 523 is added to Title 49 as follows:

PART 523—VEHICLE CLASSIFICATION

Sec.
523.1 Scope.
523.2 Definitions.
523.3 Automobiles.
523.4 Passenger automobiles.
523.5 Nonpassenger automobiles.

AUTHORITY: Sec. 301, Pub. L. 94-163, 80 Stat. 901 (15 U.S.C. 2001).

§ 523.1 Scope.

This part establishes categories of vehicles that are subject to Title V of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2001 et seq.

§ 523.2 Definitions.

"Approach angle" means the smallest angle, in a plan side view of an automobile, formed by the level surface on which the automobile is standing and a line tangent to the front tire static loaded radius arc and touching the underside of the automobile forward of the front tire.

"Axle clearance" means the distance from the level surface on which an automobile is standing to the lowest point on the axle differential of the automobile.

"Breakover angle" means the supplement of the largest angle, in the plan side view of an automobile, that can be formed by two lines tangent to the front and rear static loaded radii arcs and intersecting at a point on the underside of the automobile.

"Cargo-carrying volume" means the total volume in cubic feet rounded to the nearest 0.1 cubic feet of either an automobile's enclosed nonseating space that is intended primarily for carrying cargo and is not accessible from the passenger compartment, or the space intended primarily for carrying cargo bounded in the front, in the typical configuration, by a vertical plane that is perpendicular to the longitudinal centerline of the automobile and passes through the rearmost point on the rearmost seat and elsewhere by the automobile's interior surfaces.

"Curb weight" is defined the same as "vehicle curb weight" in 40 CFR Part 86.

"Departure angle" means the smallest angle, in a plan side-view of an automobile, formed by the level surface on which the automobile is standing and a line tangent to the rear tire static loaded radius arc and touching the underside of the automobile rearward of the rear tire.

"Gross vehicle weight rating" means the value specified by the manufacturer as the loaded weight of a single vehicle.

"Passenger-carrying volume" means the sum in cubic feet, rounded to the nearest 0.1 cubic feet, of a vehicle's front and rear seat volumes, calculated as follows, with the head room, shoulder room, and leg room dimensions determined in accordance with the procedures outlined in Society of Automotive Engineers Recommended Practice J1100a, Motor Vehicle Dimensions (Report of Human Factors Engineering Committee, Society of Automotive Engineers, approved September 1973 and last revised September 1975.)

(a) For front seat volume, divide 1,728 into the product of the following SAE dimensions, measured in inches to the nearest 0.1 inches, and round the quotient to the nearest 0.001 cubic feet.

(1) H61—Effective head room—front.
(2) W3—Shoulder room—front.
(3) L34—Maximum effective leg room—accelerator.

(b) For the volume of rear seats, divide 1,728 into the product of the following SAE dimensions, measured in inches to the nearest 0.1 inches, and round the quotient to the nearest 0.001 cubic feet.

(1) H63—Effective head room—second.
(2) W4—Shoulder room—second.
(3) L51—Minimum effective leg room—second.

"Running clearance" means the distance from the level surface on which an automobile is standing to the lowest point on the automobile, excluding unsprung weight.

"Static loaded radius arc" means a portion of a circle whose center is the center of a standard tire-rim combination of an automobile and whose radius is the distance from that center to the level surface on which the automobile is standing, measured with the automobile at curb weight, the wheel parallel to the vehicle's longitudinal centerline, and the tire inflated to the manufacture's recommended pressure.

"Temporary living quarters" means a space in the interior of an automobile in which people may temporarily live and which includes sleeping surfaces, such as beds, and household conveniences, such as a sink, stove, refrigerator, or toilet.

§ 523.3 Automobile.

(a) An automobile is any 4-wheeled vehicle propelled by fuel which is manufactured primarily for use on public streets, roads, and highways (except any vehicle operated exclusively on a rail or rails), and that either—

(1) Is rated at 6,000 pounds gross vehicle weight or less; or

(2) Which—

(i) Is rated more than 6,000 pounds gross vehicle weight but less than 10,000 pounds gross vehicle weight,

(ii) Is a type of vehicle for which the Administrator determines, under Paragraph (b) of this section, average fuel economy standards are feasible, and

(iii) Is a type of vehicle for which the Administrator determines, under Paragraph (b) of this section, average fuel economy standards will result in significant energy conservation, or is a type of vehicle which the Administrator determines, under Paragraph (b) of this section, is substantially used for the same purposes as vehicles described in paragraph (a)(1) of this section.

(b) A vehicle that is rated at more than 6,000 pounds and less than 10,000 pounds gross vehicle weight, is manufactured primarily for use in the transportation of not more than 10 individuals, and does not meet the criteria in § 523.5(b)(1) for automobiles capable of off-highway operation is a type of vehicle—

(1) For which average fuel economy standards are feasible, and

(2) Which is substantially used for the same purposes as vehicles described in paragraph (a)(1) of this section.

§ 523.4 Passenger automobile.

A passenger automobile is any automobile (other than an automobile capable of off-highway operation) manufactured primarily for use in the transportation of not more than 10 individuals.

§ 523.5 Nonpassenger automobile.

(a) A nonpassenger automobile is an automobile either designed for off-highway operation, as described in paragraph (b) of this section, or primarily designed to perform at least one of the following functions:

(1) Transport more than 10 persons;
(2) Provide temporary living quarters;
(3) Transport property on an open bed;
(4) Provide greater cargo-carrying than passenger-carrying volume; or
(5) Permit expanded use of the automobile for cargo-carrying or other nonpassenger-carrying purposes through removal of seats by means installed for that purpose by the automobile's manufacturer or with simple tools, such as screwdrivers and wrenches, so as to create a flat, floor level, surface extending from the forwardmost point of installation of those seats to the rear of the automobile's interior.

(b) An automobile capable of off-highway operation is an automobile—

(1) That either—

(i) Has 4-wheel drive; or

(ii) Is rated at more than 6,000 pounds gross vehicle weight; and

(2) That has at least four of the following characteristics (see Figure 1) calculated when the automobile is at curb weight, on a level surface, with the front wheels parallel to the automobile's longitudinal centerline, and the tires inflated to the manufacturer's recommended pressure—

(i) Approach angle of not less than 28 degrees.

(ii) Breakover angle of not less than 14 degrees.

(iii) Departure angle of not less than 20 degrees.

(iv) Running clearance of not less than 8 inches.

(v) Axle clearance of not less than 7 inches.

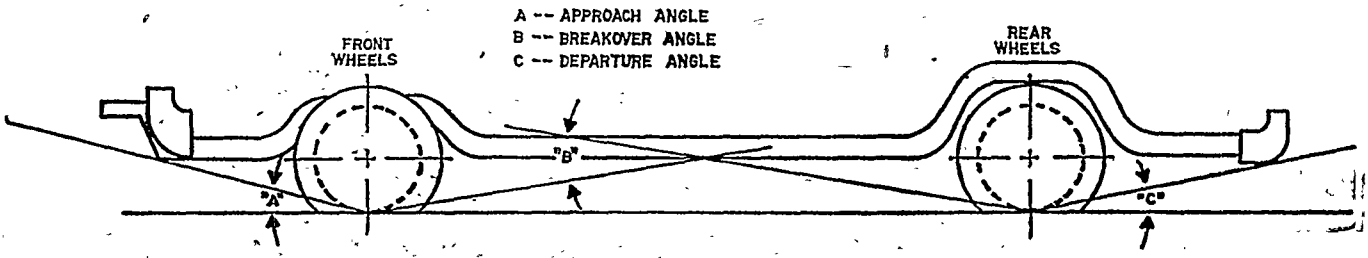

Fig. I

[FR Doc.76-37339 Filed 12-17-76;8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

CIVIL AERONAUTICS BOARD

[Docket 29198; Order 76-12-78]

ALASKA FARES INVESTIGATION

Supplemental Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 14th day of December, 1976.

By Order 76-9-38, adopted September 8, 1976, the Board made Wien Air Alaska, Inc. (Wien) a party to the *Alaska Fares Investigation*, instituted by Orders 76-4-180, April 30, 1976, and 76-8-17, August 3, 1976. This action was taken to insure a complete record in the proceedings, since Wien competes with Alaska Airlines, Inc. (Alaska) in the Anchorage-Fairbanks and Fairbanks-Juneau markets. The proceeding as currently constituted comprehends an investigation of the pertinent fares of Alaska, Northwest Airlines, Inc., Western Air Lines, Inc., and Pan American World Airways, Inc., and it is appropriate that Wien's fares in the Anchorage-Fairbanks, Fairbanks-Juneau, and Anchorage-Juneau markets also be investigated herein.

Through inadvertence, the ordering paragraph of Order 76-8-17, which instituted an investigation of Pan American's fares between Fairbanks and New York, failed to include that carrier's Fairbanks-Seattle and Fairbanks-Portland fares, and we will herein order an investigation of such fares and consolidate it into Docket 29198. In addition, we are correcting the ordering paragraph to cure certain technical errors.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a), 403, 404, and 1002 thereof,

It is ordered that: 1. An investigation be instituted to determine whether the rates, charges, and provisions applicable to Wien Air Alaska, Inc., between Anchorage and Fairbanks and between Fairbanks and Juneau, shown on 6th Revised Pages 184 and 189, and between Anchorage and Juneau, shown on 8th Revised Page 185, of Airline Tariff Publishing Company, Agent, Tariff C.A.B. No. 258, and the rules, regulations, and practices affecting such rates, charges, and provisions, including subsequent revisions or reissues thereof, are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, or otherwise unlawful, and, if found unlawful, to determine and prescribe the lawful rates, charges, and provisions, and rules, regulations, and practices affecting such provisions;

2. An investigation be instituted to determine whether the rates, charges, and provisions applicable to Pan American World Airways, Inc., between Fairbanks, on the one hand, and New York, Seattle, and Portland, Ore., on the other, shown on 5th Revised Page 141 of Airline Tariff Publishing Company, Agent, Tariff C.A.B. No. 258, and the rules, regulations, and practices affecting such rates, charges, and provisions, including subsequent revisions or reissues thereof, are or will be unjust, unreasonable, unjustly discriminatory, unduly preferential, or otherwise unlawful, and, if found to be unlawful, to determine and prescribe the lawful rates, charges, and provisions, and rules, regulations, and practices affecting such provisions;

3. The investigations ordered in paragraphs 1 and 2 be consolidated into Docket 29198; and

4. Copies of this order be served upon Alaska Airlines, Inc., Northwest Airlines, Inc., Pan American World Airways, Inc., Western Air Lines, Inc., and Wien Air Alaska, Inc.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

JAMES R. DERSTINE,
Acting Secretary.

[FR Doc.70—37296 Filed 12-17-78;8:45 am]

[Docket 23080-2; Order 76-12-60]

PRIORITY AND NONPRIORITY DOMESTIC SERVICE MAIL RATES—PHASE 2

Order Fixing Temporary Mail Rates

Issued under delegated authority December 10, 1976.

By Order 76-11-129, dated November 24, 1976, the Board directed the parties to show cause why the Board should not fix temporary fuel surcharges to the linehaul element of the several temporary domestic service mail rates, effective for the annual periods beginning June 22, 1974, and June 21, 1975, and on and after June 19, 1976. The proposed surcharges reflect the estimated impact of escalating fuel costs on the overall domestic mail transportation costs.

The time designated for filing notice of objection has elapsed and no notice of objection or answer to the order has been filed by any party. All parties have therefore waived the right to a hearing and all other procedural steps short of a decision by the Board fixing the proposed service mail rates.

In the absence of objections to the rates proposed, the findings and conclusions set forth in Order 76-11-129 are hereby reaffirmed and adopted.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly sections 204(a) and 406 thereof, the Board's Regulations 14 CFR Part 302 and the authority delegated by the Board in 14 CFR 385.16(g);

It is ordered that: 1. Subparagraph (b) of ordering paragraph 1 of Order 74-10-94, October 18, 1974, be and it hereby is amended so as to fix the following linehaul charges per nonstop great-circle ton-mile to be paid by the Postmaster General:

(a) From April 27, 1974, through June 21, 1974, 18.75 cents for sack mail and standard container mail, 10.65 cents for daylight container mail and 13.67 cents for parcel air lift (PAL) mail;

(b) From June 22, 1974, through June 20, 1975, 19.61 cents for sack mail and standard container mail, 11.14 cents for daylight container mail and 14.30 cents for parcel air lift (PAL) mail;

(c) From June 21, 1975, through June 18, 1976, 20.01 cents for sack mail and standard container mail, 11.37 cents for daylight container mail and 14.59 cents for parcel air lift (PAL) mail; and

(d) On and after June 19, 1976, 19.89 cents for sack mail and standard container mail, 11.30 cents for daylight container mail and 14.50 cents for parcel air lift (PAL) mail;

2. The temporary service mail rates established herein shall be paid in their entirety by the Postmaster General and shall be subject to retroactive adjustment to March 28, 1973, as may be required by the order establishing final service mail rates in Docket 23080-2; and

3. This order shall be served upon Airlift International, Inc., Air New England, Inc., Alaska Airlines, Inc., Allegheny Airlines, Inc., American Airlines, Inc., Braniff Airways, Inc., Continental Air Lines, Inc., Delta Air Lines, Inc., Eastern Air Lines, Inc., The Flying Tiger Line Inc., Frontier Airlines, Inc., Hughes Air Corp., National Airlines, Inc., North Central Airlines, Inc., Northwest Airlines, Inc., Ozark Air Lines, Inc., Pan American World Airways, Inc., Piedmont Aviation, Inc., Seaboard World Airlines, Inc., Southern Airways, Inc., Texas International Airlines, Inc., Trans World Airlines, Inc., United Air Lines, Inc., Western Air Lines, Inc., and the Postmaster General.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations 14 CFR 385.50, may do so within ten days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless within such period a petition for review thereof is filed, or the

Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc.76-37295 Filed 12-17-76;8:45 am]

[Docket 30170]

WEST COAST-ALASKA INVESTIGATION

Prehearing Conference

Notice is hereby given that a prehearing conference in the above-entitled matter is assigned to be held on February 24, 1977, at 9:30 a.m. (local time), in Room 1003, Hearing Room A, North Universal Building, 1875 Connecticut Avenue, N.W., Washington, D.C., before Administrative Law Judge Alexander N. Argerakis.

In order to facilitate the conduct of the conference, parties are instructed to submit one copy to each party and six copies to the Judge of (1) proposed statements of issues; (2) proposed stipulations; (3) proposed requests for information and for evidence; (4) statements of positions; and (5) proposed procedural dates. The Bureau of Operating Rights will circulate its material on or before January 27, 1977, and the other parties on or before February 11, 1977. The submissions of the other parties shall be limited to points on which they differ with the Bureau, and shall follow the numbering and lettering used by the Bureau to facilitate cross-referencing.

Dated at Washington, D.C., December 13, 1976.

ROSS I. NEWMANN,
Chief Administrative Law Judge.

[FR Doc.76-37294 Filed 12-17-76;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

TELECOMMUNICATIONS EQUIPMENT TECHNICAL ADVISORY COMMITTEE

Partially Closed Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. V, 1975), notice is hereby given that a meeting of the Telecommunications Equipment Technical Advisory Committee will be held on Friday, January 14, 1977, at 10:00 a.m. in Room 4833, Main Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C.

The Telecommunications Equipment Technical Advisory Committee was initially established on April 5, 1973. On March 12, 1975, the Acting Assistant Secretary for Administration approved the recharter and extension of the Committee for two additional years, 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, Bureau of East-West Trade, with respect to questions involving technical matters, worldwide availability and actual utilization of production and technology, and licensing procedures which may affect the level of export controls applicable to telecommunications equipment, including technical data related thereto, and including those whose export is subject to multilateral (COCOM) controls.

The Committee meeting agenda has five parts:

GENERAL SESSION

(1) Opening remarks by the Chairman.
(2) Presentation of papers or comments by the public.
(3) Presentation of preliminary Volume I Findings by Committee members.
(4) Nomination and election of a new Chairman.

EXECUTIVE SESSION

(5) Discussion of matters properly classified under Executive Order 11652, 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 submitted at any time before or after the meeting.

With respect to agenda item (5), the Acting Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formerly determined on January 23, 1976, pursuant to section 10(d) of the Federal Advisory Committee Act that the matters to be discussed in the Executive Session should be exempt from the provisions of the Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552(b)(1), i.e., it is specifically required by Executive Order 11652 that they be kept confidential in the interest of the national security. All materials to be reviewed and discussed by the Committee during the Executive Session of the meeting have been properly classified under the Executive Order. All Committee members have appropriate security clearances.

Copies of the minutes of the open portion of the meeting will be available upon written request addressed to the Freedom of Information Officer, Domestic and International Business Administration, Room 3100, U.S. Department of Commerce, Washington, D.C. 20230.

For further information, contact Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, Domestic and International Business Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202-377-4196.

The Complete Notice of Determination to close portions of the meetings of the Telecommunications Equipment Technical Advisory Committee and of any subcommittees thereof, was published in the FEDERAL REGISTER on April 30, 1976 (41 FR 18129).

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of East-West Trade, Department of Commerce.

[FR Doc.76-37197 Filed 12-17-76;8:45 am]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COTTON TEXTILE PRODUCTS FROM INDIA

Additional Officials of the Government of India Authorized to Issue Export Visas a Certifications for Exemption

DECEMBER 14, 1976.

On March 22, 1976, there was published in the FEDERAL REGISTER (41 FR 11869) a notice dated March 16, 1976 which announced amendments to the certification procedure for certain cotton textile products which are exempt from the Bilateral Cotton Textile Agreement of August 6, 1974, as amended, between the Governments of the United States and India. The notice stated that the names of officials authorized by the Government of India to issue both export visas and certifications for exemption would be published.

The Government of India has designated Messrs. R. K. Bhagotra and G. K. Bhatnagar to issue export visas and certifications for exempt cotton textile products, in addition to officials named previously. (See 41 FR 15441 and 24623.)

ROBERT E. SHEPHERD,
Acting Chairman, Committee for the Implementation of Textile Agreements, and Acting Deputy Assistant Secretary for Resources and Trade Assistance.

[FR Doc.76-37360 Filed 12-17-76;8:45 am]

SOCIALIST REPUBLIC OF ROMANIA

Announcing Import Restraint Levels for Certain Wool and Man-Made Fiber Textile Products

DECEMBER 16, 1976.

On October 21, 1976, there was published in the FEDERAL REGISTER (41 FR 46512) a notice dated October 18, 1976, announcing forthcoming consultations concerning textile trade with the Governments of Japan, Romania and the Republic of China and soliciting public comment thereon.

On November 1-3, 1976, the United States Government held consultations with the Government of the Socialist Republic of Romania concerning the rapidly increasing level of exports to the United States of men's and boys' suits of wool and man-made fibers in Categories 120 and 237. No agreement was reached on a solution to this problem. Recent data confirm that imports have continued to accelerate, causing disruption to the U.S. market. A market state-

ment is available for inspection in the Office of Textiles, Room 2815, U.S. Department of Commerce, 14th & Constitution Avenue, N.W., Washington, D.C. 20230.

Under the terms of Article 3.6 of the GATT Arrangement Regarding International Trade in Textiles, the Committee for the Implementation of Textile Agreements has informed the Government of the Socialist Republic of Romania that, effective on December 23, 1976 and for the twelve-month period extending through December 22, 1977, imports of wool textile products in Category 120 will be limited to 82,500 units and man-made fiber textile products in Category 237, to 101,000 units unless this order is modified or withdrawn as a result of agreement between the Governments of the United States and the Socialist Republic of Romania on other measures to avoid further market disruption in these categories.

Further consultations with the Government of the Socialist Republic of Romania are anticipated. The letter published below is subject to termination or revision as a result of those consultations.

Accordingly, there is published below a letter of December 16, 1976, from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs directing that, effective on December 23, 1976 and extending through December 22, 1977, the amounts of wool textile products in Category 120 and man-made fiber textile products in Category 237, produced or manufactured in Romania, which may be entered or withdrawn from warehouse for consumption in the United States, be limited to the designated levels.

ROBERT E. SHEPHERD,
Acting Chairman, Committee for the Implementation of Textile Agreements, and Acting Deputy Assistant Secretary for Resources and Trade Assistance, Department of Commerce.

DECEMBER 16, 1976.

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

DEAR MR. COMMISSIONER: Under the terms of the Arrangment Regarding International Trade in Textiles done at Geneva on December 20, 1973, and in accordance with the provisions of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective on December 23, 1976 and for the twelve-month period extending through December 22, 1977, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in Category 120 and man-made fiber textile products in Category 237, produced or manufactured in Romania, in excess of the following levels of restraint, regardless of the date of export:

Category:	*Twelve-Month Level of Restraint, units*
120	82,500
237	101,000

Wool textile products in Category 120 and man-made fiber textile products in Category 237 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) prior to the effective date of this directive shall not be denied entry under this directive.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on February 3, 1975 (40 F.R. 5010), as amended on December 31, 1975 (40 F.R. 60220).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

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

Sincerely,

ROBERT E. SHEPHERD,
Acting Chairman, Committee for the Implementation of Textile Agreements, and Acting Deputy Assistant Secretary for Resources and Trade Assistance, U.S. Department of Commerce.

[FR Doc.76-37415 Filed 12-17-76;8:45 am]

COMMODITY FUTURES TRADING COMMISSION

REGISTRATION AS COMMODITY TRADING ADVISORS, COMMODITY POOL OPERATORS

Changes In Forms 5-R and 6-R

The Commodity Futures Trading Commission has amended an existing instruction to, and made certain minor changes in the language and format of, Forms 5-R and 6-R for the registration of Commodity Trading Advisors and Commodity Pool Operators under section 4n(1) of the Commodity Exchange Act, as amended.

Changes include amendment to the instructions on each form to provide the new address of the Commission's Eastern Regional Office (to which a completed application must be sent), changes in reference to the registration period and other technical changes.

Copies of the amended Forms 5-R and 6-R are available for immediate use from any office of the Commodity Futures Trading Commission.

Issued in Washington, D.C., on December 15, 1976.

WILLIAM T. BAGLEY,
Chairman, Commodity Futures Trading Commission.

[FR Doc.76-37205 Filed 12-17-76;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF SCIENTIFIC ADVISORY BOARD

Meeting

DECEMBER 10, 1976.

The USAF Scientific Advisory Board Ad Hoc Committee on Advanced ICBM Technology will hold a meeting on January 18 and 19, 1977 in the Space and Missile Systems Organization facilities at Norton Air Force Base and Los Angeles Air Force Station from 8:30 a.m. to 5:00 p.m. both days.

The Committee will receive classified briefings and conduct classified discussions concerning an in-depth review of the technical aspects of the advanced ICBM program.

The meeting concerns matters listed in Section 552(b) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information contact the Scientific Advisory Board Secretariat at (202) 697-8845.

FRANKIE S. ESTEP,
Air Force Federal Register Liaison Officer, Directorate of Administration.

[FR Doc.76-37270 Filed 12-17-76;8:45 am]

USAF SCIENTIFIC ADVISORY BOARD

Meeting

DECEMBER 10, 1976.

The USAF Scientific Advisory Board Munitions-Armament Panel wil hold a meeting on January 20 and 21, 1977 at the Space and Missile Systems Organization, Los Angeles, from 8:30 a.m. to 5:00 p.m. both days.

The Panel will receive classified briefings and conduct classified discussions concerning issues surrounding the reentry vehicle for the advanced ICBM program.

The meeting concerns matters listed in Section 552(b) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information contact the scientific Advisory Board Secretariat at (202) 697-8845.

FRANKIE S. ESTEP,
Air Force Federal Register Liaison Officer, Directorate of Administration.

[FR Doc.76-37271 Filed12-17-76; 8:45 am]

Department of the Navy

CHIEF OF NAVAL OPERATIONS EXECUTIVE PANEL ADVISORY COMMITTEE

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Chief of Naval Operations Executive Panel Advisory Committee will hold a closed meeting on January 6, 1977 at Pan Heuristics Division, Science Applications, Inc., 1801 Avenue of the Stars, Los Angeles, California. The session will commence at 8:30 a.m. and terminate at 5:30 p.m.

The agenda will consist of matters required by Executive Order to be kept secret in the interest of national defense, including a comprehensive discussion of the Navy's strategic nuclear capabilities.

Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

Dated: December 15, 1976.

JOHN S. JENKINS,
Captain, JAGC, U.S. Navy, Assistant Judge Advocate General (Civil Law).

[FR Doc.76-37211 Filed 12-17-76;8:45 am]

SECRETARY OF THE NAVY'S ADVISORY BOARD ON EDUCATION AND TRAINING (SABET)

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Secretary of the Navy's Advisory Board on Education and Training (the Board) will meet on January 6-7, 1977, at the Management Information Center, Chief of Naval Education and Training, Pensacola, Florida. The January 6 session will commence at 8:45 a.m. and terminate at 4:30 p.m. and the January 7 session will commence at 8:45 a.m. and terminate at 2 p.m.

The Board will receive a series of informal briefings on matters of continuing interest to the Board, including the Navy Campus for Achievement, women at the Naval Academy, the use of satellites for transmission of training to remote sites, and the impact of the "new GI Bill." The Board will then review studies concerning the military/civilian faculty mix at the Naval Academy; the status of implementation of Instructional Systems Development procedures in the training command; the future of the education specialist civilian work force in the training command; trends for predicting academic success as emerging in the civilian post-secondary education community; and trends in voluntary education, such as the Community College of the Air Force and the Education Commission of the States Task Force on Voluntary Education. Based on these briefings and discussions, the Board will then develop recommendations and comments to be provided to the Secretary of the Navy.

Dated: December 15, 1976.

JOHN S. JENKINS,
Captain, JAGC, U.S. Navy, Assistant Judge Advocate General (Civil Law).

[FR Doc.76-37210 Filed 12-17-76;8:45 am]

Department of the Navy

REGIONAL DISCHARGE REVIEW SYSTEM

Hearing Locations

In FEDERAL REGISTER Document 75-27207, published on October 9, 1975, 40 FR 47524, the Department of the Navy published notice that, beginning in November 1975, the Navy Discharge Review Board will convene and conduct hearings for a number of days each quarter in each of the following locations: Chicago, Illinois; New Orleans, Louisiana; and San Francisco, California. In FEDERAL REGISTER Document 76-20384, published on July 15, 1976, 41 FR 29190, the Department of the Navy published notice that approval had been granted for the Navy Discharge Review Board to conduct hearings, within assigned resources, on a noncontinuing basis, in cities other than Chicago, New Orleans, and San Francisco, when the concentration of petitioners in a geographical area so warrants. This expanded availability is to facilitate the opportunity for personal appearances before the Board.

The following itinerary for the first six months of calendar year 1977 has been approved, but remains subject to modification if necessary:

January—Atlanta, Georgia, Dallas, Texas, New Orleans, Louisiana.
February—Denver, Colorado, San Diego, California, San Francisco, California.
March—Chicago, Illinois, Kansas City, Kansas.
April—Boston, Massachusetts.
May—San Diego, California, San Francisco, California, Seattle, Washington.
June—Chicago, Illinois, St. Paul, Minnesota.

Any former member of the Navy or Marine Corps who desires to obtain a review of his or her discharge, either in Washington, D.C. or in one of the other cities in which the Board will conduct hearings, should file an application with the Board using DD Form 293. If a personal appearance is requested, the petitioner should indicate which scheduled location is preferred. Application forms (DD 293) can be obtained from, and the completed applications should be mailed to, the following address:

Navy Discharge Review Board, Suite 905, 801 North Randolph Street, Arlington, Va. 22203.

Notice is hereby given that, since the foregoing itinerary is subject to modification and since, following receipt of a new application, the Navy Discharge Review Board must obtain the petitioner's military records before a hearing may be scheduled, the receipt of an application by the Navy Discharge Review Board is not tantamount to scheduling such hearing. Petitioners and/or their counsel will be notified by mail of the date and place of their scheduled hearing when personal appearance is requested.

Dated: December 10, 1976.

JOHN S. JENKINS,
Captain, JAGC, U.S Navy, Assistant Judge Advocate General (Civil Law).

[FR Doc.76-37340 Filed 12-17-76;8:45 am]

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

IDAHO HUMAN RIGHTS COMMISSION

Retention of Designation as a 706 Agency

The Equal Employment Opportunity Commission published notice on September 8, 1976, at 41 FEDERAL REGISTER 37844, that it proposed to withdraw the designation of the Idaho Human Rights Commission as a 706 agency in accordance with its procedural regulation 29 CFR 1601.12(k). Notice is hereby given that on November 23, 1976, the Equal Employment Opportunity Commission voted to retain the designation of the Idaho Human Rights Commission as a 706 agency. The Commission's determination to retain the designation appears below as Appendix A.

Signed at Washington, D.C., this 6th day of December 1976.

ETHEL BENT WALSH,
Vice Chairman.

APPENDIX A

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Washington, D.C., Dec. 2nd, 1976.

Mr. George R. Kibbe, Director, Human Rights Commission, Capital Annex No. 3 506 N. 5th, Boise, Idaho 83720.

DEAR MR. KIBBE: This letter is to inform you that on November 23, 1976, at a duly constituted Commission meeting, the Commission voted to retain the designation of the Idaho Human Rights Commission as a 706 agency.

Pursuant to Commission regulation 1601.12(k), 29 CFR 1601 12(k), the Commission evaluated the comments received from the agency and other interested persons concerning the proposed withdrawal of designation which was published in the FEDERAL REGISTER on September 8, 1976, 41 FR 37844. Our recent evaluation indicates that the proposed withdrawal was based on a consideration of the Idaho Fair Employment Practices Act prior to amendment. The Commission is of the opinion that since the current Act provides the agency with the power to issue orders and seek enforcement of those orders in court, the agency appears to have the authority to grant and seek enforcement of backpay awards. This authority meets the requirement of 29 CFR 1601.12 (f)(5) (ii), to wit: That the fair employment law authorizes the agency to "grant or seek relief from the employment practices found to be illegal."

Continued designation of the Idaho Commission as a 706 agency is, of course, subject to the provisions of our regulations at 29 CFR 1601.12.

We thank you for your cooperation in this matter. A notice of the Commission's decision to continue the designation of your agency as a 706 agency is being published in the FEDERAL REGISTER.

Sincerely,

ETHEL BENT WALSH,
Vice Chairman.

[FR Doc.76-37272 Filed 12-17-76;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[RM-2621; FCC 76-1075]

FILING OF PUBLIC COMMENT ON APPLICATIONS FOR CERTIFICATES OF COMPLIANCE

Memorandum Opinion and Order; Denying Petition for Rulemaking

Adopted: November 17, 1976.
Released: November 26, 1976.

In the Matter of: Amendment of Part 76 of the Commission's Rules and Regulations relative to the filing of public comments on applications for certificates

of compliance Petition for Rulemaking filed by The Committee for Open Media.

1. On September 16, 1975, the Committee for Open Media (COM), a public interest group composed of residents of Northern California, filed with the Commission a "Petition for Amendment of the Rules" (RM-2621) seeking changes to § 76.25 and § 76.27 of the Commission's Rules. No other comments have been received in this proceeding.

2. Petitioner asks that the rules be changed to allow more time for public comment on applications for certificates of compliance. Specifically, it is suggested that the present 30-day public notice period be extended to 120 days, and that provision be made for filing reply-to-reply comments. COM believes that under the current limitations a "superhuman" effort is required to file meaningful, well-prepared comments and/or objections due to the confusion and multiplicity of issues associated with cable television regulation particularly with respect to the local franchise. In contrast, COM notes that the filing period for comments regarding broadcast license applications is longer than for certificate applications even though the procedures are more routine and the licenses are granted for a shorter period of time.

3. The Commission believes its present filing requirements do not constitute an unnecessary burden on interested persons seeking to participate in the certificating process. First, we note that the majority of applications processed by the Commission are unopposed,[1] and in these instances an extended filing period would serve only to delay certification and, quite often, initiation of cable service to the community. And, when objections are forthcoming the Commission's experience has been that the present rules provide ample time for the preparation and presentation of thoughtful comments. Occasionally, additional time or comments are required for appropriate consideration of an application, and in those cases, the Commission will continue, upon proper request, to waive its filing rules. Lastly, we note the local nature of certificate applications i.e., they must include a franchise negotiated with the local authorities. Thus, objections and comments may in many instances be discussed and resolved prior to filing the application with the Commission.

4. In view of the foregoing, *it is ordered*, That the "Petition for Amendment of the Rules," filed by the Committee for Open Media, is denied.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.76-37247 Filed 12-17-76;8:45 am]

[1] Nor is there any indication, such as great numbers of requests for acceptance of late filing, that the reason for the relative lack of opposition is the shortness of the filing period.

[Docket Nos. 21003; 21004; File No. BPH-9436; BPH-9563]

TRI-CITIES BROADCASTING CO. AND RADIO SOUTH, INC.

Memorandum Opinion and Order; Designating Applications for Consolidated Hearing on Stated Issues

For Construction Permits:
Adopted: December 8, 1976.
Released: December 15, 1976.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it for consideration the above-captioned applications of Tri-Cities Broadcasting Co. [Tri-Cities], licensee of standard broadcast Station WTUG, Tuscaloosa, Alabama; and Radio South, Inc., requesting a construction permit for a new FM broadcast station in Tuscaloosa, Alabama.

2. Tri-Cities has failed to comply with the requirements of the Primer on the Ascertainment of Community Problems by Broadcast Applicants, 27 FCC 2d 650, 21 RR 2d 1507 (1971). In its demographic study, Tri-Cities indicated that Tuscaloosa is the focal point of the economic and commercial activities in the area, and that the city's economy is diversified with expanding industrial and manufacturing growth. However, Tri-Cities interviewed only several small businessmen, and our review finds no one who can be considered as a leader of the general business community at large, or a representative of any of the major employers within Tuscaloosa. Voice of Dixie, Inc., 45 FCC 2d 1027, 29 RR 2d 1127 (1974), *recon. den.* 47 FCC 2d 526, 30 RR 2d 851 (1974). Therefore, a limited Suburban issue will be specified.[1]

3. Since Tri-Cities proposes predominately Black-oriented programming, while Radio South, Inc., proposes general market programming, the relative need for these different types of programming will be considered under the standard comparative issue. Ward L. Jones, FCC 67-82 (1967); Policy Statement on Comparative Bradcast Hearings, 1 FCC 2d 393, footnote 9 at 397 (1965).

4. Radio South proposes to locate its main studio and transmitter site at the transmitter site of station WCFT-TV. The site is located within 100 feet of the Tuscaloosa city boundary, and is virtually surrounded by the boundary. In light of the above, the applicant has demonstrated sufficient good cause, as required by § 73.210(a)(3), to locate the main studio outside Tuscaloosa.

5. Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, for the purposes of comparison, the areas and populations which would receive FM service of 1mV/m or greater intensity, together with the availability of other primary aural services in the area will be considered under the standard comparative issue, for the purpose of determining whether a comparative preference should accrue to either of the applicants.

6. Except as indicated by the issues specified below, applicants are qualified to construct and operate as proposed. However, because the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. *It is ordered*, That pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine the efforts made by Tri-Cities to ascertain the needs and problems of business in the area to be served and the means by which the applicant proposes to meet those needs and problems.

(2) To determine which of the proposals would, on a comparative basis better serve the public interest.

(3) To determine in light of the evidence adduced pursuant to the foregoing issues which of the applications should be granted.

8. *It is further ordered*, That to avail themselves of the opportunity to be heard, the applicants and party respondent herein, pursuant to § 1.221(c) of the Commission's Rules, in person, or by an attorney shall, within twenty (20) days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

9. *It is further ordered*, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's Rules, give notice of the hearing, either individually or, if feasible and consistent with the rules, jointly, within the time and in the manner prescribed in such rule, shall advise the Commission of the publication of such notice as required by § 1.594(g) of the Rules.

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

[FR Doc. 76-37248 Filed 12-17-76; 8:45 am]

[1] Suburban Broadcasters, 30 FCC 1021, 20 RR 951 (1961).

PERSONAL USE RADIO ADVISORY COMMITTEE

Meeting

The next meeting of the Personal Use Radio Advisory Committee (PURAC) will be held Thursday, January 27, 1977 at 10 A.M. at the Sheraton National Hotel, Columbia Pike and Washington Boulevard, Arlington, Virginia 22204.

The agenda for this meeting, the purpose of which is to discuss the Commit-

tee's progress towards formulation of its Task area reports, will be as follows:

Chairman's remarks and introductions.
Reports on action items from last meeting.
Reports from task area coordinators.
Other business, to be determined.
Review of action item list.
Adjournment.

Meetings of PURAC are open to the public, subject to available meeting space. Observers desiring to make oral presentations at this meeting should coordinate their presentations with the Chairman. The following information should be submitted: Name, mailing address, and telephone number of the person wishing to make the presentation, an outline of the material to be presented, the estimated duration of the presentation, and the audio/visual aids, if any, required. Written statements may also be submitted to the Committee and should be addressed to the Chairman, Mr. John B. Johnston, Personal Use Radio Advisory Committee, Room 5114, Federal Communications Commission, Washington, D.C. 20554. Further information concerning this meeting of PURAC may also be obtained from Mr. Gregory M. Jones, Room 5114, Federal Communications Commission, Washington, D.C. 20554 (202-634-6619).

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.76-37299 Filed 12-17-76;8:45 am]

PURAC TASK AREA GROUP ON TECHNICAL STANDARDS

Meeting

In preparation for the next meeting of the Personal Use Radio Advisory Committee (PURAC), the PURAC Task Area group investigating technical standards will meet January 11, 1977 at 9 A.M. in Room 8210 of the offices of the Federal Communications Commission at 2025 "M" Street, N.W., Washington, D.C. 20554 to discuss its fact finding progress for presentation to the full PURAC. The agenda for this meeting will be as follows:

I. Opening remarks of the task coordinator.
II. Task area progress report and discussion.
III. Adjournment.

This meeting is open to the public. Individuals wishing to make oral or written presentations should contact the Task Area Coordinator, Mr. Lee Bergren, 5460 Buena Vista Drive, Mission, Kansas 66205 (913-262-6565), prior to the meeting.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.76-37298 Filed 12-17-76;8:45 am]

FEDERAL MARITIME COMMISSION

CITY OF OAKLAND AND JAPAN LINE, LTD., ET AL.

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10126; 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 hearings, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before December 30, 1976. 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.

In the matter of: City of Oakland and Japan Line, Ltd. Kawasaki Kisen Kaisha, Ltd. Mitsui O.S.K. Lines, Ltd. Yamashita-Shinnihon Steamship Co., Ltd.

Notice of Agreement Filed by:

J. Kerwin Rooney, Port Attorney, Port of Oakland, P.O. Box 2064, 66 Jack London Square, Oakland, Calif. 94604.

Agreement No. T-3040-2, between city of Oakland (City) and Japan Line, Ltd., Kawasaki Kisen Kaisha, Ytd., Mitsui O.S.K. Lines, Ltd., and Yamashita-Shinnihon Steamship Co., Ltd., (the Lines), modifies the basic agreement which provides for the 10-year nonexclusive preferential assignment of certain marine terminal facilities located in the City's Outer Harbor Terminal, which the Lines will use primarily for handling containerized traffic. The purpose of the modification is to provide for the delay in construction of Petroleum Street from Ferry Street to Maritime Street and make other related changes.

By Order of the Federal Maritime Commission.

Dated: December 15, 1976.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.76-37297 Filed 12-17-76;8:45 am]

FEDERAL POWER COMMISSION

[Docket Nos. RP76-15, RP76-98 and CP69-41 et al.]

ALGONQUIN GAS TRANSMISSION CO.

Order Denying Application for Rehearing

DECEMBER 10, 1976.

By order dated October 15, 1976, the Commission rejected a proposed First Revised Sheet No. 10-A and a portion of Substitute First Revised Sheet No. 10-A to Algonquin Gas Transmission Company's (Algonquin) FPC Gas Tariff, First Revised Volume No. 1 and ordered Algonquin to file within 15 days of the issuance of the order new tariff sheets in compliance with the requirements stated. By letter filed October 29, 1976, Algonquin tendered for a refiling Substitute First Revised Sheet No. 10-A and requested a stay of the Commission order pending action on its Application for Rehearing. The Commission rejected the refiled sheet and granted the stay by order issued November 26, 1976. Algonquin filed an Applictaion for Rehearing of the Otcober 15 order on November 12, 1976. For the reasons stated herein, the Commission shall deny the Application for Rehearing.

The single issue presented for the Commission's review in the October 15, 1976, order was whether the amount overcollected by operation of Algonquin's purchased feedstock adjustment Clause (PFAC) during the 1975-76 winter heating season should be refunded with interest. The Commission ruled that refunds should be made with interest. This ruling was based upon the regulatory rate principle that revenues should match costs. The revenues received by Algonquin through operation of its proposed PFAC during the 1975-76 winter heating season were in excess by $6,023,784 of the costs incurred by Algonquin under the PFAC. Such overcollections are per se unjustified. Section 154.67 of the Commission's Regulations as amended by Order Nos. 513 and 513-A provides:

> The pipeline company shall refund at such time and in such manner as may be required by final order of the Commission, the portion of any increased rates and charges found by the Commission to be not justified, together with interest at the rate of . . . nine percent per annum for all rate filings tendered on or after October 10, 1974 * * *

Because the overcollections received by Algonquin are unjustified, they must be refunded with interest in accordance with the Commission's Regulations.

Algonquin states in its Application for Rehearing that it has agreed upon a basis for settling the matters raised by this proceeding with its customers and that a settlement would be certified to the Commission in the near future. Algonquin contends that the Commission's action carved out a single issue from the PFAC proceeding and disposed of it without a record or supported findings. Algonquin contends further that it was denied procedural due process and required to file revised tariff sheets without a finding being made that the present rates are unjust or unreasonable.

Finally, Algonquin challenges the Commission's method of interest calculation for its off-system customers because they are to receive refunds by lump sum payment.

The October 15, 1976, order addressed solely the question of refunding with interest the amount of overcollections received by Algonquin by operation of its PFAC during the 1975–76 winter heating season. This does not prejudge the reasonableness of Algonquin's PFAC itself. The reasonableness of the PFAC and its continued use is the subject of hearings which were conducted in accordance with the orders of September 24, 1975, and May 28, 1976, in these dockets. This matter is presently before the Presiding Administrative Law Judge. The instant situation involving refunding with interest is separate and distinct from the issue in hearing because it relates only to overcollections already received under the PFAC, not to the reasonableness of the PFAC itself. Algonquin has alluded to possible settlement provisions that may occur in this case. Any statement by the Commission regarding such possibilities would be premature and could affect the settlement position of parties. In view of this, the Commission declines to comment on such possibilities.

The Commission does not believe the October 15 order denied Algonquin due process. That order does not prejudge the reasonableness of the PFAC. The overcollections received by Algonquin were unjustified and, therefore, under the Regulations, they must be refunded with interest. Algonquin retains still its full rights to pursue litigation of the reasonableness of the PFAC, including the right to seek settlement. At such times as other questions concerning the PFAC or its operation arise, the Commission shall decide them at that time.

Algonquin states that the method of interest calculation which the Commission adopted in the October 15 order is unjustified and inequitable for repayment to its SNG off-system customers who are to receive their refunds in a lump sum payment because the total amount of overcollections for these customers "were received by Algonquin Gas on an incremental, monthly basis, and under the terms of the PFAC are to be returned on a lump-sum basis well short of the equivalent of a full year." In light of the fact that this refund will be in the form of a lump sum payment, the Commission believes that the interest calculation for Algonquin's off-system customers should be different from that ordered for the SNG on-system customers. Algonquin shall calculate interest at the rate of 9% per annum for its off-system customers from the date each portion of overcollection was received through the date on which the lump sum refund is made. The method of interest calculation for Algonquin's SNG on-system customers shall remain the same as set forth in the October 15, 1976, order.

The Commission orders: (A) Algonquin's Application for Rehearing is hereby denied.

(B) The calculation of the interest for refunds to Algonquin's SNG off-system customers shall be in the manner set forth in this order. The calculation of interest for Algonquin's on-system customer refunds shall be made in the manner set forth in the October 15, 1976, order in this proceeding.

(C) Algonquin shall make immediate refunds with interest to its customers in accordance with the requirements of this order and the October 15 order in this proceeding. Algonquin shall submit within 15 days of the issuance of this order a report of refunds any any necessary tariff revisions.

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

By the Commission.[1]

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-37261 Filed 12-17-76;8:45 am]

[Docket No. ER77-91]

ARKANSAS-MISSOURI POWER CO.

Filing of Agreement

DECEMBER 10, 1976.

Take notice that on December 1, 1976, Arkansas-Missouri Power Company (Ark-Mo) tendered for filing a Supplemental Agreement for Power Interchange Between Ark-Mo and Associated Electric Cooperative, Inc. (Associated) dated October 20, 1976, providing for service under the following service schedules:

Service Schedule A—Economy Energy Transactions.
Service Schedule B—Replacement Energy Service.
Service Schedule C—Participation Power Service.
Service Schedule D—Firm Power Service.

Ark-Mo has stated that the rates in Service Schedules A and B were established on the basis of arms-length negotiations between Ark-Mo and Associated, and are similar to rates for similar services charged by other utilities. Ark-Mo requests that this agreement be permitted to become effective on January 1, 1977, in order to improve the coordination and enhance the reliability of the two systems.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 28, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-37263 Filed 12-17-76;8:45 am]

[Docket No. RP77-15]

CAROLINA PIPELINE COMPANY, COMPLAINT VS. SOUTHERN NATURAL GAS COMPANY, RESPONDENT

Filing of Complaint

DECEMBER 14, 1976.

Take notice that on November 12, 1976, Carolina Pipeline Company (Carolina) filed a complaint against Southern Natural Gas Company (Southern), pursuant to Sections 5(a) and (13) of the Natural Gas Act and Section 1.6 of the Commission's Rules of Practice and Procedure. Carolina alleges that Southern is violating Sections 9.3(1), 9.4(1), and 9.4(2) of the General Terms and Conditions of its FPC Gas Tariff, Sixth Revised Volume No. 1. Carolina requests the Commission to issue an order requiring Southern to cease and desist from its violations of these sections and to comply fully with them.

Carolina states that on days when a gas supply deficiency is experienced, Southern is required by Section 9.4(2) to notify each and every one of its customers as to how much gas they can take on that day. Carolina alleges that Southern's current practice is to only notify customers of their maximum gas quantities if that customer has requirements in the priority of service being curtailed on the particular day in question.

Carolina states that since some customers were not notified of the maximum quantity of gas they were permitted to take, they took gas in excess of the Index of Requirements limitation. Carolina states that these excess volumes can be used for any purpose the customer desires.

Carolina states that Southern's refusal to adhere to Section 9.3(2) leads to violation of Section 9.3(1) which requires full curtailment of lower priorities before curtailment of higher priorities is commenced. Carolina also states that Southern's refusal to adhere to Section 9.4(2) leads to violation of Section 9.4(1) which requires all gas taken in excess of curtailment orders to be deemed unauthorized overrun gas.

Any person desiring to be heard or to respond with reference to said notice should on or before January 14, 1977, file with the Federal Power Commission a petition to intervene or a response in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.6 or 1.8). All responses filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any hearing therein must file a petition to intervene in ac-

[1] Commissioner Watt's dissent filed as part of the original.

cordance with the Commission's Rules. All parties who have previously filed protests or petitions to intervene need not do so again.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-37259 Filed 12-17-76;8:45 am]

[Docket No. ER77-95]

CENTRAL HUDSON GAS & ELECTRIC CORP.

Filing of Rate Schedule

DECEMBER 10, 1976.

Take notice that Central Hudson Gas & Electric Corporation (Central Hudson) on December 6, 1976 tendered for filing as a supplement to its Rate Schedule FPC No. 22 a letter of notification dated November 19, 1976, from Central Hudson to New York State Electric & Gas Corporation. Central Hudson states that this letter provides for an increase in the monthly operation and maintenance charge from $1,603.80 to $1,746.54 in accordance with Article IV.2. of its Rate Schedule FPC No. 22. The increase is proposed to become effective January 1, 1977.

Copies of the filing by Central Hudson were served upon:

New York State Electric & Gas Corporation,
4500 Vestal Parkway, East
Binghamton, New York 13902.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Paragraphs 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 22, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this petition are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.73-37265 Filed 12-17-76;8:45 am]

[Docket No. ER77-52]

CONSOLIDATED EDISON CO. OF NEW YORK, INC.

Extension of Time

DECEMBER 13, 1976.

On December 7, 1976, the Port Authority of New York and New Jersey filed a request for an extension of time to file protests or petitions to intervene in the above-styled proceeding. By Notice issued November 22, 1976, protests and petitions to intervene were to be filed by December 7, 1976.

Upon consideration, notice is hereby given that an extension of time is granted to and including December 21, 1976, within which interested persons may file protests or petitions to intervene in this proceeding.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-37262 Filed 12-17-76;8:45 am]

[Docket No. ER77-1]

MISSISSIPPI POWER CO.

Order Granting Intervention and Establishing Hearing Procedures

DECEMBER 14, 1976.

On October 1, 1976, Mississippi Power Company (MPCO) tendered for filing proposed changes in its FPC Electric Tariff, Original Volume No. 1. The proposed changes increase revenues from jurisdictional sales and service by $4,536,000 based on the 12-month period ending October 31, 1977.

Notice of the filing was issued on October 18, 1976, with comments due on or before November 1, 1976.

On October 29, 1976, this Commission issued an Order Accepting For Filing And Suspending Proposed Rate Filing to insure that all parties would have an adequate opportunity to comment upon the proposed filing. MPCO's proposed rate filing was accepted for filing and suspended for one day, becoming effective November 2, 1976. In the above-mentioned order, we indicated that upon receipt of comments, we would issue such further orders as may be appropriate in this proceeding.

On October 27, 1976, Coast Electric Power Association, East River Power Association, and Singing River Electric Power Association (hereinafter referred to as EPAs) filed a protest and petition to intervene in this proceeding. The EPAs purchase electric power and energy from MPCO pursuant to Rate Schedule MRA-12. That Rate Schedule is superseded by Rate Schedule MRA-13. They maintain that the increased rates are excessive.

The EPAs allege that the cost of service study on which MPCO bases its filing substantially overstates the actual cost of MPCO of providing service to the EPAs. They assert that MPCO's requested rate of return on common equity of 14.1 percent results in an excessively high overall return of 9.25 percent. Furthermore, they state that errors contained in MPCO's cost of service study mask a greatly higher overall rate of return of 9.40 percent.

In calculating allowance for Funds Used During Construction (AFUDC), the EPAs assert that MPCO's 7.5 percent capitalization rate is too high. They maintain that if the funds actually used for construction were accurately determined, the capitalization rate would be approximately 4 percent.

The EPAs additionally allege that MPCO's increased rates to them are discriminatory and anticompetitive, representing a "price squeeze" in violation of antitrust laws.

They request that the Commission suspend MPCO's proposed rates for five months, conduct a hearing on the lawfulness of the rates, and permit them to intervene in this proceeding.

After careful consideration of the allegations contained inthe EPAs' petition, we find that they do not warrant lengthening the suspension period from one day to five months. However, since MPCO's proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful, we will establish hearing procedures.

The Commission finds: (1) The participation of Coast Electric Power Association, East Mississippi Electric Power Association, and Singing River Electric Power Association in this proceeding may be in the public interest.

(2) The allegations contained in the EPAs' petition do not set forth any facts or legal issues which would warrant Commission lengthening of the suspension period.

The Commission orders: (A) Coast Electric Power Association, East Mississippi Electric Power Association, and Singing River Electric Power Association are hereby permitted to intervene in this proceeding and to participate as parties subject to the Commission's Rules and Regulations; *Provided, however,* That participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in their Petitions to Intervene; and *Provided, further,* That the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(B) Pending a hearing and decision thereon, MPCO's proposed rates will remain effective subject to refund.

(C) Pursuant to the authority of the Federal Power Act, particularly Sections 205 and 206 thereof, the Commission's Rules of Practice and Procedure, and the Regulations under the Federal Power Act, a hearing shall be held concerning the justness and reasonableness of MPCO's proposed rate increases.

(D) Commission Staff shall prepare and serve top sheets on all parties for purposes of settlement on or before April 29, 1977. (See Administrative Order No. 157.)

(E) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (see Delegation of Authority, 18 CFR 3.5(d)), shall convene a settlement conference in this proceeding on a date certain within 10 days after the service of top sheets by the Staff, in a hearing or conference room of the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Said Presiding Administrative Law Judge is hereby authorized to establish all procedural dates and to rule upon all motions (with the exceptions of petitions to intervene, motions to consolidate and

sever, and motions to dismiss), as provided for in the Rules of Practice and Procedure.

(F) MPCO shall file monthly with the Commission the report on billing determinants and revenues collected under the presently effective rates and the proposed increased rates filed herein, as required by Section 35.19a of the Commission's Regulations, 18 CFR Section 35.19a.

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

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-37258 Filed 12-17-76;8:45 am]

[Docket No. RP75-89]

NORTHERN NATURAL GAS CO.

Order Approving Settlement Agreement and Terminating Proceeding

DECEMBER 10, 1976.

On July 15, 1976, Northern Natural Gas Company (Northern) filed a Stipulation and Agreement (Agreement), together with a motion for its approval, intended to dispose of all issues in the captioned proceeding. This proceeding originated when Northern filed revised tariff sheets on April 11, 1975, seeking increased annual jurisdictional revenues of $69.8 million. The tariff sheets were suspended for five months, or until October 27, 1975, by Commission order issued May 16, 1975. For the reasons hereinafter stated, the Commission will approve the Agreement and terminate the proceeding.

Notice of the filing of the Agreement was issued July 27, 1976. Comments in support of the Agreement were filed by Iowa Public Service Company, The Northern Distribution Group, the Public Utilities Commission of South Dakota (PUCSW), and the Commission Staff. Northern filed a reply to the comments of PUCSW. All parties filing comments support the Agreement and recommend its approval. PUCSW, which supports the Agreement, nonetheless argues that, insofar as the allowance for Federal income taxes is computed on the basis of the 48% statutory tax rate instead of an alleged lesser actual tax rate through the use of a consolidated tax return, the return on equity permitted by the settlement rates will exceed the agreed upon amount. Northern's reply contests PUCSW's conclusion. Since PUCSW nevertheless recommends approval of the Agreement, we do not pass on the merits of its argument.

Section I of the Agreement provides for refunds of approximately $12,234,000 for Northern's market area sales and refunds of approximately $8,900 for field sales, both with interest at 9% per annum. In addition it provides for a reduction in jurisdictional revenues from the rates effective October 27, 1975 (filed in Docket No. RP75-89) of approximately $12,100,000. Section II of the Agreement recites that $287,000 is included in the cost of services as a result of inclusion in rate base of certain Research and Development expenditures, the propriety of which is to be determined in Texas Eastern Transmission Corporation's proceeding in Docket No. RP75-73. In the event rate base treatment is denied therein by final and non-appealable Commission order, Northern will refund the principal amount for its jurisdictional customers, with interest at 9% per annum.

Section III of the Agreement states that 5 BcF of natural gas will be delivered, not sold, to Michigan Consolidated Gas Company. In the event deliveries are less than the 5 Bcf, Northern will make refund to its customers. Section IV of the Agreement recites a reserved issue relating to cost of service treatment for company production.[1] Section V requests the Commission to confirm that the reserve for deferred income taxes deducted in determining rate case is not in excess of the book amount of such reserve. Our order approving this Agreement shall constitute such confirmation.

The jurisdictional cost of service of $400,509,558, contained in Appendix C of the Agreement, is a reduction from the filed jurisdictional cost of service of $445,810,710, and is based on an overall rate of return of 9.8% including an allowance for common equity of 12.5%, all as contained in Appendix D of the Agreement. The Commission finds that the settlement agreement represents a reasonable resolution of the issues in this proceeding and will therefore approve the Agreement and terminate the proceedings herein.

The Commission orders: (A) The Stipulation and Agreement filed on July 15, 1976, is incorporated herein by reference, and is approved and adopted.

(B) This order is without prejudice to any findings or order which have been made or which may hereafter be made by the Commission and is without prejudice to any claims or contentions which may be made by the Commission, its staff or any other party or person affected by this order in any proceeding now pending or hereinafter instituted by or against Northern or any other person or party.

(C) The proceedings in the instant docket are hereby terminated.

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

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-37267 Filed 12-17-76;8:45 am]

[Docket No. RP 77-20]

RATON NATURAL GAS CO.

Change in Rates

DECEMBER 14, 1976.

Take notice that Raton Natural Gas Company (Raton) on November 30, 1976, tendered for filing, proposed changes in its FPC Gas Tariff, Volume No. 1, consisting of Fourteenth Revised Sheet No. 3a. The change in rate is for jurisdictional sales and service. The proposed effective date is January 1, 1977.

Raton states that the instant change in rates is designed to enable Raton to recover increases in operating costs, increased return and related income tax requirements. The proposed rates would increase revenues by $11,122, which is less than one percent of annual revenues.

Copies of Raton's filing are on file with the Commission and are available for public inspection. In addition, copies have been served on Raton's Jurisdictional Customer and the New Mexico Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 27, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-37260 Filed 12-17-76;8:45 am]

[Docket No. ER77-86]

SOUTHERN COMPANY SERVICES, INC.

Proposed Tariff Change

DECEMBER 10, 1976.

Take notice that Southern Company Services, Inc., on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company on December 1, 1976, tendered for filing The Southern Company System Intercompany Interchange Contract proposed to be effective for the calendar year 1977.

The Southern Company System Intercompany Interchange Contract constitutes a coordination and interchange agreement between the operating companies of The Southern Company system and provides for certain power pooling transactions, including the exchange of interchange energy and the pricing thereof, the purchase and sale of capacity and the rates and charges therefor as well as other interchange arrangements between the operating companies.

Copies of the filing were served upon the parties of record in *Southern Services, Inc.*, Docket No. E-8514.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8

[1] This issue was resolved by approval of a settlement agreement in Docket Nos. RP74-75 and RP75-89, order issued July 27, 1976.

and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 29, 1976. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-37261 Filed 12-17-76;8:45 am]

[Docket No. ER77-100]

TUCSON GAS & ELECTRIC CO.

Filing of Amendment to Agreement

DECEMBER 13, 1976.

Take notice that Tucson Gas & Electric Company ("Tucson") on December 6, 1976 tendered for filing an Amendment No. 1 to the 1976-1978 Energy Sale Agreement between Tucson and Southern California Edison Company ("Edison"). The purpose of the amendment is to increase the maximum amount of energy available to Edison under the contract. Tucson states that copies of the filing were served upon Edison.

Any person desiring to be heard or to make any application with reference to said Amendment No. 1 should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before December 27, 1976. Protests will be considered by the Commission 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 must file a petition to intervene. Copies of this Amendment No. 1 are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-37263 Filed 12-17-76;8:45 am]

FEDERAL RESERVE SYSTEM

BOYDEN BANCORP

Order Approving Formation of Bank Holding Company

Boyden Bancorp, Boyden, Iowa, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act ("Act") (12 U.S.C. § 1842(a)(1)) of formation of a bank holding company through acquisition of 81.7 percent of the voting shares of Farmers Savings Bank, Boyden, Iowa ("Bank").

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with § 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received in light of the factors set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

Applicant, a nonoperating corporation with no subsidiaries, was formed for the purpose of becoming a bank holding company through the acquisition of shares of Bank. Upon consummation of the proposed transaction, Applicant would control the 320th largest banking organization in Iowa with total deposits of $10.9 million representing approximately .09 percent of total depoists held by commercial banks in the States.[1] Bank ranks 11th out of the 16 banking organizations operating in the Sioux County banking market (approximated by Sioux County plus western O'Brien County and northeastern Plymouth County) and controls 4.8 percent of total market deposits. Since the purpose of the proposed transaction is to transfer the ownership of shares of Bank from individuals to a corporation owned by the same individuals, consummation of the proposal would have no adverse effect on existing or potential competition nor would it increase the concentration of banking resources in any relevant area. Accordingly, the Board concludes that competitive considerations are consistent with approval of the application.

The financial and managerial resources and future prospects of Applicant, which are dependent upon those of Bank, are regarded as satisfactory. Applicant proposes to service the debt it will incur as a result of the proposed transaction through dividends from Bank as well as cash payments made by Bank to Applicant and retained by Applicant to the extent that they represent savings from filing consolidated tax returns, without adversely affecting Bank's capital position. Thus, considerations relating to banking factors are consistent with approval of the application.

Although there will be no immediate increase in the services offered by Bank upon consummation of the proposal, considerations relating to the convenience and needs of the community to be served are consistent with approval of the application. Accordingly, it is the Board's judgment that consummation of the proposed transaction would be in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be made (a) before the thirtieth calendar day following the effective date of this Order or (b) later than three months after the effective date of this Order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Chicago pursuant to delegated authority.

[1] All banking data are as of December 31, 1975.

By order of the Board of Governors,[2] effective December 13, 1976.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.76-37238 Filed 12-17-76;8:45 am]

DAKOTA BANCORP

Order Approving Acquisition of Bank

Dakota Bancorporation, Rapid City, South Dakota, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under § 3(a)(3) of the Act (12 U.S.C. § 1842(a)(3)) to acquire 80 per cent of the voting shares of First National Bank of Crosby ("Crosby Bank"), Crosby, North Dakota, a proposed new bank.[1]

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with § 3(b) of the Act. The time for filing comments and views has expired and the Board has considered the application and all comments received, including those of Farmers State Bank of Crosby, Crosby, North Dakota, in light of the factors set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).

Applicant controls one bank in North Dakota with deposits of $3.0 million, representing 0.1 per cent of the total commercial bank deposits in the State, and is the 138th largest banking organization in North Dakota.[2] Since Crosby Bank is a proposed new bank, consummation of the proposed transaction would not immediately increase Applicant's share of commercial bank deposits in North Dakota.

Applicant, a one-bank holding company, presently controls Columbus National Bank ("Columbus Bank"), Columbus, North Dakota. The proposal envisions Crosby Bank purchasing the assets and assuming the liabilities of Columbus Bank. Columbus Bank will then be liquidated with its capital accounts distributed to its shareholders. The Columbus Bank facility and its paying and receiving station in Lignite, North Dakota, will then become paying and receiving stations of Crosby Bank. Columbus Bank, the only bank in Columbus, represents 8.7 per cent of the deposits within the relevant market which contains both Columbus and Crosby.[3] Ap-

[2] Voting for this action: Chairman Burns and Governors Gardner, Coldwell, Jackson and Partee. Absent and not voting: Governors Wallich and Lilly.

[1] This application was filed under § 3(a)(3) of the Bank Holding Company Act since the proposal involves the acquisition by Applicant of shares of an additional bank. However, the end result of the proposed transaction is that Applicant will continue to own only one bank whose main office will be simply relocated from Columbus to Crosby, North Dakota.

[2] Unless otherwise indicated, all banking data are as of December 31, 1975.

[3] The relevant market is approximated by Divide and Burke Counties.

plicant is the smallest of the four banking organizations in the market. Since the proposal would essentially transfer present accounts from Columbus Bank to Crosby Bank, consummation of the proposal would not eliminate any significant existing competition, increase the concentration of banking resources, or have an adverse effect on the development of future competition in the relevant market. Therefore, competitive considerations are consistent with approval of the application.

The financial and managerial resources and future prospects of Applicant and its existing subsidiary bank are regarded as satisfactory. Crosby Bank, as a proposed new bank, has no financial or operating history; however, its prospects as a subsidiary of Applicant appear favorable. Considerations relating to the banking factors are consistent with approval of the application. The addition of a second banking alternative in Crosby should enhance banking competition and increase services to residents of the area. In addition, a paying and receiving station would remain available in Columbus. Furthermore, the relocation of Applicant's subsidiary bank from Columbus to the larger town of Crosby would appear to present the opportunity for Crosby Bank to increase the deposit base assumed from Columbus Bank and, thus, enable it to offer improved services to the market as a whole. Accordingly, considerations relating to the convenience and needs of the community to be served are consistent with approval of the application.

Comments were filed in opposition to this proposal by the Farmers State Bank of Crosby ("Protestant"), the only bank presently located in Crosby. The Board has reviewed Protestant's submission and has concluded that it does not present a basis for denial of this application. It is the Board's judgment that the proposed acquisition would be in the public interest and that the application should be approved.

On the basis of the record, the application is approved for the reasons summarized above. The transaction shall not be made (a) before the thirtieth calendar day following the effective date of this Order or (b) later than three months after that date, and (c) First National Bank of Crosby, Crosby, North Dakota, shall be opened for business not later than six months after the effective date of this Order. Each of the periods described in (b) and (c) may be extended for good cause by the Board, or by the Federal Reserve Bank of Minneapolis pursuant to delegated authority.

By order of the Board of Governors,[4] effective December 13, 1976.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc.76-37239 Filed 12-17-76;8:45 am]

[4] Voting for this action: Chairman Burns and Governors Gardner, Coldwell, Jackson, and Partee. Absent and not voting: Governors Wallich and Lilly.

GAYLORD BANKSHARES, INC.

Order Denying Formation of Bank Holding Company

Gaylord Bankshares, Inc., Gaylord, Kansas, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. § 1842(a)(1)) of formation of a bank holding company through acquisition of 80 per cent or more of the voting shares of The First National Bank of Gaylord, Gaylord, Kansas ("Bank").

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with § 3(b) of the Act. The time for filing comments and views has expired, and the Board has considered the application and all comments received, including those submitted by the Comptroller of the Currency and Applicant's responses thereto, in light of the factors set forth in § 3(c) of the Act (12 U.S.C. § 1842(c)).[1]

Applicant is a nonoperating corporation organized under the laws of Kansas for the purpose of becoming a bank holding company through acquisition of Bank ($2.8 million in deposits).[2] Upon acquisition of Bank, Applicant would control the 536th largest bank in Kansas, holding approximately .03 of one per cent of the total deposits in commercial banks in the State.

Bank is the seventh largest of eight commercial banks in the relevant market,[3] and holds approximately 4.2 per cent of the total deposits in commercial banks in the market The principal owner of Applicant is also the principal owner of Osborne Bankshares, Inc., a registered one-bank holding company controlling 80 per cent of The First State Bank & Trust Company, Osborne, Kansas ("First"), which is located 18 miles south of Bank in the same banking market. Given the size of the banks involved and the structure of the market, it is the Board's view that the combination of these two banks in the market would have no significant adverse effects on competition. Accordingly, based on the facts of record, the Board concludes that consummation of the proposed transaction would have no significant adverse effect upon either existing or potential competition.

The Board has indicated on previous occasions that it believes that a bank holding company should be a source of financial and managerial strength to its subsidiary bank(s) and that the Board will closely examine the condition of an applicant in each case with this consideration in mind. As part of this proposal, Applicant would assume $120,000 of the debt originally incurred by Applicant's principal in acquiring shares of Bank. Applicant proposes to service this debt over a 12-year period through dividends to be declared by Bank and the tax benefits to be derived from filing consolidated tax returns. In the Board's view, the projected earnings of Applicant over the debt-retirement period appear to be somewhat optimistic in view of Bank's previous earnings record and, even if actually realized, would not provide Applican with the financial flexibility necessary to meet its annual debt service requirements while maintaining adequate capital at Bank. While there has been some improvement in earnings of Bank since its acquisition by Applicant's principal, this improvement has occurred over only one year and does not provide Applicant with a proven record of earnings to support its projections.

The Board is of the opinion that in analyzing the managerial resources of a bank that is part of a chain of one-bank holding companies it should look beyond the subject bank involved in an application to the other banks that are part of that chain. In assessing the managerial resources of Applicant, the Board notes that the overall financial resources of First, the subsidiary bank of the affiliated one-bank holding company, have declined somewhat since First was placed in the holding company. The decline of the financial resources of First does not reflect favorably on Applicant's management capabilities and weighs against approval of this application.

On the basis of the above banking factors and other factors of record, the Board is of the view that it would not be in the public interest to approve the formation of a bank holding company with an initial debt structure that could result in the weakening of Bank's overall financial condition, and the Board concludes that the considerations relating to financial and managerial resources weigh against approval of the application.

As indicated above, the proposed formation essentially involves the reorganization of the ownership interests of Bank. No significant changes in Bank's operations or in the services offered to customers of Bank are anticipated. Consequently, considerations relating to the convenience and needs of the community to be served lend no weight toward approval of the application.

On the basis of all of the circumstances concerning this application, the Board concludes that the financial and managerial considerations involved in this proposal present adverse circumstances bearing upon the financial resources and future prospects of both Applicant and Bank. Such adverse factors are not outweighed by any procompetitive effects or by benefits that would result in serving the convenience and needs of the community. Accordingly, it is the Board's judgment that approval of the application would not be

[1] In letters dated August 27, 1976 and October 21, 1976, the Comptroller of the Currency recommended denial of the subject application. Applicant responded to the Comptroller in letters dated September 14, 1976 and November 4, 1976.

[2] All banking data are as of December 31, 1975.

[3] The relevant market is approximated by Smith and northern Osborne counties.

in the public interest and that the application should be denied.

On the basis of the record, the application is denied for the reasons summarized above.

By order of the Board of Governors,[4] effective December 13, 1976.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc.76-37240 Filed 12-17-76;8:45 am]

MICHIGAN FINANCIAL CORP.

Order Approving Acquisition of Bank

Michigan Financial Corporation, Marquette, Michigan, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)) to acquire all of the voting shares (less directors' qualifying shares) of the successor by merger to The Iron River National Bank, Iron River, Michigan ("Bank"). The bank into which Bank is to be merged has no significance except as a means to facilitate the acquisition of the voting shares of Bank. Accordingly, the proposed acquisition of shares of the successor organization is treated herein as the proposed acquisition of the shares of Bank.

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with section 3(b) of the Act. The time for filing comments and views has expired. The Board has considered the application and all comments received in light of the factors set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant, the 22nd largest commercial banking organization in Michigan, controls seven banks with aggregate deposits of $184.4 million, representing 0.64 percent of total deposits held by commercial banks in the State.[1] Acquisition of Bank (deposits of $13.4 million as of June 30, 1976) would increase Applicant's share of commercial bank deposits in the State by less than one-tenth of one percentage point and would not result in any significant increase in the concentration of banking resources in Michigan.

Bank, the fourth largest of eight commercial banks located in the relevant banking market[2] holds about 10.5 percent of the total commercial bank deposits in the market. Applicant's nearest subsidiary banks are located in Hermansville and Ishpeming, 73 and 78 road miles respectively, from Iron River. Minimal competition exists between Bank and any of Applicant's subsidiary banks and, due to the distances involved and the fact that the intervening areas are sparsely populated, it is unlikely that any will develop in the near future. The present economic character of the market and Michigan's restrictive branching laws make conditions for *de novo* entry appear unfavorable. The Federal Reserve Bank of Minneapolis concludes, therefore, that consummation of the proposed acquisition would not have significant adverse effects on existing or potential competition.

The financial and managerial resources and future prospects of Applicant, its subsidiary banks and Bank are regarded as satisfactory, particularly in view of Applicant's commitment to inject equity capital into one of its present subsidiary banks. Applicant's affiliation with Bank should enable Bank to expand the range of banking services offered. Therefore, considerations relating to the convenience and needs of the community to be served lend some weight toward approval of the application.

For the reasons summarized, the Federal Reserve Bank of Minneapolis hereby approves the application.

The transaction shall not be made (a) before the thirtieth calendar day following the effective date of this Order, or (b) later than three months after the effective date of this Order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank of Minneapolis pursuant to delegated authority.

By order of the Federal Reserve Bank of Minneapolis, acting pursuant to delegated authority for the Board of Governors, effective December 10, 1976.

L. G. GABLE,
Vice President.

[FR Doc.76-37241 Filed 12-17-76;8:45 am]

UNITED MICHIGAN CORP.

Order Approving Acquisition of Bank

United Michigan Corporation, Flint, Michigan, a bank holding company within the meaning of the Bank Holding Company Act, has applied for the Board's approval under Section 3(a)(3) of the Act (12 U.S.C. 1842(a)(3)), to acquire all of the voting shares (less directors' qualifying shares) of the successor by consolidation to the Peoples State Bank of Caro, Caro, Michigan ("Bank"). The bank into which Bank is to be consolidated has no significance except as a means to facilitate the acquisition of the voting shares of Bank. Accordingly, the proposed acquisition of shares of the successor organization is treated herein as the proposed acquisition of the shares of Bank.

Notice of the application, affording opportunity for interested persons to submit comments and views, has been given in accordance with Section 3(b) of the Act. The time for filing comments and views has expired, and the Federal Reserve Bank of Chicago has considered the application and all comments received in light of the factors set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

Applicant controls one bank subsidiary holding about $512.9 million in deposits,[1] representing about 1.7 percent of the total commercial bank deposits in Michigan. In addition, Applicant controls one nonbank subsidiary, a mortgage company. Applicant is the tenth largest of all banking organizations in Michigan and upon acquisition of Bank, Applicant's share of State deposits would increase slightly to 1.8 percent, but its rank would not change. Consummation of this proposal would not materially increase the concentration of banking resources in the State.

Bank (deposits $19.7 million) is the largest of ten banking organizations in the relevant market.[2] Although Bank is the largest, Bank is not dominant in the market; Bank holds only about 15.4 percent of the total commercial bank deposits in the market and the second and third leading banking organizations are nearly the same size as Bank. Applicant's sole bank subsidiary is the second largest banking organization competing in the adjacent Flint banking market to the southwest. There is no significant existing of potential competition between the two banks. Moreover, the possibility that any direct competition would develop between them in the future is remote. In addition, Applicant's entry *de novo* into the market is unlikely because of the low population per banking office ratio. Any adverse competitive effects resulting from this proposal would be very slight and inconsequential; thus, competitive effects are consistent with approval.

The financial and managerial resources and future prospects of Applicant, its subsidiary Bank, and Bank are considered to be generally satisfactory and consistent with approval of subject application.

While most of Bank's services would be unchanged upon consummation of this proposal, Applicant would cause Bank to provide new trust services and restructure the loan portfolio in an attempt to provide more loan services to the community. Considerations relating to the convenience and needs of the community to be served lend weight toward approval of the application. It is this Reserve Bank's judgment that the proposed acquisition is in the public interest and that the application should be approved.

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[4] Voting for this action: Chairman Burns and Governors Gardner, Coldwell, Jackson, and Partee. Absent and not voting: Governors Wallich and Lilly.

[1] Banking data, unless indicated otherwise, are as of June, 1975.

[2] The relevant market is approximated by the southeastern half of Iron County, the southwestern half of Dickinson County and the northwestern corner of Menominee County in Michigan and the northeastern two-thirds of Florence County in Wisconsin.

[1] Deposits are as of December 31, 1975.

[2] The relevant market is approximated by Tuscola County, excluding the Gagetown branch of the Farmers and Merchants State Bank of Sebawaing, Mich., Sebawaing, Michigan, and the Millington branch of Frankenmuth Bank & Trust, Frankenmuth, Michigan, but includes the Clifford branch of The Kingston State Bank, Kingston, Michigan, on the Tuscola-Lapeer County line and the Munger branch of Frankenmuth Bank & Trust in eastern Bay County.

On the basis of the record as summarized above, the Federal Reserve Bank of Chicago approves the application, provided the transaction shall not be consummated (a) before the thirtieth calendar day following the effective date of this Order, or (b) later than three months after the effective date of this Order, unless such period is extended for good cause by the Board, or by the Federal Reserve Bank pursuant to delegated authority.

By order of the Federal Reserve Bank of Chicago, acting pursuant to delegated authority for the Board of Governors of the Federal Reserve System, effective December 8, 1976.

ROBERT P. MAYO,
President.

[FR Doc.76-37242 Filed 12-17-76;8:45 am]

GENERAL SERVICES ADMINISTRATION

[Federal Property Management Regs.; Temporary Reg. F-405]

SECRETARY OF DEFENSE

Delegation of Authority

1. *Purpose.* This regulation delegates authority to the Secretary of Defense to represent, in conjunction with the Administrator of General Services, to consumer interests of the executive agencies of the Federal Government in an investigation before the Pennsylvania Public Utility Commission involving a proposed rulemaking proceeding.

2. *Effective date.* This regulation is effective immediately.

3. *Delegation.* a. Pursuant to the authority vested in me by the Federal Property and Administrative Services Act of 1949, 63 Stat. 377, as amended, particularly sections 201(a)(4) and 205(d) (40 U.S.C. 481(a)(4) and 486(d)), authority is delegated to the Secretary of Defense to represent the consumer interests of the Federal executive agencies before the Pennsylvania Public Utility Commission in a proceeding involving the concurrent resolution (Resolution No. 228) of the House of Representatives and the Senate of the Commonwealth of Pennsylvania to undertake a thorough investigation of alternative rate structures. The authority delegated to the Secretary of Defense shall be exercised concurrently with the Administrator of General Services.

b. The Secretary of Defense may redelegate this authority to any officer, official, or employee of the Department of Defense.

c. This authority shall be exercised in accordance with the policies, procedures, and controls prescribed by the General Services Administration, and shall be exercised in cooperation with the responsible officers, officials, and employees thereof.

WALLACE H. ROBINSON, Jr.,
Acting Administrator of General Services.

DECEMBER 9, 1976.

[FR Doc.76-37273 Filed 12-17-76;8:45 am]

NANTAHALA NATIONAL FOREST

Order Transferring From Department of Agriculture to Tennessee Valley Authority Possession and Control of Certain Lands and Land Rights

By virtue of the authority vested in the President of the United States by section 7(b) of the Tennessee Valley Authority Act of 1933 (16 U.S.C. 831f(b)), and delegated to the Administrator of General Services by Section 1 (17) of Executive Order 11609 of July 22, 1971, and further delegated to the Commissioner, Public Buildings Service, by GSA Order ADM 5450.39A of November 5, 1974, and further delegated to the Assistant Commissioner for Real Property, Public Buildings Service, by GSA Order PBS P 5450.9A CHGE 19 of April 1, 1975:

It is ordered, That the full possession and control of lands and land rights hereinafter described and all rights of use and access appurtenant thereto in other lands existing under Contract TV-54350 and Contract TV-21679A between the Department of Agriculture ("Department") and the Tennessee Valley Authority ("TVA") be and they are hereby transferred from Department to TVA, such transfer being deemed necessary and proper for the purposes of TVA as stated in the Tennessee Valley Act of 1933, as amended:

The lands and appurtenances identified and described in Exhibit "A" of Supplement No. 2 to Contract TV-54350 (containing 121 acres, more or less) and Appendix C of Contract TV-21679A (containing 166 acres, more or less).

Dated: December 1, 1976, Washington, D.C.

ROY MARKON,
Assistant Commissioner for Real Property Public Buildings Service.

[CONTRACT TV-21679A SUPPLEMENT 1]

SUPPLEMENT TO AGREEMENT OF TRANSFER BETWEEN TENNESSEE VALLEY AUTHORITY AND UNITED STATES DEPARTMENT OF AGRICULTURE

THIS SUPPLEMENTARY AGREEMENT, made and entered into this 2nd day of November, 1976, by and between TENNESSEE VALLEY AUTHORITY, a corporation organized and existing under and by virtue of an Act of Congress known as the Tennessee Valley Authority Act of 1933, as amended (hereinafter called "TVA"), and the UNITED STATES DEPARTMENT OF AGRICULTURE for the use and benefit of the Forest Service of the Department of Agriculture (hereinafter called "Department");

WITNESSETH:

WHEREAS, TVA has heretofore assigned and transferred to Department possession and control of certain lands for inclusion in Nantahala National Forest by the Agreement of Transfer between TVA and Department dated June 28, 1962 (Contract TV-21679A), which lands were included in such Forest by Executive Order 11067 of November 27, 1962; and

WHEREAS, the parties deem it desirable in the interest of the public that possession and control of a part of these lands so transferred by the aforesaid Agreement of Transfer, which were included in the Nantahala National Forest by said Executive Order, be returned to TVA;

Now, therefore, in consideration of the premises and the mutual covenants herein contained, TVA and Department covenant and agree as follows:

1. The Department hereby consents to the retransfer to TVA by the Administrator of General Services, or his designated representative, pursuant to Section 7(b) of the Tennessee Valley Authority Act of 1933 under the authority delegated to him by Section 1(17) of Executive Order 11609 of July 22, 1971, all of the use, possession, custody, and control of those lands identified and described as Parcels No. 1 and 2 in Appendix C to TV-21679A and all use and access rights appurtenant thereto in lands now in the custody, possession, and control of TVA.

2. Upon execution by the Administrator of General Services, or his designated representative, of a transfer order as consented to by Department in article 1 above, Parcels No. 1 and 2 identified above and their appurtenances shall cease to be a part of the Nantahala National Forest under the administration of the Department and shall be administered thenceforth by TVA for the purposes of the Tennessee Valley Authority Act of 1933, as amended, as fully as though the original agreement of transfer (Contract TV-21679A) had never included said Parcels No. 1 and 2.

3. The remaining lands and rights transferred by Contract TV-21679A and not included in those lands described in article 1 above are in no way affected by this supplement.

In witness whereof, the parties hereto have caused this instrument to be executed by their respective representatives thereunto duly authorized, as of the day and year first above written.

ATTEST:
MADGE EVANS,
Assistant Secretary.

TENNESSEE VALLEY AUTHORITY,
LYNN SEEBER,
General Manager.

U.S. DEPARTMENT OF AGRICULTURE,
ROBERT W. LONG,
Assistant Secretary of Agriculture.

PARCELS NOS. 1 AND 2

APPENDIX C
TO
TV-21679A

Land lying in the Beaverdam and Shoal Creek Townships of Cherokee County, State of North Carolina, on both shores of Apalachia Lake, approximately ¼ mile west of Hiwassee Dam, the said land being comprised of two separate parcels and being more particularly described as follows:

PARCEL NO. 1

Beginning at a point in the 1,280-foot contour on the north shore of Apalachia Lake and in the boundary of the land previously conveyed in fee by the Tennessee Valley Authority to the U.S. Forest Service designated as Tract No. XTFBR-3 from which a bronze plate (Coordinates: N. 548,779; E. 449,905) set in a flat rock and stamped "73-3A RM" bears N. 5°35' W. at a distance of 14 feet.

From the initial point,

With the boundary between the lands of the United States of America (TVA) and the U.S. Forest Service by bearings and distances as follows:

N. 5°35' W., 1183 feet, passing the bronze plate set in a flat rock and stamped "73-3A RM" at 14 feet, to a large boulder in which is set a bronze plate stamped 72-9;

N. 52°17' E., 1868 feet to a metal marker in the southwest line of the right-of-way for the Hiwassee-Chickamauga Transmission Line;

Leaving the boundary between the lands of the United States of America (TVA) and the U.S. Forest Service and with the southwest line of the right of way for the Hiwassee-Chickamauga Transmission Line, a line 75 feet southwest of and parallel to the center line of the said transmission line, S. 39°41' E., 1,020 feet to a metal marker;

Leaving the line parallel to the transmission line, S. 20°14'W., 1,580 feet to a metal marker;

S. 45°09'E., approximately 350 feet to a point in the 1,280-foot contour on the north shore of Apalachia Lake;

With the 1,280-foot contour as it meanders in a westerly direction to the point of beginning.

The land described above as Parcel No. 1 contains 82.5 acres, more or less.

PARCEL NO. 2

Beginning at a point in the 1,280-foot contour on the south shore of Apalachia Lake and in the boundary of the land previously conveyed in fee by the Tennessee Valley Authority to the U.S. Forest Service designated as Tract No. XTFBR-3 from which the bronze plate (Coordinates: N. 548,779; E. 449,905) set in a flat rock and stamped "73-3A RM" in the boundary of the above described Parcel No. 1 bears N. 5°35'W. at a distance of 574 feet.

From the initial point,

With the 1,280-foot contour as it meanders in an easterly direction to a point in the southeasterly prolongation of that course identified in the above metes and bounds description of Parcel No. 1 by a bearing and distance of S. 45°09'E., approximately 350 feet;

S. 45°09'E., approximately 500 feet to a metal marker from which the metal marker at the northwest end of the above mentioned course of Parcel No. 1 (S. 45°09'E., approximately 350 feet) bears N. 45°09'W. at a distance of 1,158 feet;

N. 76°50'E., 1,299 feet to a metal marker in the boundary of the United States of America's land;

With the United States of America's boundary line by bearings and distances as follows,

S. 5°12' E., 714 feet, passing a metal-marker at 137 feet, to a metal marker;

S. 47°15' W., 897 feet to a metal marker;

N. 83°53' W., 745 feet to a 20-inch chestnut tree;

N. 83°48' W., 666 feet to US-TVA Monument HDR-84;

N. 84°03' W., 954 feet to US-TVA Monument HDR-85;

N. 83°54' W., 207 feet to US-TVA Monument 26-3;

N. 84°03' W., 954 feet to US-TVA Monument 26-1;

With the boundary line between the lands of the United States of America (TVA) and the U.S. Forest Service N. 5°35' W., 932 feet, passing US-TVA Monument 27-1 RM at 917 feet, to the point of beginning. The land described above as Parcel No. 2 contains 83.5 acres, more or less.

All of the above described land comprising Parcels 1 and 2 contains a total of 166 acres, more or less.

NOTE No. 1.—The positions of corners and directions of lines are referred to the North Carolina Coordinate System. The contour elevation is based on MSL Datum as established by the USC&GS Southeastern Supplementary Adjustment of 1936. The boundary markers designated "US-TVA Monument" are concrete monuments capped by bronze tablets imprinted with the given numbers.

[Contract TV-54350 Supplement 2]

SUPPLEMENT TO AGREEMENT OF TRANSFER BETWEEN TENNESSEE VALLEY AUTHORITY AND UNITED STATES DEPARTMENT OF AGRICULTURE

This Supplementary Agreement, made and entered into this 2nd day of November, 1976, by and between Tennessee Valley Authority, a corporation organized and existing under and by virtue of an Act of Congress known as the Tennessee Valley Authority Act of 1933, as amended, (hereinafter called "TVA"), and the United States Department of Agriculture for the use and benefit of the Forest Service of the Department of Agriculture (hereinafter called "Department");

WITNESSETH

Whereas, TVA, by virtue of the Agreement of Transfer between TVA and Department dated June 20, 1940 (Contract TV-54350), has heretofore assigned and transferred to Department the possession and control of certain lands for inclusion in Nantahala National Forest, which lands were included in such Forest by Presidential Order of November 16, 1940; and

Whereas, the parties deem it desirable in the interest of the public that possession and control of a part of these lands so transferred by the aforesaid Agreement of Transfer, which are included in the Nantahala National Forest by said Presidential Order, be returned to TVA;

Now, therefore, in consideration of the premises and the mutual covenants herein contained, TVA and Department covenant and agree as follows:

1. The Department hereby consents to the retransfer to TVA by the Administrator of General Services, or his designated representative, pursuant to Section 7(b) of the Tennessee Valley Authority Act of 1933 under the authority delegated to him by Section 1(17) of Executive Order 11609 of July 22, 1971, all of the use, possession, custody, and control of certain of those lands identified and described in Contract TV-54350 and all use and access rights appurtenant thereto in lands now in the custody, possession, and control of TVA. A description of said lands is attached hereto and hereby made a part hereof as Exhibit "A."

2. Upon execution by the Administrator of General Services, or his designated representative, of a transfer order as consented to by Department in Article 1 above, the lands described in Exhibit "A" shall cease to be a part of the Nantahala National Forest under the administration of the Department and shall be administered thenceforth by TVA for the purposes of the Tennessee Valley Authority Act of 1933, as amended, as fully as though the original agreement of transfer (Contract TV-54350) had never included said lands.

3. The remaining lands described in Contract TV-54350 and in Supplement 1 thereto and not included in Exhibit "A" are in no way affected by this supplement.

In witness whereof, the parties hereto have caused this instrument to be executed by their respective representatives thereunto duly authorized, as of the day and year first above written.

TENNESSEE VALLEY AUTHORITY,
LYNN SEEBER,
General Manager.

UNITED STATES DEPARTMENT OF AGRICULTURE,
ROBERT W. LONG,
Assistant Secretary of Agriculture.

ATTEST:

MADGE EVANS,
Assistant Secretary.

EXHIBIT "A"

PORTIONS OF ACQUISITION TRACTS FBR-59, FBR-60, FBR-61, FBR-62, FBR-64, FBR-71, AND FBR-202

All that certain tract or parcel of land lying and being in Shoal Creek Township, 8th Civil District, Cherokee County, North Carolina, located on Hiwassee Lake and more particularly described as follows:

Being portions of tracts of land identified in TVA's land records as acquisition tracts FBR-59, FBR-60, FBR-61, FBR-62, FBR-64, FBR-71, and FBR-202. Being also a portion of that certain tract of land transferred to the United States Department of Agriculture, Forest Service by the Tennessee Valley Authority by an Agreement of Transfer—Contract No. TV-54350, dated June 20, 1940.

Beginning at a point located within Tract FBR-59, in the 1,528 foot (M.S.L.) contour, on the north shore of the Bearpaw Creek embayment of Hiwassee Lake, marked by a 2" x 30" aluminum pipe with an aluminum survey marker, (Coordinates: N=538,321.4 feet and E=453,361.2 feet);

Thence with a line of severance through Tract FBR-59, N. 56°05' W., 383.58 feet to a point located in the old boundary between US-TVA Monuments 59-1 and 59-2, common to Tract FBR-59 and the E. W. Burger (now or formerly) parcel, said point bearing N. 26°39' E., 722.12 feet from US-TVA Monument 59-1;

Thence with the boundary of Tract FBR-59, common to the said Burger parcel, N. 26°39' E., 818.48 feet to US-TVA Monument 59-2;

Thence with a line of severance through Tract FBR-59, N. 12°21'50" W., 569.81 feet to a point located in the 1,528 foot (M.S.L.) contour on the south shore of the Mickon Branch embayment of Hiwassee Lake marked by a 2" x 30" aluminum survey marker, (Coordinates: N=539,723.6 feet and E=453,288.0 feet);

Thence with the 1,528 foot contour (M.S.L.), as it meanders along the shore of Hiwassee Lake, passing through Tracts FBR-59, FBR-60, FBR-71, FBR-64, FBR-61, FBR-202, FBR-62, respectively, and again into Tract FBR-59 to the point of beginning and containing 121 acres, more or less.

NOTE.—The positions of corners and directives of lines are referred to the North Carolina Coordinate System. The contour elevation is based on M.S.L. Datum as established by the USC&GS Southeastern Supplementary Adjustment of 1936. The boundary markers designated "US-TVA Monument" are concrete monuments capped by bronze tablets imprinted with the given numbers.

The preceding description was prepared from surveys conducted by James H. Price, Registered Land Surveyor No. 812, during January and February, 1975. The surveys, which are recorded in field book TUSQ-P2 on file in Asheville, North Carolina at the Office of the Forest Supervisor for the National Forests in North Carolina, are made a part of the preceding description.

[FR Doc.76-37274 Filed 12-17-76;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Assistant Secretary for Health

JEPTHA E. CAMPBELL AND JAMES E. GILCHRIST

Proposed Issuance of Exclusive License

Pursuant to § 6.3, 45 CFR, Part 6, notice is hereby given of intent to issue a limited-term, revocable, exclusive, patent license in and to an invention of Jeptha E. Campbell and James E. Gilchrist entitled "Method and Apparatus for Plating and Counting Aerobic Bacteria."

Any objection thereto, together with request for opportunity to be heard, if desired, should be directed to Theodore Cooper, M.D., the Assistant Secretary for Health, Department of Health, Education, and Welfare, 330 Independence Avenue, SW., Washington, D.C. 20201, within thirty (30) days of the date of publication of this notice. Interested parties may obtain a copy of the patents directed to this invention upon request in writing to the party hereinabove named.

(45 CFR 6.3)

JAMES F. DICKSON,
Acting Assistant Secretary for Health.

Dated December 13, 1976.

[FR Doc.76-37251 Filed 12-17-76;8:45 am]

Office of Education

NATIONAL ADVISORY COUNCIL ON ADULT EDUCATION

Public Meeting

Notice is hereby given, pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), that the National Advisory Council on Adult Education will meet on January 24, 1977, from 10:00 a.m. to 4:30 p.m., and on January 25-26, 1977, from 9:00 a.m. to 5:00 p.m. at the Hotel Washington, 15th at Pennsylvania Avenue, N.W., Washington, D.C.

The National Advisory Council on Adult Education is established under Section 311 of the Adult Education Act (80 Stat. 1216.20 U.S.C. 1201). The Council is directed to:

Advise the Commissioner in the preparation of general regulations and with respect to policy matters arising in the administration of this title, including policies and procedures governing the approval of State plans under section 306 and policies to eliminate duplication, and to effectuate the coordination of programs under this title and other programs offering adult education activities and services.

The Council shall review the administration and effectiveness of programs under this title, make recommendations with respect thereto, and make annual reports to the President of its findings and recommendations (including recommendations for changes in this title and other Federal laws relating to adult education activities and services). The President shall transmit each such report to the Congress together with his comments and recommendations.

The meeting of the Council shall be open to the public.

The proposed agenda includes:

Orientation for new members.

Reports of the Chairman, Vice Chairman, Executive Director, and the Council's standing committees.

Imperatives for Policy and Action in Lifelong Learning.

1977 Annual Report.

Right to Read Program.

Futures and Amendments meetings.

NAPCAE/AEA/NACAE on Legislation.

Records shall be kept of all Council proceedings (and shall be available for public inspection at the Office of the National Advisory Council on Adult Education located in Room 323, Pennsylvania Bldg., 425 13th Street, N.W., Washington, D.C. 20004).

Signed at Washington, D.C. on December 13, 1976.

GARY A. EYRE,
Executive Director, National Advisory Council on Adult Education.

[FR Doc.76-37275 Filed 12-17-76;8:45 am]

Office of Education

SUPPLEMENTAL EDUCATIONAL OPPORTUNITY GRANT, COLLEGE WORK-STUDY, AND NATIONAL DIRECT STUDENT LOAN PROGRAMS

Closing Dates for Receipt of Requests for Regional and National Reviews of Applications

1. Notice is hereby given that pursuant to the authority contained in sections 413D(b), 446, and 462(b) of the Higher Education Act of 1965 (20 U.S.C. 1070b-3, 42 U.S.C. 2756, and 20 U.S.C. 1087bb), institutions which have filed an application for fiscal year 1977 funds, for use in the award period 1977-78, for the Supplemental Educational Opportunity Grant, College Work-Study, and National Direct Student Loan Programs (Part A Subpart 2, Part C and Part E of Title IV of the Higher Education Act of 1965, respectively), and area vocational schools for the College Work-Study Program, and which desire to request a reevaluation of the review panel's funding recommendation, may request a review by the Regional Office. Institutions which then wish to request a review of the funding recommendation of the Regional Office may request a review by a national review panel. In order to be assured of consideration, requests for Regional Office review must be received on or before December 23, 1976, and requests for national review must be received on or before January 14, 1977. (In view of the large number of requests for review by the Regional Office, the closing date for such requests is extended from the date of December 10, 1976, which was shown on the Notification of Regional Review Action on Application for Federal Student Financial Aid Programs for the Award Period 1977-78, to the date of December 23, 1976.) The establishment of these closing dates is in accordance with program regulations, §§ 176.7(c) and (d), 175.7(c) and (d), and 144.7(c) and (d), respectively. All requests shall be submitted in writing to the Regional Office of the Office of Education serving the area in which the institution is located. The addresses of the Regional Offices are as follows:

Office of Education, Region I, John F. Kennedy Federal Building, Boston, Massachusetts.

Office of Education, Region II, 26 Federal Plaza, New York, New York 10007.

Office of Education, Region III, P.O. Box 13716 (3535 Market Street), Philadelphia, Pennsylvania 19101.

Office of Education, Region IV, 50 Seventh Street, N.E., Room 555, Atlanta, Georgia 30323.

Office of Education, Region V, 300 South Wacker Drive, Chicago, Illinois 60606.

Office of Education, Region VI, 1200 Main Tower, Dallas, Texas 75202.

Office of Education, Region VII, 601 East 12th Street, Kansas City, Missouri 64106.

Office of Education, Region VIII, 11037 Federal Office Building, 19th and Stout Streets, Denver, Colorado 80202.

Office of Education, Region IX, 50 United Nations Plaza, San Francisco, California 94102.

Office of Education, Region X, Arcade Plaza Building, 1321 Second Avenue—M.S. 1511, Seattle, Washington 98101.

(20 U.S.C. 1070b-3; 42 U.S.C. 2756; 20 U.S.C. 1087bb)

a. *Requests for Regional Office and national reviews.* A request sent by mail will be considered to be received on time in the Regional Office of the Office of Education serving the area in which the institution is located if:

(1) The request was sent by registered or certified mail not later than the fifth calendar day prior to the closing date (or if such fifth calendar day is a Saturday, Sunday, or Federal holiday, not later than the next following business day), as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service; or

(2) The request is received on or before the closing date in the mail room of the Regional Office of the Office of Education serving the area in which the institution is located. (In establishing the date of receipt, the Commissioner will rely on the time-date stamp of such mail room or other documentary evidence of receipt maintained by the Department of Health, Education, and Welfare or the U.S. Office of Education.)

b. *Hand delivered requests for Regional Office and national reviews.* A request to be hand delivered must be taken to the Regional Office of the Office of Education serving the area in which the institution is located. Hand delivered requests will be accepted daily between the hours of 9:00 a.m. and 4:00 p.m. in the appropriate Regional Office except Saturdays, Sundays, or Federal holidays.

3. Requests will be accepted for Regional Office and national reviews from institutions of higher education that have not qualified as eligible institutions

of higher education under section 435(b) or 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1085(b), 1141(a)). Such requests will also be processed and reviewed. However, in order for such institutions to receive an allocation of fiscal year 1977 funds, the Division of Eligibility and Agency Evaluation of the Bureau of Postsecondary Education of the Office of Education must have received by January 31, 1977 all materials and documents necessary to determine whether such an institution is an eligible institution of higher education. Similarly with regard to the College Work-Study Program, requests for Regional Office and national reviews will be accepted from area vocational schools that have not had their eligibility to participate in the College Work-Study Program established; however, in order for such schools to receive an allocation of fiscal year 1977 funds, the Division of Eligibility and Agency Evaluation of the Bureau of Postsecondary Education of the Office of Education must have received by January 31, 1977 all materials and documents necessary to determine whether such a school is an eligible area vocational school.

(20 U.S.C. 1070b-3; 42 U.S.C. 2756; 20 U.S.C. 1087aa-ff)

(Catalog of Federal Domestic Assistance Programs: 13.418 Supplemental Educational Opportunity Grant Program; 13.463 College Work-Study Program; and 13.471 National Direct Student Loan Program)

Dated: December 15, 1976.

EDWARD AGUIRRE,
United States Commissioner of Education.

[FR Doc.76-37377 Filed 12-17-76;8:45 am]

Office of Human Development

COMPLIANCE WITH PROVISIONS OF OMB CIRCULAR A-90

Prior OHD Approval for ADP Equipment and Services

Pursuant to Office of Management and Budget (OMB) Circular No. A-90, Transmittal Memorandum, No. 1, the Office of Human Development has published regulations and procedures which are consistent with the provisions of the OMB transmittal. These requirements have been administratively established in 45 CFR, Subtitle A, Part 74, Administration of Grants and include approval by the Rehabilitation Services Administration, Office of Human Development, prior to the acquisition of ADP equipment or services and system operations which result in increased system operational costs, etc.

Dated: December 14, 1976.

STANLEY B. THOMAS, Jr.,
Assistant Secretary for Human Development.

[FR Doc.76-37209 Filed 12-17-76;8:45 am]

Public Health Service

HEALTH MAINTENANCE ORGANIZATIONS

Delegation of Authority

Notice is hereby given that relative to Health Maintenance Organizations the following delegation was made, effective November 23, 1976, pursuant to the authority delegated (39 F.R. 32171) on July 29, 1974, by the Secretary of Health, Education, and Welfare to the Assistant Secretary for Health:

Delegation from the Assistant Secretary for Health to the Director, Office of Quality Standards, Office of the Assistant Secretary for Health, without authority to redelegate, of authority under Title XIII of the Public Health Service Act to determine whether an entity is a qualified Health Maintenance Organization within the meaning of Title XIII.

The May 1, 1975, delegation (40 F.R. 23508) by the Assistant Secretary for Health to the Administrator, Health Services Administration, has been superseded insofar as it relates to the authority delegated to the Director, Office of Quality Standards.

Dated: November 23, 1976.

RUPERT MOURE,
Executive Officer, Public Health Service.

[FR Doc.76-37276 Filed 12-17-76;8:45 am]

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

[Docket No. M 77-36]

CLINCH VALLEY COAL CORP.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 861(c) (1970), Clinch Valley Coal Corp. has filed a petition to modify the application of 30 CFR 75.1710 to its No. 1 Mine located in Tazewell County, Virginia.

30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

A time schedule by which all mines must comply with Section 75.1710 is specified by 30 CFR 75.1710-1(a) which provides:

(a) Except as provided in paragraph (f) of this section, all self-propelled electric face equipment including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

(1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;

(2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;

(3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;

(4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;

(5) (i) On and after January 1, 1976, in coal mines having mining heights of 30 inches or more, but less than 36 inches.

(ii) On and after July 1, 1977, in coal mines having mining heights of 24 inches or more, but less than 30 inches, and

(6) On and after July 1, 1978, in coal mines having mining heights of less than 24 inches.

The substance of Petitioner's statement is as follows:

1. Petitioner's haulage equipment consists of the following:

Type	Model No.	Name	Serial No.
(1) Scoop	CX-2	S. & S. Machinery.	CX2-105
(2) Scoop	CX-2	do	CX2-209
(3) Roof bolter.	2C1-300	Galis	02273
(4) Roof bolter.	10409	Paul's Repair Shop.	177

2. The height, length, and width of each piece of equipment is as follows:

	Height (inches)	Length (feet)	Width (feet)
(1) Scoop	32	29	9½
(2) Scoop	33	29	9½
(3) Roof bolter	30	16	7½
(4) Roof bolter	28	10	6

3. The No. 1 Mine is in the Upper Split of Horsepen Seam which ranges from 35 to 48 inches in height. Due to irregularity of height of coal seam, a sufficient height could not be maintained to provide clearance for canopies. Batteries are changed for the scoops on the surface and the haulway height runs down to 33 to 34 inches in a few places. Placing canopies on its equipment would lessen safety due to operators' limited vision and operating discomfort, as well as creating a danger of shearing roof bolts.

4. An approved full bolting roof control plan is utilized at Petitioner's mine. Employees are trained daily by the foreman in safe roof control techniques.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before January 19, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Depart-

ment of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: December 9, 1976.

JAMES R. RICHARDS,
Director, Office of Hearings and Appeals.

[FR Doc.76-37277 Filed 12-17-76;8:45 am]

[Docket No. M 77-14]

LAUREL BRANCH COAL CO., INC.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 861(c) (1970), Laurel Branch Coal Co., Inc., has filed a petition to modify the application of 30 CFR 75.1710 to its No. 8 Mine located in Lee County, Virginia.

30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

A time schedule by which all mines must comply with Section 75.1710 is specified by 30 CFR 75.1710-1(a) which provides:

(a) Except as provided in paragraph (f) of this section, all self-propelled electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

(1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;

(2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;

(3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;

(4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;

(5) (i) On and after January 1, 1976, in coal mines having mining heights of 30 inches or more, but less than 36 inches.

(ii) On and after July 1, 1977, in coal mines having mining heights of 24 inches or more, but less than 30 inches, and

(6) On and after July 1, 1978, in coal mines having mining heights of less than 24 inches.

The substance of Petitioner's statement is as follows:

1. Petitioner is subject to the requirements of regulations dated September 19, 1975, supplemented October 30, 1975, issued by the Commonwealth of Virginia, Department of Labor and Industry, Division of Mines and Quarries, pertaining to the installation of canopy equipment utilized by Petitioner in the mine involved in this petition. Virginia regulations require a minimum 6-inch clearance between the top of the canopy and the lowest projection of the roof or roof supports, and prohibits the design of a canopy which obstructs the vision of the operator to the extent that he must lean out of the canopy to see where he is going.[1]

2. Petitioner states that it went to the manufacturer of its equipment (its miner being a Lee-Norse) and had the canopies for these specific items of equipment made by the manufacturer with the belief that such standard equipment would better serve the equipment as required under 30 CFR 75.1710, but that Petitioner's mine is uneven and has variation in mining height ranging from 36 to 55 inches and as a result of the attempts to use the canopies on the miner scoop, shuttler cars, etc., it has drastically reduced the vision of the operator, it has caused dislodgement of roof bolts and has caused continuous complaints from both the operators of the equipment and other employees in close proximity to the operation of the equipment. It is, therefore, the belief of Petitioner that to continue to attempt to use such canopies is contrary to the intent of the particular code section in question which Petitioner believes Congress intended to promote rather than to reduce the safety of the miner and mine equipment operators where such rules are being enforced in an inflexible manner.

3. Petitioner and his employees believe that vision is drastically reduced as to the operator such that he is forced to lean from his canopy position in order to be able to see, placing himself and those in close proximity to him in a dangerous position causing a diminution of safety both to the operator and other employees which creates a hazard much more dangerous to the operator and his fellow employees than the danger sought to be eliminated by the installation of the canopies under the code section in question.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before January 19, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: December 8, 1976.

JAMES R. RICHARDS,
Director, Office of Hearings and Appeals.

[FR Doc.76-37278 Filed 12-17-76;8:45 am]

[1] A copy of the Virginia Regulations is available for inspection at the address shown in the last paragraph of the notice.

[Docket No. M 77-40]

McCOY ALMA COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 861(c) (1970), McCoy Alma Coal Co. has filed a petition to modify the application of 30 CFR 75.1710 to its No. 3 Mine, located in Pike County, Kentucky.

30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

A time schedule by which all mines must comply with Section 75.1710 is specified by 30 CFR 75.1710-1(a) which provides:

(a) Except as provided in paragraph (f) of this section, all self-propelled electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

(1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;

(2) On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;

(3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;

(4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;

(5) (i) On and after January 1, 1976, in coal mines having mining heights of 30 inches or more, but less than 36 inches.

(ii) On and after July 1, 1977, in coal mines having mining heights of 24 inches or more, but less than 30 inches, and

(6) On and after July 1, 1978, in coal mines having mining heights of less than 24 inches.

The substance of Petitioner's statement is as follows:

1. The first underground mining commenced in October of 1976 by Petitioner as a one section mine with plans for additional sections when mine development and equipment availability would permit.

2. The mining machinery was placed on order with the Joy Manufacturing Company in late 1973, being the lowest profile equipment available at this time and the lowest profile equipment available to the mining industry to the Petitioner's knowledge to date. The equipment currently employed in the coal mine operation consists of 16 RB cutting machines; 14 BU-10 loading machines; 21 SC shuttle cars; Joy coal drills; Gales and Long-Airdox roof bolters and scoops

for general mine cleanup work. The coal is conveyed from the discharge point near the mine face to the mine portal by conveyor belt equipment.

3. So as to insure that the appropriate machinery was procured for use in the mining operation, extensive work was completed such as core drilling and outcrop prospecting prior to placing orders for such equipment. These efforts indicated the coal heights to be 42 to 48 inches.

4. The first section of machinery arrived from the vendor in May of 1975, with factory provided canopies for same. These canopies were installed on each piece of machinery prior to its employment underground. The coal heights at the mine entrance averaged 48 inches which included a rock binder ranging from 2 to 4 inches in thickness. The mine's main projections are projected to drive a distance of 5,000 feet picking up an additional section to the right and to the left then continuing on for an additional distance of 5,000 feet with a mine projected life of 20 years at an average annual yield of 250,000 tons. As the mine operation progressed underground some 500 to 600 feet the coal height reached to an average of 42 inches and very uncommon rolls and dips in the coal seam were being encountered which caused the machinery canopies to come in contact with the roof causing severe damage to the roof bolts which ultimately resulted in a hazardous roof condition. The canopies were lowered to the lowest position possible; however, this did not solve the problem but tended to create an additional problem in that some of the equipment operators complained of limb numbness, severe headaches, dizziness and severe stomach cramps from being cramped into such a small space.

5. On or about August 1, 1975, the canopies were removed on all machinery, except roof bolters, as these canopies were considered by the mine operators and machinery operators as well to be a great safety hazard in having them employed on the machinery.

6. The Petitioner points out that canopies were not a requirement until January 1, 1976, as the average coal height of the coalbed was 42 inches. At present, Petitioner is in the process of procuring new canopies, installing and re-installing canopies on all machinery in the working mine in order to comply with the requirements of 30 CFR 75.1710-1 knowing that the same hazards will be encountered as before.

7. Petitioner states that the application of the above requirements will result in a diminution of safety to its miners for reasons which are set out below.

8. The main or first line of safety in Petitioner's mine and in all underground coal mines is the use of adequate roof bolting. The individual safety of all underground miners is being endangered by the use of canopies in that the top of the canopy is sheering or catching the roof bolts and, therefore, weakening the overhead arch which solid torque roof bolts provide, therefore, increasing the likelihood of roof falls.

9. When the canopy can be used it puts the operator in a cramped and awkward position and on several occasions, as a result of this position, has caused dizziness, headaches and stomach cramps thereby causing an increased risk, not only to the operator but also to his fellow workers. Because of this awkward and cramped position the operators are required to leave their machinery more frequently creating a hazardous condition not only to himself but to his fellow workers.

10. To the Petitioner's knowledge and through his repeated consultations with mining machinery manufacturing companies, there is no known machinery available which would decrease or alleviate the above hazards.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before January 19, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: December 9, 1976.

JAMES R. RICHARDS,
Director, Hearings and Appeals.

[FR Doc.76-37279 Filed 12-17-76;8:45 am]

[Docket No. M 77-15]

WOLF CREEK COLLIERIES CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. § 361(c) (1970), Wolf Creek Collieries Co. has filed a petition to modify the application of 30 CFR 75.1710 to its No. 6 Mine, located in Martin County, Kentucky.

30 CFR 75.1710 provides:

An authorized representative of the Secretary may require in any coal mine where the height of the coalbed permits that electric face equipment, including shuttle cars, be provided with substantially constructed canopies, or cabs, to protect the miners operating such equipment from roof falls and from rib and face rolls.

A time schedule by which all mines must comply with Section 75.1710 is specified by 30 CFR 75.1710-1(a) which provides:

(a) Except as provided in paragraph (f) of this section, all self-propelled electric face equipment, including shuttle cars, which is employed in the active workings of each underground coal mine on and after January 1, 1973, shall, in accordance with the schedule of time specified in subparagraphs (1), (2), (3), (4), (5), and (6) of this paragraph (a), be equipped with substantially constructed canopies or cabs, located and installed in such a manner that when the operator is at the operating controls of such equipment he shall be protected from falls of roof, face, or rib, or from rib and face rolls. The requirements of this paragraph (a) shall be met as follows:

(1) On and after January 1, 1974, in coal mines having mining heights of 72 inches or more;

On and after July 1, 1974, in coal mines having mining heights of 60 inches or more, but less than 72 inches;

(3) On and after January 1, 1975, in coal mines having mining heights of 48 inches or more, but less than 60 inches;

(4) On and after July 1, 1975, in coal mines having mining heights of 36 inches or more, but less than 48 inches;

(5) (i) On and after January 1, 1976, in coal mines having mining heights of 30 inches or more, but less than 36 inches,

(ii) On and after July 1, 1977, in coal mines having mining heights of 24 inches or more, but less than 30 inches, and

(6) On and after July 1, 1978, in coal mines having mining heights of less than 24 inches.

The substance of Petitioner's statement is as follows:

1. Petitioner's self-propelled electric face equipment currently has canopies. Petitioner, however, requests permission to remove the canopies from its equipment because maintaining canopies on safety to the machine operator and other workers in the area of the equipment.

2. Petitioner feels that by providing room for the canopies on the equipment, the workers must mine a portion of the roof, thereby disturbing the roof rock and creating a less than ideal roof control plan. This creates a greater hazard of roof falls.

3. The canopy impairs the vision of the worker operating the equipment thereby decreasing his maximum ability to maneuver the equipment. This increases the likelihood of accidents causing injury to the worker-operator and others in the area of the equipment.

4. A removal of part of the roof to provide room for the canopies would result in prohibitive costs for Petitioner in mining coal which is less than 60 inches in height. Petitioner therefore requests modification of 30 CFR 75.1710.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before January 19, 1977. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director,
Office of Hearings and Appeals.

DECEMBER 8, 1976.

[FR Doc.76-37280 Filed 12-17-76;8:45 am]

Bureau of Outdoor Recreation

[INT FES 76-62]

LEWIS AND CLARK TRAIL

Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, Pub. L. 91-190, the Department of

the Interior has prepared a final environmental impact statement for the proposed Lewis and Clark Trail, a potential addition to the National Trails System.

The proposal involves inclusion of the 3,700 mile route in the National Trails System and development of recreation facilities along 22 selected segments of the route.

Copies are available for inspection at the Bureau of Outdoor Recreation, Mid-Continent Regional Office, 603 Miller Court, Lakewood, Colorado, and the Bureau of Outdoor Recreation, Office of Communications, Room 237, Interior South Building, 1951 Constitution Avenue, NW., Washington, D.C. 20240.

A limited number of copies are also available and may be obtained by writing to the Regional Director, Mid-Continent Regional Office, Denver Federal Center, P.O. Box 25387, Denver, Colorado 80225.

Dated: December 14, 1976.

STANLEY D. DORELIUS;
Deputy Assistant Secretary of the Interior.

[FR Doc.76-37288 Filed 12-17-76; 8:45 am]

INTERNATIONAL TRADE COMMISSION

[USITC SE-76-3]

Government In the Sunshine Commission Meeting

Interested members of the public are invited to attend and to observe the meeting of the United States International Trade Commission to be held on December 23, 1976, beginning at 9:30 a.m., in the Hearing Room of the United States International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436. The Commission plans to consider the following agenda items in open session:

1. Agenda for future meetings;
2. Minutes of December 10 and 13, 1976;
3. Reorganization;
4. Footwear (Inv. TA-201-18)—vote on the question of injury;
5. Mushrooms (Inv. TA-201-17)—vote on a remedy (if necessary);
6. Stoves and motors (Inv. 332-79)—approval of report;
7. Briefing by Mr. Will on the history report;
8. Television sets (Inv. 337-TA-23)—see action jackets GC-76-144 and GC-76-146;
9. Recommendation from the investigative staff with respect to a complaint filed under section 337 of the Tariff Act of 1930, as amended, relating to stainless steel pipe—see memorandum dated December 6, 1976.
10. Any items left over from previous agenda.

If you have any questions concerning the agenda for the December 23, 1976, Commission meeting, please contact the Secretary to the Commission at (202) 523-0161. Public access to any documents considered by the Commission at the meeting may be obtained under the provisions of Subpart C of the Commission's rules (19 C.F.R. 201.17-201.21).

Issued: December 15, 1976.

By order of the Commission,

KENNETH R. MASON,
Secretary.

[FR Doc.76-37290 Filed 12-17-76;8:45 am]

[USITC SE-76-2A]

MEETING

Additional Agenda Item

In deliberations held on December 16, 1976, the United States International Trade Commission, acting on the authority of 19 U.S.C. 1335 in conformity with proposed 19 C.F.R. 201.38, voted to add the following item to its agenda for the meeting of December 21, 1976:

11. Consideration of an appeal filed pursuant to the Freedom of Information Act (see memorandum from the General Counsel of December 13, 1976).

Commissioners Leonard, Minchew, Moore, Parker, and Ablondi voted, by unanimous consent, that Commission business requires the change in subject matter by addition of the agenda item, affirmed that no earlier announcement of the addition to this agenda was possible, and directed the issuance of this notice at the earliest practicable time. (Commissioner Bedell was not present for the vote.)

Pursuant to the specific exemption of 5 U.S.C. 552b(c)(6), on the authority of 19 U.S.C. 1335, and in conformity with proposed 19 C.F.R. 201.37(b)(6), Commissioners Leonard, Minchew, Moore, and Parker voted to hold this porton of the December 21, 1976, meeting in closed session. Commissioner Ablondi voted against closing this portion to the public and Commissioner Bedell was not present for the vote.

A majority of the entire membership of the Commission felt that this portion of the meeting should be closed to the public since information to be discussed in such portion is likely to disclose information of a personal nature which could constitute a clearly unwarranted invasion of personal privacy.

Those persons expected to be present at this closed portion, and their corresponding affiliations, are listed as follows:

Daniel Minchew, Chairman
Joseph O. Parker, Vice Chairman
Will E. Leonard, Commissioner
George M. Moore, Commissioner
Catherine Bedell, Commissioner
Italo H. Ablondi, Commissioner
Kenneth R. Mason, Secretary
E. Bernice Morris, Staff Assistant

The General Counsel to the Commission certified that it is his opinion that the Commission's action in closing this portion of its meeting of December 21, 1976, was properly taken by a vote of a majority of the entire membership of the Commission pursuant to 5 U.S.C. 552b(d)(1) and in conformity with proopsed 19 C.F.R. 201.37(d). The discussion to be held in closed session is within the specific exemption of 5 U.S.C. 552b(c)(6) and proposed 19 C.F.R. 201.37(b)(6).

By order of the Commission:

RUSSELL N. SHEWMAKER,
General Counsel.

Issued: December 17, 1976.

KENNETH R. MASON,
Secretary.

[FR Doc.76-37527 Filed 12-17-76;11:41 am]

[USITC SE-76-4]

MEETING

Interested members of the public are invited to attend and to observe the meeting of the United States International Trade Commission to be held on December 20, 1976, beginning at 10:00 a.m., in the Hearing Room of the United States International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436. The Commission plans to consider the following agenda items in open session:

1. Color television receivers (Inv. 337-TA-23)—see action jackets GC-76-144, GC-76-146, and GC-76-156, and motion 23-37.

A majority of the entire membership of the Commission determined by recorded vote that Commission business requires that the meeting of December 20, 1976, be called with less than one week's prior notice and directed the issuance of this notice at the earliest practicable time.

If you have any questions concerning the agenda for the December 20, 1976, Commission meeting, please contact the Secretary to the Commission at (202) 523-0161. Public access to any documents considered by the Commission at the meeting may be obtained under the provisions of Subpart C of the Commission's rules (19 C.F.R. 201.17-201.21).

On the authority of 19 U.S.C. 1335 and in conformity with proposed 19 C.F.R. 201.39(a), when a person's privacy interests may be directly affected by holding a portion of a Commission meeting in public, that person may request the Commission to close such portion to public observation. Such requests should be communicated to the Office of the Chairman of the Commission.

Issued: December 17, 1976.

By order of the Commission:

KENNETH R. MASON,
Secretary.

[FR Doc.76-37528 Filed 12-17-76;11:41 am]

NATIONAL COMMISSION ON NEW TECHNOLOGICAL USES OF COPYRIGHTED WORKS

Meeting

DECEMBER 13, 1976.

A meeting of the National Commission on New Technological Uses of Copyrighted Works will be held at 10 a.m. on January 13 and 9 a.m. on January 14, 1977, at the offices of the Commission, located in Room 910, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, Virginia. The proceedings will be devoted to the presentation of testimony providing information relating to the problems of photocopying of copyrighted materials. A preliminary agenda for the meeting is attached.

Various invited witnesses will testify on their ongoing activities relating to this subject. This is the second in a number of fact-finding hearings which will be held on the photocopying issue. The hearings will be open to the public.

All members of the public, including representatives of groups concerned, are invited to submit requests to present testimony in future hearings on this subject. Such request should be accompanied by brief written statements identifying the individual or group requesting to testify on the issue of photocopying of copyrighted materials and the evidence desired to be given.

All such requests should be addressed to Robert W. Frase, Assistant Executive Director, National Commission on New Technological Uses of Copyrighted Works, Washington, D.C. 20558.

ROBERT W. FRASE,
Assistant Executive Director,
CONTU.

PRELIMINARY AGENDA—ELEVENTH MEETING, JANUARY 13–14, 1977, ROOM 910, CONTU CONFERENCE ROOM, 1921 JEFFERSON DAVIS HIGHWAY, ARLINGTON, VIRGINIA

Thursday, Jan. 13, 1977 (Convene 10 a.m.)

10 a.m. to 11 a.m.	Director or Deputy Director, National Agricultural Library—on provision of photocopies by the National Agricultural Library and its affiliated libraries.
11 a.m. to 12 noon	Gerald Sophar, coauthor of the Halperin-Sophar 1967 study on photocopying.
12 noon to 2 p.m.	Lunch (a group arrangement has been made).
2 p.m. to 3 p.m.	Dr. Edward C. McIrvine, manager, technological assessment, Xerox Corp.—On the present and future technology of photocopying.
3 p.m. to 4 p.m.	Ben Weil of the Exxon Corp.—The operations and requirements for access to scientific and technical materials of a large industrial research library.
4 p.m. to 5 p.m.	Commission discussion.
5 p.m.	Adjournment.

Friday, Jan. 14, 1977 (Convene 9 a.m.)

9 a.m. to 10:30 a.m.	William Knox, Director of the National Technical Information Service (NTIS)—The NTIS program for the supplying of authorized photocopies of journal articles.
10:30 a.m. to 11:30 a.m.	Charles Lieb, Esq., copyright attorney, Association of American Publishers—Views of the AAP on the supplying of authorized photocopies and the licensing of photocopying.
11:30 a.m. to 12:30 p.m.	Paul Zurkowski, Information Industry Association—Views of the IIA on the supplying of authorized photocopies and the licensing of photocopying.
12:30 p.m. to 2 p.m.	Lunch (no group arrangements have been made).
2 p.m. to 3 p.m.	Irwin Karp, Esq., attorney, Authors League of America—Recommendations of the Authors League on photocopying.
3 p.m. to 4 p.m.	Commission discussion.
4 p.m.	Adjournment.

[FR Doc.76-37291 Filed 12-17-76;8:45 am]

NATIONAL SCIENCE FOUNDATION

SCIENCE FOR CITIZENS

Availability of Draft Program Announcements

The National Science Foundation (NSF) announces the availability for review and comment of draft Program Announcements for Public Service Science Residencies and Public Service Science Internships. These Announcements have been prepared by the Science for Citizens program, in the Office of Science and Society, and are intended to facilitate the participation of experienced scientists and engineers as well as graduate and undergraduate students in helping the public understand science, engineering and technology and their impact on public policies.

All interested individuals are invited to present written comments to the Foundation. To be most useful, comments should be received by NSF by January 12, 1977, and should be addressed to:

Public Service Science, Residencies and Internships, Office of Science and Society, National Science Foundation, Washington, D.C. 20550.

The draft Program Announcements are included immediately following this notice.

M. REBECCA WINKLER,
Acting Committee
Management Officer.

ANNOUNCEMENT OF PUBLIC SERVICE SCIENCE RESIDENCIES FOR SCIENTISTS AND ENGINEERS

As a means of improving the public understanding of science, engineering, and technology and their impact on public policies, the Science for Citizens program (SFC) will award approximately 15 "residencies" to facilitate the participation of experienced scientists and engineers in public service science activities.

General Description. "Public service science" is construed for the purposes of this program to mean participation in activities that contribute to the development and dissemination of facts, issues, and arguments relevant to public policy issues having significant scientific and technological aspects. These activities should be directed toward enabling citizens to reach informed decisions in matters of public policy affecting their daily lives, as consumers, workers, family members, and community residents, as well as matters of policy in broader social and political contexts.

In this experimental program, the Foundation hopes to encourage scientists and engineers to consider a wide range of alternative uses of their professional knowledge and skills. Appropriate projects may include (but are not limited to) research, writing, expert advice and other activities addressed to the needs of citizens, and informal educational activities for adults such as seminars, workshops, and public lectures. Residents may associate themselves with any of a similarly wide range of host organizations, including (for example) educational institutions, state and local government agencies and offices, professional associations and societies, trade unions and trade associations, and other groups that serve important public purposes.

The broadly educational and public service objectives of this program should be emphasized. In presenting their proposals, applicants are required to state clearly the contributions they expect to make to the improvement of public understanding. Proposals will not be considered whose primary purpose is the advocacy or support of particular positions in matters of public debate and controversy, or for which the principal purpose is private study, the development of formal curricular materials, or the preparation of publications for which payment will be received.

Applicants are responsible for making their own arrangements with an appropriate host institution. Applications must be accompanied by a letter of confirmation and endorsement from the proposed host which clearly indicates how the proposed project will coincide with those aspects of the institution's program that are specifically directed toward the stated goals of the SFC program.

Eligibility. Public Service Science Residencies wil be offered only to persons who (1) are or will be citizens or nationals[1] of the United States as of August 15, 1977, and (2) will have earned by the beginning of their tenure a doctoral degree in the mathematical, physical, biological, medical (but not clinical), engineering, or social sciences, or have acquired equivalent professional experience and qualifications.

Persons who are required to comply with the registration requirements of section 308 (a) of the Federal Regulation of Lobbying Act (2 U.S.C. 267(a) are not eligible for awards under this announcement, nor may applicants serve their residencies with a host organization that is required to register under this Act, nor may Residents use funds granted under this Announcement for any activities that would be defined as lobbying under the terms of the Act.

[1] The term "national of the United States" designates a citizen of the United States or a native resident of a possession of the United States such as American Samoa. It does not refer to a citizen of another country who has applied for United States citizenship.

Tenure. The normal tenure of a Public Service Science Residency is 12 months. The residency may be interrupted provided that no single period of tenure is less than 3 months and that the entire residency is served within a 24-month period. Recipients of awards must begin their tenure within 18 months after the award is made. Exception to these policies may be made by the Foundation if sufficient reason can be shown.

Stipends. The stipend rate for Residents is $18,000 per year, prorated at $1,500 per month. This stipend is intended to allow full-time participation in the program during the tenure period, but not to provide an increase in pay above the Resident's regular salary. No travel or dependency allowances or other payments in addition to the basic stipend will be provided by the Foundation. The host institution or home institution of the Resident at its discretion may supplement the basic stipend up to a maximum of $25,000 per year, subject to prior approval by the Foundation. Except for this supplementation, a Resident may not accept additional remuneration from another fellowship or similar award.

Reports. Residents are required to submit both quarterly reports and a final report to the Foundation. The quarterly reports, which must be submitted within 15 days of completion of each 90-day period of time, may be brief summaries of activities and accomplishments. The final report, which must be submitted within 30 days of completion of tenure, is intended to help the Foundation evaluate the success of the residency program as a whole, and should be a full and reflective summary of the Resident's experience. The host institution will also be asked to submit a final report, and to indicate its willingness to do so in its letter of confirmation.

Conditions of Appointment. Residents are expected to devote their full time to the public service science activities on the basis of which they received their award. Any reduction of these activities to a less-than-full-time basis will result in termination of the award, and any major change in the activities program or tenure must receive prior approval from the Foundation. The award is also subject to termination if the Resident or the host institution discontinues an approved program prior to the end of the specified period of tenure.

This Announcement sets forth the basic conditions of appointment. In addition, residency awards are made subject to the provisions in the publication entitled Information for Public Service Science Residents (and any subsequent amendments thereto), which will be mailed to successful applicants.

Evaluation and Selection. The evaluation of applicants will be based on (1) the applicant's professional abilities, as evidenced by a curriculum vitae, letters of reference, and other indications of scientific and public service activities and competence, and (2) the potential contributions of the proposed activities to the public understanding of science, engineering and technology, as evidenced in the proposal itself and in its confirmation by the host institution.

In keeping with the experimental nature of the Science for Citizens program, awards will be balanced and diversified insofar as possible by type of activity, type of host institution, geographical location, and disciplinary specialty.

Applications will be screened initially by SFC program staff for conformity with program objectives and then submitted to peer review. Membership of each review panel will have balanced representation from the scientific and nonscientific communities and the public and private sectors, and will consist of scientists, experts on informal science education, and experts on the use of scientific information in the resolution of public policy issues.

Application Materials. To be eligible for consideration an application must be submitted on standard forms provided by the Foundation. Application forms and instructions may be obtained from:

Public Service Science Residencies, Office of Science and Society, National Science Foundation, Washington, D.C. 20550.

The deadline for filing applications is May 31, 1977. All applicants will be notified by letter of the disposition of their applications no later than September 15, 1977.

ANNOUNCEMENT OF PUBLIC SERVICE SCIENCE INTERNSHIPS

This Announcement is identical to the Residency Anouncement with the following changes:

For each occurence of the words "resident" and "residency" substitute the "Intern" and "internship".

Introductory paragraph. Change to read:

• • • (SFC) will award approximately 20 internships to facilitate the participation of undergraduate and graduate students of science and engineering in public service science activities.

General Description. Change paragraph 2, line 1 to read:

In this experimental program, the Foundation hopes to encourage science and engineering students to consider a wide range of alternative applications of their educational skills and interests.

Eligibility. Change criterion (2) to read:

(2) Are enrolled in undergraduate or graduate-level programs in the mathematical, physical, biological, medical (but not clinical), engineering, or social sciences. Applicants must have completed three years of undergraduate study with a major in science or engineering by the time they expect to begin their internships, and must be enrolled in an accredited educational institution at the time of aplication.

Tenure. Change first two sentences to read:

The tenure of a Public Service Science Interim may range between 6 months and 12 months. The internship may be interrupted provided that no single period of tenure is less than 6 months and that the entire internship is served within a 24-month period.

Stipends. Change first paragraph to read:

The stipend rate for Interns is $5,000 per year, prorated at $420 per month.

Evaluation and Selection. Change criterion (1) to read:

(1) the applicant's academic record, curriculum vitae, and letters of reference.

[FR Doc.76-37213 Filed 12-17-76;8:45 am]

NATIONAL SCIENCE FOUNDATION

SUBPANEL FOR STUDENT-ORIGINATED STUDIES PROGRAM ADVISORY PANEL ON SCIENCE EDUCATION PROJECTS

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subpanel for Student-Originated Studies Program.
Date and time: January 6-8, 1977, 9:00 a.m. to 5:00 p.m. each day.
Place: Sheraton Park Hotel, 2660 Woodley Road, N.W., Washington, D.C.
Type of meeting: Closed.
Contact person: Dr. Max Ward, Program Manager, Student-Originated Studies Program, Room 400, National Science Foundation, 5225 Wisconsin Avenue, N.W., Washington, D.C. 20550, telephone (202) 282-7150.
Purpose of panel: To provide advice and recommendations concerning support for science education.
Agenda: To review and evaluate science education proposals and projects as part of the selection process for awards.
Reason for closing: The proposals and projects being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals, associated with the proposals and projects. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(b), Freedom of Information Act. The rendering of advice by the panel is considered to be a part of the Foundation's deliberative process and is thus subject to exemption (5) of the Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make determinations by the Director, NSF, on February 11, 1976.

M. REBECCA WINKLER,
Acting Committee Management Officer.

[FR Doc.76-37253 Filed 12-17-76;8:45 am]

SUBPANEL FOR WOMEN IN SCIENCE PROGRAM ADVISORY PANEL ON SCIENCE EDUCATION PROJECTS

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subpanel for Women in Science Program.
Date and time: January 12-14, 1977—Jan. 12, 7-10 p.m.; Jan. 13-14, 8:30 a.m. to 5 p.m.
Place: Quality Inn—Downtown, Massachusetts Avenue and Thomas Circle, NW., Washington, D.C.
Type of meeting: Closed.
Contact person: Miss M. Joan Callanan, Program Manager, Women in Science, Room 406, National Science Foundation, 5225 Wisconsin Ave., NW., Washington, D.C. telephone (202) 282-7150.
Purpose of panel: To provide advice and recommendations concerning support for science education.
Agenda: To review and evaluate science education proposals and projects as part of the selection process for awards.
Reason for closing: The proposals and projects being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals and projects. These matters are within exemptions (4) and (6) of 5 U.S.C. 552 (b), Freedom of Information Act. The rendering of advice by the panel is considered to be a part of the Foundation's deliberative process and is thus subject to exemption (5) of the Act.

Authority to close meeting: This determination was made by the Committee Management Office pursuant to provisions of Section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make determinations by the Director, NSF, on February 11, 1976.

M. REBECCA WINKLER,
Acting Committee Management Officer.

[FR Doc.76-37254 Filed 12-17-76;8:45 am]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS; REACTOR SAFETY STUDY WORKING GROUP

Meeting

As announced in the FEDERAL REGISTER (41 FR 52922, December 2, 1976), the ACRS Reactor Safety Study Working Group will meet on January 4, 1977, in Room 1046, 1717 H Street, N.W., Washington, DC 20555. The agenda will be the same as published in the FEDERAL REGISTER (41 FR 51482; November 22, 1976).

This meeting, originally scheduled to be held on December 8, 1976, was postponed to accommodate schedules of invited participants.

Dated: December 14, 1976.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc.76-37198 Filed 12-17-76;8:45 am]

[Docket Nos. STN 50-556; STN 50-557]

PUBLIC SERVICE CO. OF OKLAHOMA AND ASSOCIATED ELECTRIC COOPERATIVE, INC.; BLACK FOX STATIONS, UNITS 1 AND 2

Second Prehearing Conference

Notice is hereby given, pursuant to § 2.751(a) of the U.S. Nuclear Regulatory Commission's Rules of Practice, 10 CFR Part 2, that a prehearing conference will be held in the above-identified proceeding at 10:00 a.m., in Bankruptcy Courtroom No. 2 on Thursday, January 6, 1977, at the U.S. District Courthouse, 333 West Fourth Street, Tulsa, Oklahoma 74103.

This prehearing conference will be conducted by the Atomic Safety and Licensing Board (the Board) established by the Commission to conduct this licensing proceeding which involves an application for construction permits for two (2) nuclear reactors in Oklahoma. This proposed facility has been designated as the Black Fox Station, Units 1 and 2.

The prehearing conference will deal with the following matters:

1. Oral argument on all outstanding petitions to intervene;
2. Oral argument on all outstanding motions;
3. Discussion of the status of discovery;
4. Discussion of the status of the established schedule for the proceeding;
5. Such other matters as it may aid in the orderly disposition of the proceeding.

Members of the public are invited to attend this prehearing conference as well as the evidentiary hearing which will be held at a later date to be fixed by the Board. Members of the public wishing to make limited appearances pursuant to § 2.715(a) of the Commission's Rules of Practice may identify themselves at this prehearing conference but oral or written statements to be presented by limited appearance will not be received at this conference. The Board will receive such limited appearances at the beginning of the evidentiary hearing, however.

Issued this 13th day of December, 1976, at Bethesda, Maryland.

By order of the Atomic Safety and Licensing Board.

DANIEL M. HEAD,
Chairman.

[FR Doc.76-37199 Filed 12-17-76;8:45 am]

REGULATORY GUIDE 1.90, "INSERVICE INSPECTION OF PRESTRESSED CONCRETE CONTAINMENT STRUCTURES WITH GROUTED TENDONS"

Public Meeting

The Nuclear Regulatory Commission staff will conduct a public meeting to discuss the proposed Revision 1 of Regulatory Guide 1.90, "Inservice Inspection of Prestressed Concrete Containment Structures with Grouted Tendons." The guide is one of a series of guides developed for the implementation of the Commission's regulation 10 CFR Part 50, Appendix A—"General Design Criteria for Nuclear Power Plants."

Regulatory Guide 1.90 provides guidelines for developing acceptable programs for inspecting prestressed concrete containment structures with grouted tendons. The version of the guide to be discussed at the meeting will be Draft 9 of Revision 1, which has been placed in the Public Document Room. This includes a number of changes from both the November 1974, "For Comment" issue and Draft 6, dated June 4, 1976 which was discussed at an open meeting of the ACRS Subcommittee on Regulatory Guides on July 7, 1976. Draft 9 of the guide is available for inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. Single copies (which may be reproduced) may be obtained upon written request to the Director, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

The meeting will be held on January 25, 1977, in Room P-118 of the Commission's Offices at 7920 Norfolk Avenue, Bethesda, Maryland, from 9:30 a.m. to 4:00 p.m. Representatives of the Offices of Standards Development, Nuclear Reactor Regulation, and Inspection and Enforcement will be present.

The meeting is intended to provide opportunities for the NRC staff and other interested persons to discuss the content of the guide. Written comments may be submitted to the Commission staff at the meeting or may be sent (at any time) to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Interested persons are invited to attend the meeting and provide comments and suggestions on specific provisions of the guide. Opportunity will also be provided for any person who would like to make oral statements on the content of the guide. Any person who intends to make an oral statement should notify Mr. Hans Ashar, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Telephone (301) 443-6927, by January 18, 1977. It is expected that oral statements will be limited to ten minutes. Persons desiring additional information or the meeting agenda should also contact Mr. Ashar.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland this 13th day of December 1976.

For the Nuclear Regulatory Commission.

RAY G. SMITH,
Acting Director, Office of Standards Development.

[FR Doc. 76-37200 Filed 12-17-76;8:45 am]

PRIVACY ACT OF 1974

Notices of Systems of Records; Exemptions

On August 19, 1976, the Nuclear Regulatory Commission published in the FEDERAL REGISTER (41 FR 35073) a notice proposing to amend 10 CFR Part 9 of its regulations to exempt from certain requirements of the Privacy Act portions of the NRC systems of records NRC-1, "Appointment and Promotion Certificate Records." The exemptions are intended to protect investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under a promise of confidentiality, as provided by 5 U.S.C. 552a (k)(5).

The notice included a statement that an appropriate exemption, pursuant to 5 U.S.C. 552a(k)(5), of the NRC system of records NRC-1 to conform with the amendment of 10 CFR 9.95 will be published when final action is taken on the proposed amendment of 10 CFR 9.95. The amendment of NRC-1 also amends the categories of records in the system to describe more precisely the particular types of records therein and amends the paragraph on retrievability to clarify that records are accessed by name as well as by numbers associated with names.

By separate notice the Commission is publishing in effective form the amendment to 10 CFR 9.95. (See the Rules section of todays FEDERAL REGISTER).

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552, 552a, and 553 of Title 5 of

the United States Code, as amended, the following amendments to the Notices of Systems of Records are published as a document subject to publication in the annual compilation of Privacy Act documents.

1. In NRC–1, the following paragraph is added following the paragraph entitled "System name", and the paragraphs entitled "Categories of records in the system" and "Retrievability" are revised to read as follows:

NRC–1

System Name:

Appointment and Promotion Certificate Records—NRC

Pursuant to 5 U.S.C. 552a(k)(5), the Commission has exempted portions of this system of records from 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G); (H), and (I), and (f). The exemption rule is contained in Section 9.95 of the NRC regulation (10 CFR 9.95).

* * * * *

Categories of records in the system:

This system of records contains career opportunity announcements, applications for vacancies, supervisory evaluation forms, performance appraisals, the results of reference checks, candidate evaluation certification and selection forms and related correspondence.

* * * * *

Retrievability:

Information accessed by name and numbers associated with names.

* * * * *

Effective date: These amendments to the Notices of Systems of Records become effective on December 20, 1976.

Dated at Bethesda, Maryland this 11th day of November 1976.

For the Nuclear Regulatory Commission.

LEE V. GOSSICK,
Executive Director for Operations.

[FR Doc.76-37336 Filed 12-17-76;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS

Proposed Meetings

In order to provide advance information regarding proposed meetings of ACRS Subcommittees and Working Groups and of the full Committee, the following preliminary schedule is being published. This preliminary schedule reflects the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published in FR Vol. 41, November 22, 1976, page 51482. Those meetings that are definitely scheduled have had, or will have, an individual notice published in the FR approximately 15 days (or more) prior to the meeting. Those Subcommittee and Working Group meetings for which it is anticipated that there will be a portion or all of the meeting open to the public are indicated by an asterisk (*). It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. Information as to whether a meeting has been firmly scheduled, cancelled or rescheduled, or whether changes have been made in the agenda for the January 6–8, 1977 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone 202/634–1374, Attn: Mary E. Vanderholt) between 8:15 a.m. and 5:00 p.m., EST.

SUBCOMMITTEE AND WORKING GROUP MEETINGS

**Emergency Core Cooling System,* December 21, 1976, Washington, DC (rescheduled from November 6, 1976) to review Exxon Nuclear Company, Inc. analytical models formulated to meet current ECCS criteria for fuel fabricated by Exxon for pressurized water reactors with ice condensers and for non-jet-pump boiling water reactors, and to review the application of these models to the Donald C. Cook, Unit No. 1 and the Oyster Creek, Unit No. 1, Nuclear Power Plants. Notice of this meeting was published in FR Vol. 41, December 6, 1976, page 53377.

**Davis-Besse Nuclear Power Station, Unit 1,* December 21, 1976, Washington, DC to review the application of the Toledo Edison Company for an operating license. Notice of this meeting was published in FR Vol. 41, December 6, 1976, page 53376.

**Donald C. Cook Nuclear Power Plant, Unit No. 1,* December 22, 1976, Washington, DC to continue the review of the Exxon Nuclear Company, Inc., fuel reload, the related emergency core cooling system analysis, and other items to determine if the plant should be allowed to operate at a 100% power level following refueling. Notice of this meeting was published in FR Vol. 41, December 6, 1976, page 53377.

**Reactor Safety Study,* January 4, 1976 (rescheduled from December 8, 1976) Washington, D.C. to continue the review of WASH-1400 (NUREG–75/014), "An Assessment of Accident Risks in U.S. Commercial Nuclear Power Plants." Notices of this meeting were published in FR Vol. 41, November 22, 1976, page 51482 and December 2, 1976, page 52922.

**Regulatory Activities* (previously titled Regulatory Guides), January 5, 1977, Washington, D.C. to review working papers regarding future Regulatory Guides and proposed changes to existing Guides. Also, to discuss activities which affect the current licensing process or reactor operations including matters relating to the Babcock and Wilcox reactor surveillance program and to steam generator operational problems.

**North Anna Power Station, Units 1 and 2,* January 5, 1977, Washington, D.C. to develop information for consideration by the ACRS in its continuing review of the application of the Virginia Electric and Power Company for a license to operate North Anna Power Station, Units 1 and 2.

**Clinch River Breeder Reactor,* January 12–13, 1977, New Stanton, Pa. An Ad Hoc Working Group of this Subcommittee will meet to gather factual information on the thermal hydraulic design of the nuclear power plant to aid the ACRS in its review of the application of the U.S. Energy Research and Development Administration, the Tennessee Valley Authority, and the Project Management Corporation for a permit to construct the Clinch River Breeder Reactor.

**Cherokee Nuclear Station, Units 1, 2, and 3, and Perkins Nuclear Station, Units 1, 2, and 3,* January 19, 1977, Charlotte, N.C. to review the application of the Duke Power Company for a permit to construct these Units.

**Transportation of Radioactive Materials,* January 25, 1977, Chicago, Ill. (rescheduled from November 4, 1976) to review public comments on NUREG–0034, "Draft Environmental Statement on the Transportation of Radioactive Material by Air and Other Modes."

**Enrico Fermi Atomic Power Plant, Unit No. 2,* January 27, 1977, Detroit, MI to review the application of the Detroit Edison Company for an operating license for Enrico Fermi Atomic Power Plant, Unit No. 2.

**Blue Hills Station, Units 1 and 2,* January 28, 1977, Beaumont, TX to review the application of Gulf States Utility Company for an early site review.

**Seismic Activity,* February 8–9, 1977, Washington, DC to discuss Appendix A to 10 CFR 100 and the derivation of earthquake response spectra.

**Regulatory Activities,* February 9, 1977, Washington, D.C. to review working papers regarding future Regulatory Guides and proposed changes to existing Guides. Also, to discuss pertinent activities which affect the current licensing process and/or reactor operations.

FULL COMMITTEE MEETINGS

JANUARY 6–8, 1977

A. *Davis-Besse Nuclear Power Station, Unit No. 1—Operating License Review

B. *North Anna Power Station, Units No. 1 and No. 2—Operating License Review

C. *Donald C. Cook Nuclear Power Plant, Unit No. 1—Full Power Operation Approval

D. *Exxon Nuclear Company, Inc.—Review of ECCS Evaluation Model.

FEBRUARY 10–12, 1977

Agenda to be announced.

Dated December 15, 1976.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc.76-37362 Filed 12-17-76;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS AD HOC WORKING GROUP OF THE SUBCOMMITTEE ON THE CLINCH RIVER BREEDER REACTOR

Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232 b.), an Ad Hoc Working Group of the ACRS Subcommittee on the Clinch River Breeder Reactor will hold a meeting on January 12–13, 1977 at the Inn America, I–70 and 119, New Stanton, PA 15672. The Advisory Committee on Reactor Safeguards will review the application of the U.S. Energy Research and Development Administration, the Tennessee Valley Authority, and the Project Management Corporation (hereafter referred to as the CRBR Project Office) for a permit to construct the Clinch River Breeder Reactor. The purpose of this meeting of the Ad Hoc Working Group will be to gather factual information on thermal hydraulic design of the nuclear power plant to aid the Committee in its review.

The agenda for subject meeting shall be as follows:

Wednesday, January 12, 1977—8 a.m. until approximately 5 p.m.

Thursday, January 13, 1977—8 a.m. until conclusion of business.

The Ad Hoc Working Group will meet in open session to discuss with representatives of the NRC Staff and the CRBR Project Office and its consultants the thermal hydraulic aspects of the CRBR design.

It may be necessary for the Working Group to hold one or more closed sessions for the purpose of exploring with the NRC Staff and Applicant matters involving proprietary information.

I have determined, in accordance with Subsection 10(d) of Public Law 92-463, that it is necessary to conduct the above closed sessions to protect confidential proprietary information (5 U.S.C. 552 (b)(4)).

Practical considerations may dictate alterations in the above agenda or schedule. The Chairman of the Working Group is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incompleted open session from one day to the next.

The Advisory Committee on Reactor Safeguards is an independent group established by Congress to review and report on each application for a construction permit and on each application for an operating license for a reactor facility and on certain other nuclear safety matters. The Committee's reports become a part of the public record. Although ACRS meetings are ordinarily open to the public and provide for oral or written statements to be considered as a part of the Committee's information gathering procedure concerning the health and safety of the public, they are not adjudicatory type hearings such as are conducted by the Nuclear Regulatory Commission's Atomic Safety & Licensing Board as part of the Commission's licensing process. ACRS meetings do not normally treat matters pertaining to environmental impacts outside the safety area.

With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda may do so by providing 15 readily reproducible copies to the Working Group at the beginning of the meeting. Comments should be limited to safety related areas within the Committee's purview.

Persons desiring to mail written comments may do so by sending a readily reproducible copy thereof in time for consideration at this meeting. Comments postmarked no later than January 5, 1977 to Mr. Thomas G. McCreless, ACRS, NRC, Washington, DC 20555, will normally be received in time to be considered at this meeting.

Background information concerning items to be considered at this meeting can be found in documents on file and available for public inspection at the NRC Public Document Room, 1717 H St., N.W., Washington, DC 20555; at the Oak Ridge Public Library, Civic Center, Oak Ridge, TN 37830; and at the Lawson McGhee Public Library, 500 W. Church Street, Knoxville, TN 37902.

(b) Persons desiring to make an oral statement at the meeting should make a written request to do so, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Working Group will receive oral statements on topics relevant to the Committee's purview at an appropriate time chosen by the Chairman of the Working Group.

(c) 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 on January 11, 1977 to the Office of the Executive Director of the Committee (telephone 202/634-1374, Attn: Mr. Thomas G. McCreless) between 8:15 a.m. and 5:00 p.m., EST.

(d) Questions may be propounded only by members of the Working Group and its consultants.

(e) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(f) Persons with agreements or orders permitting access to proprietary information may attend portions of ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and relate to the material being discussed.

The Executive Director of the ACRS should be informed of such an agreement at least three working days prior to the meeting so that the agreement can be confirmed and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. Minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to Mr. Thomas G. McCreless of the ACRS Office, prior to the beginning of the meeting.

(g) A copy of the transcript of the open portion(s) of the meeting where factual information is presented will be available for inspection on or after January 21, 1977 at the NRC Public Document Room, 1717 H St., N.W., Washington, DC 20555; at the Oak Ridge Public Library, Civic Center, Oak Ridge, TN 37830; and at the Lawson McGhee Public Library, 500 W. Church St., Knoxville, TN 37902.

A copy of the minutes of the meeting will be made available for inspection at the NRC Public Document Room, 1717 H St., N.W., Washington, DC 20555 after April 13, 1977.

Copies may be obtained upon payment of appropriate charges.

Dated: December 15, 1976.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc.76-37363 Filed 12-17-76;8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON THE NORTH ANNA POWER STATION UNITS 1 AND 2

Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232 b.), the ACRS Subcommittee on the North Anna Power Station, Units 1 and 2, will hold a meeting on January 5, 1977 in Room 1046, 1717 H Street NW., Washington, D.C. 20555. The purpose of this meeting is to continue the review of the application of the Virginia Electric and Power Company for a license to operate Units 1 and 2.

The agenda for subject meeting shall be as follows:

WEDNESDAY, JANUARY 5, 1977

8:30 a.m.-9:00 a.m. The Subcommittee will meet in open Executive Session, with any of its consultants who may be present, to explore their preliminary opinions, based upon their independent review of safety reports, regarding matters which should be considered in order to formulate a Subcommittee report and recommendations to the full Committee.

9:00 a.m. until the conclusion of business. The Subcommittee will meet in open session to hear presentations by representatives of the NRC Staff, the Virginia Electric and Power Company, and their consultants, and will hold discussions with these groups pertinent to this review.

At the conclusion of this session, the Subcommittee may 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. Upon conclusion of this caucus, the Subcommittee will announce its determination.

It may be necessary for the Subcommittee to hold one or more closed sessions for the purpose of exploring with the NRC Staff and Applicant matters involving proprietary information, particularly with regard to specific features of the plant design and plans related to plant security.

I have determined, in accordance with Subsection 10(d) of Public Law 92-463, that it is necessary to conduct the above closed sessions to protect confidential proprietary information (5 U.S.C. 552 (b)(4)).

Practical considerations may dictate alterations in the above agenda or schedule. The Chairman of the Subcommittee is empowered to conduct the meeting in

a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incompleted open session from one day to the next.

The Advisory Committee on Reactor Safeguards is an independent group established by Congress to review and report on each application for a construction permit and on each application for an operating license for a reactor facility and on certain other nuclear safety matters. The Committee's reports become a part of the public record. Although ACRS meetings are ordinarily open to the public and provide for oral or written statements to be considered as a part of the Committee's information gathering procedure concerning the health and safety of the public, they are not adjudicatory type hearings such as are conducted by the Nuclear Regulatory Commission's Atomic Safety & Licensing Board as part of the Commission's licensing process. ACRS meetings do not normally treat matters pertaining to environmental impacts outside the safety area.

With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda may do so by providing a readily reproducible copy to the Subcommittee at the beginning of the meeting. Comments should be limited to safety related areas within the Committee's purview.

Persons desiring to mail written comments may do so by sending a readily reproducible copy thereof in time for consideration at this meeting. Comments postmarked no later than December 29, 1976, to Mr. R. Muller, ACRS, NRC, Washington, D.C. 20555, will normally be received in time to be considered at this meeting.

Background information concerning items to be considered at this meeting can be found in documents on file and available for public inspection at the NRC Public Document Room, 1717 H St., N.W., Washington, D.C. 20555; at the Office of the County Administrator, Board of Supervisors, Louisa County Courthouse, Louisa, VA 23093; and at the Manuscripts Department, University of Virginia, Charlottesville, VA 22901.

(b) Those persons wishing to make an oral statement at the meeting should make a written request to do so, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Committee will receive oral statements on topics relevant to the Committee's purview at an appropriate time chosen by the Chairman of the Subcommittee.

(c) 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 on January 4, 1977 to the Office of the Executive Director of the Committee (telephone 202/634-1374, Attn: Mr. R. Muller) between 8:15 a.m. and 5:00 p.m., EST.

(d) Questions may be propounded only by members of the Subcommittee and its consultants.

(e) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(f) Persons with agreements or orders permitting access to proprietary information may attend portions of ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and relate to the material being discussed.

The Executive Director of the ACRS should be informed of such an agreement at least three working days prior to the meeting so that the agreement can be confirmed and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. Minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to Mr. R. Muller of the ACRS Office, prior to the beginning of the meeting.

(g) A copy of the transcript of the open portion(s) of the meeting where factual information is presented will be available for inspection on or after January 12, 1977 at the NRC Public Document Room, 1717 H St., N.W., Washington, DC 20555; at the Office of the County Administrator, Board of Supervisors, Louisa County Courthouse, Louisa, VA 20393; and at the Manuscripts Department, University of Virginia, Charlottesville, VA 22901.

Copies of the minutes of the meeting will be made available for inspection at the NRC Public Document Room, 1717 H St., N.W., Washington, D.C. 20555 after April 5, 1977.

Copies may be obtained upon payment of appropriate charges.

Dated: December 15, 1976.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc. 76-37364 Filed 12-17-76; 8:45 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS

Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232 b.), the Advisory Committee on Reactor Safeguards will hold a meeting on January 6-8, 1977, in Room 1046, 1717 H Street, NW, Washington, DC.

The agenda for the subject meeting will be as follows:

THURSDAY, JANUARY 6, 1977

8:30 A.M.-9 A.M.: EXECUTIVE SESSION (OPEN)

The Committee will discuss the status of its activities with respect to several generic matters including safeguards provisions related to nuclear facilities; environmental effects of the light water reactor fuel cycle; and review of proposed NRC siting policy. The Committee will discuss the disciplines required to conduct an ACRS review.

9 A.M.-9:15 A.M.: EXECUTIVE SESSION (CLOSED)

The Committee will meet in closed executive session to exchange and discuss the personal opinions of individual members leading to the formulation of advice and recommendations regarding selection of candidates for appointment to the ACRS and the classification of safeguards information related to nuclear facilities.

9:15 A.M.-9:45 A.M.: EXECUTIVE SESSION (OPEN)

The Committee will hear and discuss the report of the ACRS Subcommittee and consultants who may be present regarding the request for an Operating License for the Davis Besse Nuclear Power Station. Portions of this session will be closed if required to discuss Proprietary Information related to this plant and safeguards provisions for this Station.

9:45 A.M.-12:30 P.M.: DAVIS BESSE NUCLEAR POWER STATION (OPEN)

The Committee will hear presentations of the NRC Staff and the Applicant related to the request for an Operating License for this Station. Portions of this session will be closed if required to discuss Proprietary Information related to this Station and to discuss safeguards provisions for this plant.

1:30 P.M.-2:30 P.M.: ACRS MEETING WITH NRC COMMISSIONERS (OPEN/CLOSED)

The Committee will meet with the Commissioners in open session to discuss the status of ACRS activities with respect to several generic matters including safeguards provisions for nuclear facilities, the environmental effects of the LWR fuel cycle and review of NRC siting policy.

The Committee will meet with the Commissioners in closed session to discuss the classification of safeguards information related to nuclear facilities and the basis for selection of ACRS members.

2:30 P.M.-3 P.M.: EXECUTIVE SESSION (OPEN)

The Committee will hear and discuss the report of the ACRS Subcommittee and consultants who may be present regarding the request for an Operating License for the North Anna Power Station Units 1 and 2. Portions of this session will be closed if required to discuss Proprietary Information related to this plant and safeguards provisions for this Station.

3 P.M.-7:15 P.M.: NORTH ANNA POWER STATION UNITS 1 AND 2

The Committee will hear presentations by and hold discussions with representatives of the NRC Staff and the Applicant related to the request for an Operating License for this Station. Portions of this session will be closed if required to discuss Proprietary Information related to this plant and safeguards provisions for this Station.

FRIDAY, JANUARY 7, 1977

8:30 A.M.–9:30 A.M.: EXECUTIVE SESSION (OPEN)

The Committee will hear and discuss the report of the ACRS Subcommittee on Regulatory Activities. This will include discussion of proposed Regulatory Guides and regulatory activities such as evaluation of steam generator tube integrity for pressurized water reactors; radiation surveillance programs in Babcock and Wilcox Company pressurized water reactors, and proposed review of the seismic design basis for the San Onofre Nuclear Generating Station Unit 1 and the Humboldt Bay Nuclear Plant Unit 3.

9:30 A.M.–12 NOON: MEETING WITH REPRESENTATIVES OF THE NRC STAFF (OPEN)

The Committee will meet with representatives of the NRC Staff to hear presentations and to discuss matters related to resolution of selected safety issues related to light water reactors, the NRC–ACRS decisionmaking process, recent reactor operating experience and licensing actions, and the future schedule for ACRS activities. Members of the Staff will report to the ACRS regarding safety research in the Federal Republic of Germany related to reactor containment.

1 P.M.–1:45 P.M.: EXECUTIVE SESSION (OPEN)

The Committee will hear and discuss the reports of its Subcommittees and consultants who may be present regarding the request for approval of Exxon Nuclear Company reload fuel for pressurized water reactors and for operation of the Donald C. Cook Nuclear Plant Unit 1 with Exxon Nuclear Company reload fuel. Portions of this session will be closed if required to discuss Proprietary Information regarding these matters and safeguards provisions related to the Donald C. Cook Nuclear Plant.

1:45 P.M.–3 P.M.: EXXON NUCLEAR COMPANY RELOAD FUEL FOR PRESSURIZED WATER REACTORS (OPEN)

The Committee will hear presentations by and hold discusions with representatives of the NRC Staff and the Exxon Nuclear Company regarding proposed reload fuel for use in pressurized water reactors. Portions of this session will be closed if required to review Proprietary Information related to the design, fabrication or operation of this type fuel.

3 P.M.–5:30 P.M.: DONALD C. COOK NUCLEAR PLANT UNIT 1 (OPEN)

The Committee will hear presentations by and hold discusions with representatives of the NRC Staff and the Applicant regarding the operation of the Donald C. Cook Nuclear Plant at full power with reload fuel provided by the Exxon Nuclear Company. Portions of this session will be closed if necessary to discuss Proprietary Information related to this plant and safeguards provisions for this Station.

5:30 P.M.–6:30 P.M.: EXECUTIVE SESSION (CLOSED)

This portion of the meeting will be closed to discuss prospective candidates for appointment to the Committee.

SATURDAY, JANUARY 8, 1977

8:30 A.M.–4 P.M.: EXECUTIVE SESSION (CLOSED)

The Committee will meet in closed executive session to exchange and discuss personal opinions and recommendations leading to the formulation of advice with respect to items considered at this meeting. Proposed ACRS activities and reports on generic matters such as the environmental effects of the LWR fuel cycle and selected safety issues related to LWR reactors will be discussed.

I have determined in accordance with Subsection 10(d) of Public Law 92–463 that it is necessary to close portions of the meeting as noted above to protect material, which has been designated national security information and is classified unded E.O. No. 11652 (5 U.S.C 552 (b)(1)), and to protect proprietary data (5 U.S.C. 552(b)(4)), to protect the free exchange of opinion during the Committee's deliberative process (5 U.S.C. 552 (b)(5)), and discussion of information which, if written, would fall within the provisions of exemption 5 of 5 U.S.C. 552 (b) (5 U.S.C. 552(b)(5)), to preserve the confidentiality of procedures for the protection of information related to safeguarding of special nuclear material and the basis for appointment of ACRS members which is intra-agency and/or personnel policy information (5 U.S.C. 552 (b)(2) and (5)), and to protect information which, if released, would represent an undue invasion of privacy (5 U.S.C. 552(b)(6)). These closed sessions will consist primarily of deliberative discussion among the Committee members leading to the formulation of advice and recommendations to the Nuclear Regulatory Commission. Separation of factual information and information considered exempt from disclosure under exemption (1), exemption (2), exemption (4), exemption (5), and exemption (6) of 5 U.S.C. 552(b) from the individual advice, opinion or recommendations of ACRS members and consultants during this discussion is not considered practical.

Practical considerations may dictate alterations in the above agenda or schedule. The Chairman of the Committee is empowered to conduct the meeting in a manner that in his judgment will facilitate the orderly conduct of business, including provisions to carry over an incompleted open session from one day to the next.

The Advisory Committee on Reactor Safeguards is an independent group established by Congress to review and report on each application for a construction permit and on each application for an operating license for a reactor facility and on certain other nuclear safety matters. The Committee's reports become a part of the public record. Although ACRS meetings are ordinarily open to the public and provide for oral or written statements to be considered as a part of the Committee's information gathering procedure concerning the health and safety of the public, they are not adjudicatory type hearings such as are conducted by the Nuclear Regulatory Commission's Atomic Safety & Licensing Board as part of the Commission's licensing process. ACRS meetings do not normally treat matters pertaining to environmental impacts outside the safety area.

With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(a) Persons wishing to submit written statements regarding the agenda items may do so by providing a readily reproducible copy to the Committee at the beginning of the meeting. Comments should be limited to safety related areas within the Committee's purview. Persons desiring to mail written comments may do so by mailing a readily reproducible copy thereof in time for consideration at this meeting. Comments postmarked no later than December 22, 1976, to the Executive Director, Advisory Committee on Reactor Safeguards, Nuclear Regulatory Commission, Washington, DC 20555 will normally be received in time to be considered at this meeting. Background information concerning items to be considered at this meeting can be found in documents on file and available for public inspection at the Nuclear Regulatory Commission's Public Document Room, 1717 H Street, NW, Washington, DC 20555 and at the following Public Document Rooms:

DAVIS BESSE NUCLEAR POWER STATION

Ida Rupp Public Library, 310 Madison Street, Port Clinton, OH 43452.

NORTH ANNA STATIONS UNITS 1 AND 2

1. Louisa County Courthouse, Louisa, VA 23093.
2. Alderman Library, University of Vigrinia, Charlottesville, VA 22901.

D.C. COOK UNIT 1

Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085.

(b) Those persons wishing to make oral statements regarding agenda items at the meeting should make a request to do so prior to the meeting, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Committee will receive oral statements in safety related areas within the Committee's purview at an appropriate time chosen by the Chairman of the Committee.

(c) Further information regarding topics to be discussed, whether the meeting or portions of the meeting have 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 on January 5, 1977, to the Office of the Executive Director of the Committee (Telephone: 202–634–1371) between 8:15 a.m. and 5 p.m., Eastern Time. It should be noted that the above schedule is tentative, based on the anticipated availability of related information, etc. It may be necessary to reschedule items to accommodate required changes. The ACRS Executive Director will be prepared to describe these changes on January 5, 1977.

(d) Questions may be propounded only by members of the Committee and its consultants.

(e) The use of still, movie, and television cameras, the physical installation and presence of which will not interfere with the course of the meeting, will be permitted both before and after the meeting and during any recess. The use

of such equipment will not, however, be allowed while the meeting is in session.

(f) Persons with agreements or orders permitting access to proprietary information other than safeguards information may attend portions of ACRS meetings where this material is being discussed upon confirmation that such agreements are effective and relate to the material being discussed.

The Executive Director of the ACRS should be informed of such an agreement at least 3 days prior to the meeting so that the agreement can be confirmed and a determination can be made regarding the applicability of this agreement to the material that will be discussed during the meeting. Minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to the Executive Director at the beginning of the meeting.

(g) A copy of the transcript of the open portion(s) of the meeting where factual information is presented will be available for inspection during the following workday at the Nuclear Regulatory Commission's Public Document Room, 1717 H Street, NW, Washington, DC. Copies of the minutes of the meeting will be made available for inspection at the Nuclear Regulatory Commission's Public Document Room, 1717 H Street, NW, Washington, DC, on or after April 10, 1977. Copies may be obtained upon payment of appropriate charges.

SAMUEL J. CHILK,
Secretary of the Commission.

DECEMBER 17, 1976.

[FR Doc.76-37493 Filed 12-17-76;10:03 am]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON REGULATORY ACTIVITIES

Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b.), the Advisory Committee on Reactor Safeguards Subcommittee on Regulatory Activities will hold a meeting on January 5, 1977 in Room 1062, 1717 H Street, N.W., Washington, DC 20555.

The agenda for the above meeting will be as follows:

WEDNESDAY, JANUARY 5, 1977

(A) 8:45 A.M. UNTIL ABOUT 10:30 A.M. (OPEN)

The Subcommittee will hear presentations from the NRC Staff and will hold discussions with this group pertinent to the following items:

(1) Regulatory Guide 1.89, "Qualification of Class 1E Equipment for Nuclear Power Plants."

(2) A Working Paper, Regulatory Guide 1.XX, "Physical Models for Design and Operation of Hydraulic Structures and Systems for Nuclear Power Plants."

(B) 10:30 A.M. UNTIL THE CLOSE OF BUSINESS. (OPEN)

The Subcommittee will hear presentations from the NRC Staff and will hold discussions with this group pertinent to activities which affect the current licensing process or reactor operations, including those relating to the following:

(1) Babcock and Wilcox reactor surveillance program.

(2) Steam generator operational problems.

Other matters which may be of a predecisional nature relevant to reactor operation or licensing activities may be discussed during this session.

Portions of this session may be closed if required to discuss proprietary material related to the design, construction, or operation of specific equipment.

I have determined, in accordance with Subsection 10(d) of Public Law 92-463, that it may be necessary to close portions of the meeting as noted above to protect proprietary data under 5 U.S.C. 552(b)(4).

Practical considerations may dictate alterations in the above agenda or schedule. The Chairman of the Subcommittee is empowered to conduct the meeting in a manner that, in his judgment, will facilitate the orderly conduct of business, including provisions to carry over an incompleted open session from one day to the next.

With respect to public participation in the open portion of the meeting, the following requirements shall apply:

(A) Persons wishing to submit written statements regarding Regulatory Guide 1.89 may do so by providing a readily reproducible copy to the Subcommittee at the beginning of the meeting. Such comments shall be based upon documents on file and available for public inspection at the NRC Public Document Room, 1717 H St., N.W., Washington, DC 20555.

Persons desiring to mail written comments may do so by sending a readily reproducible copy thereof in time for consideration at this meeting. Comments postmarked no later than December 29, 1976 to Mr. G. R. Quittschreiber, ACRS, NRC, Washington, DC 20555 will normally be received in time to be considered at this meeting.

(B) Those persons wishing to make an oral statement at the meeting should make a written request to do so, identifying the topics and desired presentation time so that appropriate arrangements can be made. The Committee will receive oral statements on topics relevant to the Committee's purview at an appropriate time chosen by the Chairman of the Subcommittee.

(C) 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 Office of the Executive Director of the Committee (telephone 202/634-1374, Attn: Mr. G. R. Quittschreiber) between 8:15 a.m. and 5 p.m., EST.

(D) Questions may be propounded only by members of the Subcommittee and its consultants.

(E) The use of still, motion picture, and television cameras, the physical installation and presence of which will not interfere with the conduct of the meeting, will be permitted both before and after the meeting and during any recess. The use of such equipment will not, however, be allowed while the meeting is in session.

(F) Persons with agreements or orders permitting access to proprietary information may attend portions of ACRS meetings where this material is being discussed upon confirmaton that such agreements are effective and relate to the material being discussed.

The Executive Director of the ACRS should be informed of such an agreement at least three working days prior to the meeting so that the agreement can be confirmed and a determination can be made regarding the applicability of the agreement to the material that will be discussed during the meeting. Minimum information provided should include information regarding the date of the agreement, the scope of material included in the agreement, the project or projects involved, and the names and titles of the persons signing the agreement. Additional information may be requested to identify the specific agreement involved. A copy of the executed agreement should be provided to Mr. G. R. Quittschreiber of the ACRS Office, prior to the beginning of the meeting.

(G) A copy of the transcript of the open portion(s) of the meeting where factual information is presented and a copy of the minutes of the meeting will be available for inspection at the NRC Public Document Room, 1717 H St., NW., Washington, DC 20555 on or after January 12, 1977, and April 5, 1977, respectively.

Copies may be obtained upon payment of appropriate charges.

Dated: December 16, 1976.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc.76-37492 Filed 12-17-76;10:03 am]

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

ACQUISITION OF COMMERCIAL PRODUCTS POLICY

Implementation Guidelines

Notice is given that the Office of Federal Procurement Policy, OMB, has issued guidance to the Secretary of Defense, Administrator of Veterans Affairs, and Administrator of General Services for implementing commercial products acquisition policy (planning and analysis phase).

In the FEDERAL REGISTER Vol. 41, No. 143, July 23, 1976 41 FR 30405, stated that the Office of Federal Procurement

Policy, OMB, on a broader scale than envisioned by Commission on Government Procurement Recommendation D–6 (procurement, storage and distribution of commercial products used by Federal agencies), "is thoroughly examining the procurement and supply processes to effect appropriate revisions thereto, with the objective of implementing the policy set forth below."

"The Government will purchase commercial, off-the-shelf, products when such products will adequately serve the Government's requirements, provided such products have an established commercial market acceptability. The Government will utilize commercial distribution channels in supplying commercial products to its users.

A full text copy of the document setting forth referenced guidance is included in this notice for those interested.

Dated: December 9, 1976.

HUGH E. WITT,
Administrator.

MEMORANDUM FOR: SECRETARY OF DEFENSE, ADMINISTRATOR OF VETERANS AFFAIRS, ADMINISTRATOR OF GENERAL SERVICES

SUBJECTS: INCREMENTAL IMPLEMENTATION OF POLICY ON PROCUREMENT AND SUPPLY OF COMMERCIAL PRODUCTS—PLANNING AND ANALYSIS PHASE

My memorandum of May 24, 1976 to you announced a fundamental change in direction in the procurement and supply of commercial products. In this correspondence, I concluded that the procurement and supply processes of the executive branch must be thoroughly examined and necessary revisions made to effectively implement the following policy:

The Government will purchase commercial, off-the-shelf, products when such products will adequately serve the Government's requirements, provided such products have an established commercial market acceptability. The Government will utilize commercial distribution channels in supplying commercial products to its users.

The attached guidance initiates the planning and analysis vital to the implementation of this policy. The document contains directions for accomplishing this phase and includes the first increment of items selected for action. We understand that the Department of Defense is developing another list of items for analysis under the aegis of this policy as a part of its Commercial Commodity Acquisition Program (CCAP).

Good communication is indispensible to the success of the program on which we are embarking. Accordingly, I have asked the Interagency Steering Group (ISG) to work closely with the participants to facilitate the prompt and effective solution of problems which may emerge. Mr. Daniel S. Wilson (telephone 202/395-4946), my Special Assistant and Chairman of the ISG, is available for any assistance required for either this program or CCAP.

I am convinced that we are on the right track. Your support will enable us to achieve the favorable results that are anticipated when the policy on the procurement and supply of commercial products is fully implemented.

HUGH E. WITT,
Administrator.

ATTACHMENT

GUIDANCE FOR INCREMENTAL IMPLEMENTATION OF POLICY ON PROCUREMENT AND SUPPLY OF COMMERCIAL PRODUCTS—PLANNING AND ANALYSIS PHASE

1. *Purpose.* This document furnishes information and guidance for the planning and analysis necessary to implement the executive branch policy on the procurement and supply of commercial products.

2. *Background.* By memo, May 24, 1976, to the Secretary of Defense, Administrator of Veterans Affairs, and Administrator of General Services, the Administrator for Federal Procurement Policy established a commercial product acquisition policy and an interagency steering group (ISG) to develop implementation procedures. Membership of the ISG follows:

Mr. Daniel S. Wilson, Chairman, Special Assistant to the Administrator for Federal Procurement Policy (OFPP), Office of Management and Budget.

CDR C. E. Mandel, Standardization and Support Directorate, Office of Deputy Assistant Secretary of Defense (Materiel Acquisition), Installations and Logistics, Department of Defense.

Mr. R. F. Rozycki, Staff Director, Supply Policy and Programs Division, Office of Deputy Assistant Secretary of Defense, (Supply, Maintenance and Services), Installations and Logistics, Department of Defense.

Mr. Robert Dinnerville, Senior Contracting Specialist, Supply Service, Department of Medicine and Surgery, Veterans Administration.

Mr. John A. Battan, Director, Federal Supply Schedule Management Division, Federal Supply Services, General Services Administration.

The mandate to the ISG specifies that the procurement and supply process of the executive branch must be thoroughly examined and appropriate revisions made with the objective of implementing the following policy stipulated by the May 24, 1976 memorandum:

The Government will purchase commercial, off-the-shelf, products when such products will adequately serve the Government's requirements, provided such products have an established commercial market acceptability. The Government will utilize commercial distribution channels in supplying commercial products to its users.

3. *Policy Objectives.*—a. Maximum use of commercial distribution channels.

b. Reduction in the number of Government stocked commercial items.

c. Elimination of all unnecessary Government specifications for commercial products or the packaging of these items.

d. Where Government specifications cannot be eliminated, tailor such specifications to reflect commercial practices to the maximum extent possible.

4. *Definitions.*—a. "Commercial, off-the-shelf, product" (hereinafter referred to as "commercial product") means a commercially developed product in regular production sold in substantial quantities to the general public and/or industry at an established market or catalog price.

b. "Commercial-type product" means a Government peculiar product which, though appearing to be a commercial product, is produced in accordance with a Government specification. The product is subjected to some physicial change or addition and/or packaged and identified differently than its normal commercial product counterpart. It is usually stocked centrally by the Government because its unique nature precludes production for regular commercial distribution and supply.

c. "Established commercial market acceptability" relates to commercial products that are currently marketed in substantial quantities for the general public and/or industry. These marketed items involve commercial sales that predominate over Government purchases. To have become acceptable in the market place, products must have been priced competitively and performed acceptably, as judged by a wide range of users.

d. "Government specification" means a Federal, military or departmental document used to describe the design and/or the performance of a product.

e. "Commercial specification and standard" describes a product, a family of products, or a process used by a broad section of the public and industry. These documents are developed by non-Government bodies such as nationally recognized industry associations, standards associations and professional technical societies.

5. *Procedure—Planning and Analysis Phase.*—a. The responsible agency will develop a general plan for procuring and supporting commercial items. Completed plans will be submitted to the Administrator for Federal Procurement Policy. Necessary coordination will be performed by the ISG.

b. In performing the analysis of the attached list of items, agencies will thoroughly examine the procurement and supply processes to identify any constraints to the effective purchase and distribution of commercial products in accordance with the policy. This examination will cover the following:

(1) Requirements forecast planning.

(2) Commercial distribution channels (through what channel could the user get his requirement, what has to be accomplished with commercial distribution channels to tie-in with the Government requisitioning system, how is demand data accurately gathered for maximum fill?).

(3) Marketing research requirements to develop appropriate sources for procurement, distribution and support.

(4) Transition and draw down of inventory.

(5) Optimum procurement methodology (simplicity, flexibility, reduced paperwork, improved management of supply schedules, maximum discounts on bulk buys, decision to centralize or decentralize purchases).

(6) Specifications.

(7) Management of warranties.

(8) Socioeconomic impact (small business, Federal Prison Industries, Inc., Blind Made and Other Severely Handicapped, etc.).

(9) Constraints (specifications, regulations, procedures, statutes, etc.).

(10) Billing/payment.

(11) Stock Fund/Supply Fund considerations.

(12) Procurement data.

(13) Standardization program impact.

(14) Training.

(15) Product inspection, testing and evaluation.

(16) Capability to determine effectiveness of commercial products procurement and supply support.

(17) Exceptions for war planning and military readiness.

(18) Other areas deemed vital to implementation, such as lead-time, economic considerations that may support distribution through the depot system, etc.

c. Participating activities will submit to their ISG member a concise narrative out-

lining the results of their planning and analysis of items as frequently as is necessary to produce a decision at the appropriate level. For example:

(1) In those situations where there are no impediments to the procurement and distribution of the commercial product, a description of actions in process will be helpful in solving problems experienced by other participants or in arriving at a decision to proceed with implementation.

(2) If there is a procedural barrier to implementation, a complete evaluation will be made, with appropriate recommendations to the ISG member as to what is needed to make a decision. In other words, if a regulation, procedure, statute, or decision prevents buying and distributing the product commercially, changes necessary to enable the activity to proceed shall be identified.

d. The ISG will review agency planning and analysis activities so that problems can be evaluated and resolved expeditiously.

e. Six months after the analysis starts (or sooner if trends develop), changes to regulations or statutes should be initiated, and revised guidelines, as appropriate, issued by the OFPP. As progress permits, additional groups of products will be prepared, and the process of implementation will be continuous.

6. *General Guidance—Planning and Analysis Phase.*—a. Regulations concerning the procurement and supply of commercial products should not be changed until sufficient experience has been gained during the incremental implementation (planning and analysis phase) of the policy to provide a sound basis for making such changes.

b. Centrally managed supply systems will continue to function as they do today but with increased management attention to the commercial product policy. For example, some indicated management actions are:

(1) Warehouse inventories of commercial products under this program will be drawn down in favor of direct commercial distribution and support to the user. A progressive but nondisruptive phaseout must be accomplished when converting from Government to commercial distribution channels.

(2) Large volume procurements may require improved mechanisms for obtaining volume discounts.

(3) The Government will coordinate its forecasted demands with industry to insure maximum fill consistently.

(4) Commercial delivery systems should be compatible with Government requisitioning procedures.

(5) Marketing research techniques will be required to gather data on products, including quality, prices, producers, distribution channels, and equitable formulas for the selection of qualified products.

(6) Improved management of warranties.

c. Commercial products will be preferred, without embellishments or changes that result in a commercial-type item.

d. Specifications.

(1) Eliminate overly stringent Government specifications and build a system of purchase item descriptions with an update system to simplify the competitive purchases of commercial products. There is a need for a closer interface of requirements developers, specification writers, and industry to accomplish this task.

(2) Government specifications which unnecessarily fragment features of market-accepted commercial products, and thereby create a commercial-type item, are not acceptable.

e. As appropriate, representatives from the private sector will be invited to exchange views and/or recommendations upon selection and initiation of action on classes or groups of items in their areas of interest.

7. *Administrative support.*—a. Administrative support for the Interagency Steering Group, including conference rooms, document preparation, and records will be provided by the OFPP.

b. Administrative support for individual ISG members and subsequent flow down will be by the appropriate agency. Pay and travel expenses for all individuals concerned will be paid by the employing agency.

MEMORANDUM FOR: SECRETARY OF DEFENSE, ADMINISTRATOR OF VETERANS AFFAIRS, ADMINISTRATOR OF GENERAL SERVICES

SUBJECT: PROCUREMENT AND SUPPLY OF COMMERCIAL PRODUCTS

MAY 24, 1976.

Over the years, the trend in development of Government procurement and supply processes has been toward more explicit preferences for the use of Government specifications to acquire commercial-type products even when commercial, off-the-shelf, products have been available to fulfill agency requirements. I am convinced of the need for a fundamental change in this direction. The Government must now emphasize the acquisition of commercial, off-the-shelf, products in order to achieve optimal effectiveness in supply support operations.

Federal Government expenditures for commercial and commercial-type products will command a sizeable portion of over $66 billion estimated for Federal procurement in FY 1977. In addition to these expenditures, there are extensive costs associated with requirement and specification development, purchasing and contracting, warehouse operations, transportation, distribution, administrative handling and inventory investment. Because of the magnitude and dollar volume of the Government's requirements for commercial products, it is essential that the task of providing supply support reflects an approach that conforms to basic policy objectives of the Government.

Most commercial products have a low unit cost, but they number in the millions, are repetitively purchased, and their procurement and supply involve every agency of the Government as well as broad interface between the public and private sectors of the economy. The Commission on Government Procurement recognized the need for new direction in this area, devoting a major portion of its study efforts to the Government's acquisition of commercial products. A number of significant recommendations were included in the Commission's final report. These reflected the application of the Commission's conclusion that there was a "need for a shift in fundamental philosophy relative to commercial product procurement * * *." The attached paper, which confirms the Commission's conclusion, discusses the background and current practices of the Government in its procurement and supply of commercial products, identifies the direction for a shift in philosophy, and points to the potential benefits available to the Government from playing a less structured role in the commercial marketplace.

The paper points to a need to distinguish between the acquisition of commercial, off-the-shelf products, and the acquisition of commercial-type products which, being tailored to meet Government specifications, are not available through commercial distribution channels. The importance attached to this need stems from a recognition that the acquisition of commercial-type products normally carries with it the burdensome obligations of Government storage, handling and distribution which duplicate available commercial warehousing and delivery systems. Not only are such duplications costly, but the competition with private industry is contrary to established policy that the Government should rely on the private enterprise system for the commercial/industrial type products and services it requires.

New direction is also needed in procurement to enable the Government to take fullest advantage of manufacturers' quality assurance, warranties and repair services, where these have established reliability in the commercial market, and to enable contracting officers to purchase commercial products competitively, with quantity discounts, relying upon commercial rather than Government specifications.

After thorough consideration of these matters, I have concluded that the procurement and supply processes of the executive branch must be thoroughly examined and appropriate revisions made with the objective of implementing the following policy:

The Government will purchase commercial, off-the-shelf, products when such products will adequately serve the Government's requirements, provided such products have an established commercial market acceptability. The Government will utilize commercial distribution channels in supplying commercial products to its users.

The application of this policy will require innovative management, calling for the development of administrative and, in some instances, legal mechanisms to ensure its timely and viable implementation. Essentially, however, all that stands between the policy, as a concept, and its realization is the necessary commitment on the part of professional logisticians to seek out and apply imaginative mechanisms which will permit the Federal Government to realize the benefits available from this shift in philosophy.

We fully recognize the size and complexity of this task, and that a uniform approach to implementation is essential to assure a high probability of success. Therefore, it is requested that you designate a representative to participate with an OFPP sponsored interagency steering group to develop implementation procedures which, ultimately, will be coordinated with all concerned agencies prior to finalization. Please furnish the name, title, organization and telephone number of your designee by June 7, 1976. I have appointed, as chairman of the interagency steering group, Mr. Daniel S. Wilson, Special Assistant to the Administrator (OFPP), telephone (202) 395-4946 or Code 103-4946.

HUGH E. WITT,
Administrator.

NEW DIRECTION FOR THE PROCUREMENT AND SUPPLY OF COMMERCIAL PRODUCTS

Over the past two hundred years, the procurement and supply of goods and services to satisfy the day-to-day needs of the Federal Government have undergone many transitions. Each transition was motivated, undoubtedly, by the need to improve the effectiveness of existing supply capabilities and by the recognition that, to be effective, the procurment and supply system must continuously adapt to an ever-changing logistics environment. In retrospect, these transitions can be seen as a two hundred year, incremental process of progressive refinements and adjustments in the manner in which the Government procures and distributes the products it requires. Since each transition introduced new concepts and methods which called for the discarding of "proven" and familiar policies and practices, it is unlikely that any of these changes escaped criticism

or the resistance of some who were convinced that the old ways were better.

Today, it is apparent that the nature of the logistics environment, again, has altered and that opportunities for significant advancement in supply management effectiveness are being offered. Specifically, the development of sophisticated data processing equipment and systems for requisitioning and inventory management, and the existence of an extensive and expanding network of commercial distribution systems are highly significant logistics factors. When considered in tandem they make possible the management of the Government's procurement and supply of commercially available products on a scale never before possible. These developments permit, for the first time in the modern era, the full and active utilization by the Federal Government of all aspects of the commercial marketplace. Equally important, they present the opportunity for scaling down the time and expense of developing Government specifications, for orderly reduction in the Government's burdensome investment in inventories, and for savings in Government warehouse operations. Auspiciously, these developments occur at a time when the Government has modified its management structure to permit the exploitation of such opportunities. The Office of Federal Procurement Policy was created in 1974 with the statutory authority and responsibility to bring about precisely such Government-wide improvements.

Over the years, the Federal Government has developed a huge and complex organization devoted to the acquisition and distribution of supplies and equipment needed to provide a broad range of services. Many of these supplies and equipments are of the same nature as those used in the private sector; some are identical and some are slight but unique variations of the commercial product. The Federal Government invests great sums for such products, plus additional sums for their storage and distribution prior to use. Yet much of the effort and expense dedicated to this program is, at best, of questionable benefit in terms of results obtained and, at worst, a wasteful duplication of existing commercial distribution systems.

Government specifications are costly to develop and maintain. In many instances, such costs are justified in that specifications help to assure that the Government receives products which meet its requirements. In other instances, however, the Government's specifications merely add embellishments to commercial products for the purpose of establishing a competitive base. In such cases the Government is unable to acquire these unique items through commercial distribution channels and must establish and maintain its own costly supply network. Government specifications in these instances add to the complexity and, thus, the cost of the procurement process by requiring separate production runs for Government unique requirements. Too often, moreover, they discourage the submission of bids by established commercial suppliers, and foster the creation of suppliers whose products have not been tested in the marketplace and whose only customer is the Government.

Cost, however, is not the only consideration nor, indeed, the primary one. Fundamental to the Nation's economic and political philosophy and basic to the relationship between Government and private industry is the commitment by the Federal Government to rely for its needs upon the private sector. The value of the inventive and innovative spirit of the private enterprise system cannot be measured in a simple dollar for dollar cost comparison.

The report of the Commission on Government Procurement emphasized the need for a change in the fundamental philosophy relative to the procurement of commercial items. Momentum is already gathering toward a change in the way we procure commercial items. For example, the Defense Science Board recently completed a study which showed that the acquisition of off-the-shelf electronic test equipment would produce savings of $80 million annually. Further opportunities for savings are obvious since commercial products acquisition represents a sizeable portion of over $66 billion estimated for Federal procurement during FY 77.

To provide new direction for the Government's management of its procurement and supply of commercial products and to exploit the opportunities presented by the current logistics environment, there is need to establish policy objectives that will enable the Government to purchase commercial, off-the-shelf, products when such products will adequately serve the Government's requirement. It is also important that such products have an established commercial market acceptability. In addition, the Government should, in supplying commercial products to its users, utilize commercial distribution channels wherever possible.

These approaches will require major changes in current practices. Administrative, and, perhaps in some instances legal, mechanisms must be developed to ensure viability in implementation. Commercial warranty provisions must be more definitive; equitable formulas must be developed for determining the selection of qualified products; mechanisms must be refined for identifying and recouping volume discounts; and means must be found to interface Government requisitioning procedures with commercial delivery systems. These and related tasks will require the commitment of skilled procurement and supply management executives from the principal agencies, supported by the Government's best professional logisticians.

INCREMENTAL IMPLEMENTATION OF POLICY ON PROCUREMENT AND SUPPLY OF COMMERCIAL PRODUCTS PLANNING AND ANALYSIS PHASE

ITEMS SELECTED FOR ANALYSIS[1]

DEPARTMENT OF DEFENSE

Commodity	Specification
Electrical supplies:	
Connector, recepticle	W-C-596/12-2
Connector, recepticle	W-C-596/13-1
Connector, cable outlet	W-C-596/14-1
Connector, plug	W-C-596/17-1
Semiconductor device	MIL - S-19500/371A, MIL-S-19500E, QPL-19500-62
Subsistence:	
Soup, dehydrated tomato vegetable	MIL-F-35051C
Soup, dehydrated chicken noodle	MIL-S-1049E
Clothing & textiles:	
Towel, bath, white	DDD-T-551J
Drawer, cotton brief	MIL-D-43783B
Hardware supplies:	
Pin, cotter	FF-P-386D
Padlock; key operated	MIL-P-17802D
Screw cap, hex head	FF-S-85C, MS-90725-64
Screw cap, hex head	FF-S-85C, MS-90725-64
Electrode, welding	MIL-E-00022200/2B
Plumbing supplies:	
Drain, multiple, waste	MIL-F-18930
Double faucet	WW-P-Type 39
Photographic supplies:	
Film, photographic	L-F-00336A

STOCKED COMMERCIAL SPECIFICATION PRODUCTS

Linear microcircuit	Signetics P/N 8E555T
Dual-line receiver amplifier.	National Semiconductor P/N, DM 78208AD-883
Variable transformer	Staco Inc. P/N 320B or Gen. Radio P/N CN-169 or 5MT
Handle spray can	Red Devil Inc. P/N 3991 DG
Mount, resilient	U.S. Rubber Co. P/N 323B, VLN Corp. P/N 21655
Bumper, rubber	Atlantic India Rubber Co. P/N 713
Rubber sheet, solid	Firestone Tire & Rubber Co., P/N PS384
Paper, photographic, instrument recording.	Dupont Co. P/N LINO - WRIT, 5 W MRK 010
Tip soldering iron	Ungar Div. of Eldon Industries, P/N 533S
Laboratory fixture	Eljer P/N E9346A, Kohler P/N K-6960 or K7401, Crane P/N 8-2045A or 8-2040A, Universal Rundel Corp. P/N 82350

VETERANS ADMINISTRATION

Textiles:	
Stretch socks	[1] X-600G
Hospital equipment:	
Wheel chairs	[1] X-1529
Hospital beds	[1] X-554G
Individual supplies:	
Gloves, examining	[1] X-990
Gloves, surgeons	[1] 1123
Subsistence:	
Sugar, white, refined, granulated	JJJ-S-791L
Flour, wheat, general purpose	N-F-00481L
Drugs:	
Codine sulfate tablets	[1] X-1201A
Cefazolin	[1] X-3160

[1] Veterans Administration Specification.

[1] These items are centrally managed; i.e., centrally purchased using Government specifications and centrally stocked and distributed. They may be equipment requiring support and/or consumables.

GENERAL SERVICES ADMINISTRATION

Commodity	Specification(s)	
Appliances:		
Dispenser, water	OO-D-566	
Washers and dryers	OO-W-560D	
	OO-W-0020B	
Refrigerator	AA-R-211	
Automotive supplies:		
Spark plugs	W-S-566	
Windshield wiper blade	RR-A-1147	
Antifreeze	O-A-548	
Tire chain	RR-C-00231	
Tires and tubes	ZZ-T-381-M	ZZ-T-410A
	ZZ-T-1053D	ZZ-I-550E
Building materials:		
Lumber	NN-D-570	NN-S-730
Plywood	NN-P-530	
Tile, vinyl	MIL-T-19520A	
Steel, reinforcing bar	QQ-S-632	
Metal lath	QQ-L-101	
Expanded metal	MIL-17194C	
Hardboard, pressed	LLL-B-810	
Board, asbestos	SS-B-775	
Insulation, sleeving	MIL-I-2781D	HH-I-551
	MIL-I-22344B	HH-I-561
	MIL-I-19042A	HH-I-573
	HH-I-554	HH-I-558
Cleaning equipment:		
Bucket, mop	RR-B-800	
Wringer and bucket	RR-M-1075	
Wringer mop	RR-W-670	
Containers:		
Bags, grocer	UU-B-30	
Bags, plastic, waste	PPP-B-20	
Boxes, carton, crate	PPP-B-566	MIL-B-233C
	PPP-C-636	MIL-B-35721
	PPP-B-621	MIL-B-3889
	PPP-B-636	MIL-B-8111
	PPP-B-640	MIL-B-19830A
	PPP-B-650	MIL-B-43666
	PPP-B-665	MIL-C-43329
	PPP-B-676	MIL-K-23714
	PPP-B-00680	L-P-376
	PPP-B-1163	UU-C-225
	PPP-B-001606	MIL-B-43311
	PPP-B-1204	
	PPP-B-001672	
Cushioning material	PPP-C-795	PPP-C-1752
	PPP-C-843	PPP-C-1797
	PPP-C-850	MIL-P-13607
	PPP-C-1120	MIL-P-26514A
	----------	KK-O-71
Electrical supplies:		
Lampholder adapter	W-L-142	
	W-B-30	
Junction box cover	W-J-800	
Cable, power	J-C-30	
	J-C-580	
Conduit, rigid	WW-C-563	
	WW-C-581	
Conduit, flexible	WW-C-566	
Food preparation equipment:		
Kitchen utensils	W-H-636	MIL-C-17619B
	W-T-650	RR-D-400
	OO-R-35	RR-D-450
	OO-V-109	RR-P-54
	MIL-B-2556C	RR-B-500
	LLL-B-563	RR-E-530
	RR-B-600	RR-W-456
	MIL-B-2054D	MIL-E-2053C
	RR-C-1039	MIL-F-43392A
	RR-B-001242	RR-F-575
	RR-B-623	MIL-F-10870D
	MIL-B-1995B	MIL-G-22766
	GGG-S-60	RR-G-631
	GGG-C-746	OO-G-667
	MIL-C-22785A	RR-J-800
	MIL-C-17633B	RR-J-810
	RR-C-531	MIL-J-2571SB
	RR-K-260	MIL-J-22049B
	GGG-C-743	RR-L-50
	MIL-C-40115B	RR-L-1829
	RR-B-500	MIL-S-40044B
	MIL-P-1735	MIL-S-10697C
	MIL-P-1735E	RR-S-131
	MIL-P-457C	RR-K-200
	MIL-P-40030	ZZ-S-70
	MIL-P-40035B	MIL-S-17731B
	MIL-R-40141B	RR-S-310
	LLL-R-630	RR-S-345
		MIL-L-2851A
		MIL-M-40122B
		MIL-O-40115
		FF-O-601
		FF-O-665
		RR-P-1515
		MIL-P-13044D
		MIL-P-1747D
		MIL-P-12851C
		MIL-P-17440C
		MIL-P-3352B
		RR-P-58
		RR-P-62
		RR-P-83
		RR-P-89
		RR-P-94
		RR-P-96
		MIL-P-26483C
		GGG-P-323
		UU-P-665
		RR-S-410
		GGG-C-746
		MIL-S-128-D
		MIL-S-40104B
		MIL-T-40077A
		MIL-V-10615F

Commodity	Specification(s)	
Cutlery	RR-T-51	MIL-K-8662D
	RR-F-450	
	GGG-C-746	L-F-560
	MIL-U-10815F	RR-F-00455
	LLL-F-00550	MIL-P-1680C
	RR-F-00455	
Cups, plastic	L-C-770	
	L-C-001129	
Toothpicks	LLL-T-1332	
Furniture, rotary chair	AA-C-001771B	
Handtools:		
Soldering gun	W-S-564	
Propane torch	GGG-T-00570	
Blade, hole saw	GGG-S-66	
Blade, hacksaw	GGG-B-451	
Wrench, adjustable	GGG-W-631	
Drill, twist	GGG-D-751	
Ax, double bit	GGG-A-151	
Hatchet, half	GGG-H-131	
Knife, craftman's	GGG-K-481	
Blowtorch, gasoline	GGG-B-00550	
Hammer, blacksmith	GGG-H-86	
Hammer, carpenter	GGG-H-86	
Hammer, machinist	GGG-H-86	
Mallet	GGG-H-33	
Nail set assortment	GGG-N-71	
Trowels	GGG-T-00671	
	GGG-G-00690	
Drill, electric, light	W-D-661	
Chalk line	GGG-C-291	
Hardware:		
Screws	FF-S-85	FF-S-107
	FF-S-88	FF-S-111
	FF-S-92	
Bolts	FF-B-561	FF-B-534
		FF-B-588
	FF-B-575	
Nuts and washers	FF-N-836	FF-W-84
	FF-N-92	
Filter, air-condition	F-F-310	
Measuring tools:		
Level, carpenter	GGG-L-211	
Level, mason	GGG-L-211	
Rule, folding	GGG-R-791	
Square, carpenter	GGG-S-656	
Square, try	GGG-S-656	
Mill goods:		
Fabrics	CCC-C-417	CCC-C-467
	CCC-C-425	CCC-C-446
	CCC-C-437	CCC-C-00422
	CCC-C-439	CCC-C-00455
	CCC-C-440	CCC-C-447
	DDD-C-301	CCC-C-430
	DDD-T-00501	CCC-C-435
	DDD-T-511	MIL-C-11640
	DDD-T-531	CCC-C-001375
	CCC-C-421	CCC-C-482
	CCC-C-460	MIL-C-43619
	CCC-C-458	L-S-125
	CCC-C-444	DDD-W-101
Thread	V-T-276	V-T-285
Mousetrap and rattrap	GGG-M-00550	
Office supplies:		
Card, index and guide	UU-C-123	UU-C-95
	G-C-116	
Folders, file	UU-F-1206	UU-F-1702
	VA-X-1067	
Typewriter ribbons	DDD-R-311	
Dictionaries	G-D-00331	
Tape, adhesive	L-T-90	
Paints:		
Exterior enamel	TT-E-489	TT-E-491
	TT-E-529	
Interior latex	TT-P-96	TT-P-29
	MIL-P-9503	
Paper:		
Tissue, toilet	UU-P-556	
Tissue, facial	UU-T-450	
Napkins	UU-N-1650	
Towels	UU-T-591	UU-T-1700
	VA-X-1185	
Cups	UU-C-806	
Plates	UU-P-670	
Plumbing supplies:		
Faucet	WW-F-25	WW-P-541
Pipe, cast iron	WW-P-541	
Pipe, plastic	L-P-315	
Pipe, steel	WW-P-406	
Trap, drain	WW-P-541	
Tube, copper	WW-T-799	WW-T-775
Valves	MIL-W-19016	WW-V-54
	WW-V-51	WW-P-541
	WW-V-35	
Rope, twine, and cord	T-C-571	MIL-R-24049
	DDD-S-251	T-T-871
	MIL-C-5040B	T-T-881
	T-R-571	T-T-911
	T-R-605	MIL-C-2520
	MIL-R-17343	

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SECURITIES AND EXCHANGE COMMISSION

[Release 34—13047; File No. SR-NASD-76-14]

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

Self-Regulatory Organizations; Proposed Rule Change

Pursuant to Section 19(B)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975) notice is hereby given on December 3, 1976 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

NASD's 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 amendments to Schedule D under Article XVI of the By-Laws. A new Part III of Schedule D will be added and existing Part III will be redesignated Part V. Existing Parts V through X will be redesignated Parts VI through XI.

New Part III follows (entire text is new).

III—CONSOLIDATED QUOTATIONS SERVICE

A. DESCRIPTION OF SERVICE

The Consolidated Quotations Service (CQS) will provide the subscriber with access to bid/ask quotations for securities listed on national stock exchanges. Initially, the CQS will include approximately 2,000 common stocks, preferred stocks, warrants and rights registered or admitted to unlisted trading privileges on the New York Stock Exchange. The Subscriber will have access to quotations in such securities from all registered CQS Third Market Makers and the Boston, Midwest, New York, Pacific and Philadelphia Stock Exchanges. Quotations entered and displayed by registered Third Market Makers are required to be firm for at least a normal unit of trading.

The CQS will operate between 9:00 a.m. and 6:30 p.m. Eastern Time. All quotations for marketplaces that are open will be listed according to the best bid quotation or the best ask quotation following the quotations of the open marketplaces. If a stock exchange suspends trading in a security, a "HALT" notation will be displayed along with the last quotation. During any such suspension, quotations from marketplaces remaining open will continue to be displayed.

B. INITIATING SERVICE

Any member who desires to enter and display bid/ask quotations for CQS securities may apply for registration as a Third Market Maker. If accepted for registration, and a terminal is in place, a Third Market Maker's registration shall be effective at the start of business on the second business day following receipt of

its application by the Corporation. Otherwise registration shall be effective at the start of business on the second business day following installation of the terminal.

C. CHARACTER OF QUOTATIONS ENTERED INTO THE CQS

A registered Third Market Maker which receives a buy or sell order must execute a trade for at least a normal unit of trading at its quotations as they appear on the CQS CRT screens at the time of receipt of any buy or sell order. Each quotation entered and displayed by a registered Third Market Maker must be reasonably related to the prevailing market.

D. BUSINESS HOURS

A registered Third Market Maker shall be open and active as of 10:00 a.m. Eastern Time and no Third Market Maker shall close sooner than 4:00 p.m. Eastern Time. A registered Third Market Maker shall designate a closing time for each security from 4:00 p.m. to 6:30 p.m. Eastern Time, and the closed symbol will be appended to the quotation at the designated time. The designated closing time may only be on the hour or the half hour. A registered Third Market Maker may reopen its market in a security up to 6:30 p.m. Eastern Time upon appropriate notification to the Corporation.

E. WITHDRAWAL PROCEDURE

1. With the approval of the Corporation upon a showing that it is seriously impaired in its ability to enter quotations, a registered Third Market Maker may suspend its quotations for a specified period of time in the case of contemplated financing in the security, the presence of statutory prohibitions or restrictions, or such other reason acceptable to the Corporation.

2. A Third Market Maker who withdraws and then reenters quotations during the day may do so only with the prior approval of the Corporation.

A. A Third Market Maker whose quotations in an issue are withdrawn without the approval of the Corporation at the time CQS closed for the day shall cause its registration in such issue to be terminated subject, however, to re-registration.

4. A Third Market Maker may, by making application to the Corporation, pursuant to paragraph B re-register as a market maker in any security in which its registration is terminated pursuant to subparagraph 3. above.

F. VOLUNTARY TERMINATION

A registered Third Market Maker may voluntarily terminate its registration as to a given security by withdrawing its quotations from the System.

G. SUSPENSION AND TERMINATION OF QUOTATIONS BY ACTION OF THE CORPORATION

The Corporation may, pursuant to the procedures set out in Parts VII, VIII, or IX below, suspend, condition, limit, prohibit, or terminate a registered Third Market Maker's authority to enter quotations on one or more authorized securities for violations of the applicable standards of this Schedule "D" or if the Corporation makes a determination as provided in Part IX A.

* * * * *

Part IV of Schedule D will be amended to add a new Section D. Existing Sections D and E will be redesignated E and F. The text of new Section D is as follows:

D. CONSOLIDATED QUOTATIONS SERVICE (CQS)

1. *Adding CQS to Existing NASDAQ Terminals.*

One-Time Charges. The one-time charge for adding CQS to installed NASDAQ terminals is $210 per location, irrespective of the number of terminals involved. The charge for removal of CQS is $70 per location.

Additional monthly charges for CQS based on basic NASDAQ usage plans[1]

NASDAQ usage plan[2]	Basic charges for CQS on terminals			Free combined CQS/NASDAQ quote requests per terminal per day[3]
	1st	2d	3d and subsequent	
Standard	$50	$45	$40	100
High[4]	50	45	40	650
Unlimited[5]	50	45	40	(6)

[1] The NYSE has established monthly charges for receiving bid-asked quotations from the NYSE through retrieval devices as follows: NYSE members, $35 1st unit, $3.50 each additional unit; non-NYSE members, $57 1st unit, $5.70 each additional unit. Only 1 1st unit charge applies in an office subscribing to units from 2 or more vendors.

[2] All terminals, both CQS and NASDAQ, located on the same premises must be under the same usage plan.

[3] Quote requests for CQS securities will be included in the same count made for quote requests for NASDAQ/OTC securities. The combined count will be measured against the number of free quote requests provided in the basic charge and excess quote requests will be billed at the rate of $0.10 each. There are no charges for entering or changing quotations for NASDAQ or CQS securities in the system.

[4] The total monthly basic and excess quote charges under the high usage plan for offices within 5 or fewer NASDAQ terminals located on the same premises shall not exceed $2,635, plus the monthly basic charges for receiving CQS.

[5] Unlimited service is restricted to offices with 6 or more terminals of the same level of NASDAQ service.

[6] Unlimited.

2. *CQS without NASDAQ on Additional Terminals at Existing NASDAQ Locations.*

NASDAQ subscribers may receive CQS without NASDAQ Service on additional terminals at existing NASDAQ locations.

One-Time Charges. The new installation or complete removal charge is $175/terminal for 1–5 additional terminals, $150/terminal for 6–10 terminals and $125/terminal for 11 terminals and above.

Additional monthly charges for CQS based on basic NASDAQ usage plans[1]

NASDAQ usage plan[2]	Basic charges for CQS on terminals			Free CQS quote requests per terminal per day[3]
	1st	2d	3d and subsequent	
Standard	$125	$100	$100	100
High[4]	125	100	100	650
Unlimited[5]	125	100	100	(6)

[1] The NYSE has established monthly charges for receiving bid-ask quotations from the NYSE through retrieval devices as follows: NYSE members, $35 1st unit, $3.50 each additional unit; non-NYSE members, $57 1st unit, $5.70 each additional unit. Only 1 1st unit charge applies in an office subscribing to units from 2 or more vendors.

[2] All terminals, both CQS and NASDAQ, located on the same premises must be under the same usage plan.

[3] Quote requests for CQS securities will be included in the same count made for quote requests for NASDAQ/OTC securities. The combined count will be measured against the number of free quote requests provided in the basic charge and excess quote requests will be billed at the rate of $0.10 each. There are no charges for entering or changing quotations for NASDAQ or CQS securities in the system.

[4] The total monthly basic and excess quote charges under the high usage plan for offices with 5 or fewer NASDAQ terminals located on the same premises shall not exceed $2,635, plus the monthly basic charges for receiving CQS on NASDAQ terminals or for receiving CQS on terminals that will carry CQS only.

[5] Unlimited service is restricted to offices with 6 or more terminals of the same level of NASDAQ service.

[6] Unlimited.

3. *CQS without NASDAQ at New Locations.*

Organizations not subscribing to NASDAQ may have a terminal or terminals with CQS installed, without subscribing to NASDAQ service.

One-Time Charges. The new installation or complete removal charge is $250 for a control unit plus $175/terminal for 1–5 terminals, $150/terminal for 6–10 terminals and $125/terminal for 11 terminals and above.

The following table of rates applies to locations with CQS only.

Monthly charges[1]

Usage plan	Basic charges for terminals			Free quote requests per terminal per day	Quote requests in excess of free requests
	1st	2d	3d and subsequent		
Standard	$300	$100	$100	100	0.10
High[2]	500	100	100	65	.10
Unlimited[3]	700	100	100	(4)	(5)

[1] The NYSE has established monthly charges for receiving bid-asked quotations from the NYSE through retrieval devices as follows: NYSE members, $35 1st unit, $3.50 each additional unit; non-NYSE members, $57 1st unit, $5.70 each additional unit. Only 1 1st unit charge applies in an office subscribing to units from 2 or more vendors.

[2] The total monthly basic and excess quote charges under the high usage plan for offices with 5 or fewer CQS only terminals located on the same premises shall not exceed $1,200.

[3] Unlimited service is restricted to offices with 6 or more terminals.

[4] Unlimited.

[5] Not available.

4. *CQS and NASDAQ Service at New Locations.*

Organizations not subscribing to NASDAQ may subscribe to both CQS and NASDAQ Level 2 or Level 3 service. Level 3 service is restricted to NASD members.

One-Time Charges. The charge for new installation or complete removal is $250 for a control unit plus $175/terminal for 1–5 terminals, $150/terminal for 6–10 terminals and $125/terminal for 11 terminals and above.

If CQS and NASDAQ Service are ordered at the same time, there is no additional charge for providing the CQS capability on terminals. There is a charge of $70 per location for removal of CQS.

CQS and NASDAQ level 2 or level 3 monthly charges[1]

CQS/NASDAQ plan[2]	Basic charges for terminals			Free combined CQS/NASDAQ quote requests per usage terminal per day[3]
	1st	2d	3d and subsequent	
Standard	$525	$425	$390	100
High[4]	725	425	390	650
Unlimited[5]	925	425	390	(6)

[1] The NYSE has established monthly charges for receiving bid-asked quotations from the NYSE through retrieval divides as follows: NYSE members, $35 1st unit, $3.50 each additional unit; non-NYSE members, $57 1st unit, $5.70 each additional unit. Only 1 1st unit charge applies in an office subscribing to units from 2 or more vendors.

[2] All terminals, both CQS and NASDAQ, located on the same premises, must be under the same usage plan.

[3] Quote requests for CQS securities will be included in the same count made for quote requests for NASDAQ/OTC securities. The combined count will be measured against the number of free quote requests provided in the basic charge and excess quote requests will be billed at the rate of $0.10 each. There are no charges for entering or changing quotations for NASDAQ or CQS securities in the system.

[4] The total monthly basic and excess quote under the high usage plan for offices with 5 or fewer NASDAQ terminals located on the same premises shall not exceed $2,655, plus the monthly basic charges for receiving CQS.

[5] Unlimited service is restricted to offices with 6 or more terminals.

[6] Unlimited.

STATEMENT OF BASIS AND PURPOSE OF PROPOSED RULE CHANGE

The United States Congress and the Securities and Exchange Commission have repeatedly stated that an essential element in the creation of a national market system for listed securities is a nationwide information system containing quotations from all marketplaces. In recognition of the importance of such a quotation system the NASD Board of Governors appointed, in mid-1975, a committee of industry members to study and make recommendations to the Association's Board on the feasibility of utilizing the NASDAQ System to provide a consolidated quotations service. The Consolidated Quotations Committee and the Association's Board of Governors concluded that a consolidated quotations service for listed securities utilizing NASDAQ could be implemented.

Under the rules, quotations entered and displayed by registered Third Market Makers are required to be reasonably related to the prevailing market for that security and are required to be firm for at least a normal unit of trading. The proposal also contains rules and procedures for registered Third Market Makers relating to hours of operation; opening of closing markets; initiating service; and withdrawal, termination and suspension of quotations. These provisions are similar to those currently in effect for NASDAQ market makers.

The proposal also contains a schedule of charges for CQS.

BASIS UNDER THE ACT FOR PROPOSED RULE CHANGE

Section 15A(b)(11) provides that an association of brokers and dealers shall not be registered as a national securities association unless the Commission determines that the rules of the association include provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange which may be distributed or published by any member or person associated with a member, and persons to whom such quotations may be supplied. Such rules relating to quotations shall be designed to produce fair and informative quotations, to prevent fictitious or misleading quotations and to promote orderly procedures for collecting, distributing and publishing quotations.

COMMENTS RECEIVED FROM MEMBERS, PARTICIPANTS OR OTHERS ON PROPOSED RULE CHANGE

Although Article XVI of the By-Laws authorizes the Board of Governors alone to adopt or modify provisions of Schedule D, comments of the membership were solicited in Notice to Members 76–29.

BURDEN ON COMPETITION

It is believed that no burden on competition arises from the proposal.

On or before January 24, 1977, or within such longer period (i) as the Commission may designate up to ninety (90) days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six (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 January 17, 1977.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

DECEMBER 8, 1976.

[FR Doc.76-37147 Filed 12-17-76;8:45 am]

[Release No. 13066; SR-MSE-76-22]

MIDWEST STOCK EXCHANGE

Order Approving Proposed Rule Change

DECEMBER 14, 1976.

On October 15, 1976, the Midwest Stock Exchange, 120 South LaSalle Street, Chicago, Illinois 60603, filed with the Commission, pursuant to Section 19(b) of the Securities Exchange Act of 1934 (the "Act"), as amended by the Securities Acts Amendments of 1975, and Rule 19b-4 thereunder, copies of a proposed rule change. The proposed rule change rescinded a prohibition against a specialist from executing orders out of the primary market range.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the publication of a Commission Release (Securities Exchange Act Release No. 12917, (October 22, 1976)) and by publication in the FEDERAL REGISTER (41 FR 48008, (November 1, 1976)).

The Commission finds that the proposed rule change is inconsistent 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 proposed rule change filed with the Commission on October 15, 1976, 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.76-37219 Filed 12-17-76;8:45 am]

[Rel. No. 9565; 812-4044]

MUNICIPAL FUND SERIES CO., INC.

Filing of Application Pursuant to Section 6(c) of the Act for An Order of Exemption From Sections 15(a) and 16(a) of the Act

DECEMBER 10, 1976.

In the matter of the Municipal Fund Series Company, Inc. (The Municipal Investment Trust Fund Investment Accumulation Program), c/o Merrill Lynch, Pierce, Fenner & Smith, Incorporated, One Liberty Plaza, 165 Broadway, New York, New York 10006.

Notice is hereby given that The Municipal Fund Series Company, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end management investment com-

pany, filed an application on October 18, 1976 with regard to its Investment Accumulation Program (Long Term) and its Investment Accumulation Program (Intermediate Term) and subsequent Investment Accumulation Programs (hereinafter collectively referred to as the "Programs") for an order of exemption from sections 15(a) and 16(a) of the Act to the extent necessary to permit Applicant's investment advisers and directors to serve without prior shareholder approval until a meeting of each Program's shareholders to be held within 180 days after the effectiveness of each of Applicant's Registration Statements filed under the Securities Act of 1933. All interested persons are referred to the application on file with the Commission for a statement of the representations therein, which are summarized below.

The Applicant is a corporation formed under Maryland law. It proposes to issue its shares in various series, each of which represents a separate portfolio of securities. The initial two series of shares to be issued are: (A) shares of The Municipal Investment Trust Fund Investment Accumulation Program (Long-Term) which will represent a separate portfolio of long-term municipal obligations; and (B) shares of The Municipal Investment Trust Fund Investment Accumulation Program (Intermediate Term) which will represent a separate portfolio of intermediate term municipal obligations. Such shares will be offered without sales load to the holders of the corresponding series of The Muncipal Investment Trust Fund, which consists of a number of different unit investment trusts, as a means for the automatic reinvestment of distributions on such series. It is contemplated that, as additional types of series of The Municipal Investment Trust Fund unit trust offerings are developed, additional Investment Accumulation Programs following the same pattern as the Programs listed above will be created as new series of capital stock of Applicant.

The investment advisers (the "Advisers") of the Applicant with respect to the Programs will be (i) an affiliate of Merrill Lynch, Pierce, Fenner & Smith Incorporated, (ii) Bache Halsey Stuart Inc. and (iii) an affiliate of Reynolds Securities Inc. Merrill Lynch, Pierce, Fenner & Smith Incorporated, Bache Halsey Stuart Inc. and Reynolds Securities. are the current sponsors of The Municipal Investment Trust Fund. The three directors of Applicant at the date of filing of the application are "interested persons" of one of the Advisers. Two unaffiliated directors will replace two affiliated directors and will take office prior to the effectiveness of the Registration Statements covering the shares in the Programs under the Securities Act of 1933.

Section 15(a) of the Act provides, in part, that a person may not serve as an investment adviser of a registered investment company except pursuant to a written contract which has been approved by a vote of a majority of the outstanding voting securities of such registered investment company, and Section 16(a) of the Act provides, with limited exceptions not here relevant, that no person shall serve as a director of a registered investment company unless elected to that office by the holders of the outstanding voting securities of such company.

Applicant asserts that the proposed investment advisory agreements will comply with the provisions of the Act in all respects except that they may not satisfy the requirement of advance shareholder approval provided in section 15(a) of the Act. Prior to effectiveness under the Securities Act of 1933, the persons serving as directors of the Applicant will meet all of the requirements of the Act except that they may not satisfy the requirements of section 16(a) that they be elected to that office by holders of the outstanding voting securities of the Applicant.

All of the directors will stand for election, and the investment advisory agreements will be presented for approval by the holders of a majority of the outstanding voting securities of the Applicant and of a majority of the outstanding shares of each Program at the meeting of each Program's shareholders to be held within 180 days of effectiveness of each of Applicant's Registration Statements under the Securities Act of 1933. During the period prior to such meeting, the prospectuses used by the Applicant in connection with the sale of its shares will contain full appropriate information concerning the directors and the investment advisory agreements.

The Applicant believes that the exemptions requested above should be granted because (1) the initial public shareholders of each Program of the Applicant will have full knowledge as to the identity of the directors of the Applicant, the initial investment advisers and the terms of the investment advisory agreements prior to their purchase of the shares of the Applicant and, (2) the public shareholders of each Program of the Applicant will have an opportunity, voting as a separate Program consistent with Rule 18f-2 under the Act, to pass on the election of the directors and the investment advisory agreements within 180 days of effectiveness of Applicant's Registration Statements under the Securities Act of 1933.

Section 6(c) authorizes the Commission by order upon application to exempt, conditionally or unconditionally, any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant submits that the exemptions here requested are appropriate in the public interest, consistent with the protection of investors and the purposes of the Act.

Notice is further given that any interested person may, not later than January 5, 1977, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission should order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit, or in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-37217 Filed 12-17-76;8:45 am]

[File No. 500-1]

PENN CENTRAL CO., ET AL.

Suspension of Trading

DECEMBER 13, 1976.

In the matter of trading in securities of Penn Central Company, Penn Central Transportation Company, New York Central Railroad Company, Beech Creek Railroad Company, Cleveland and Pittsburgh Railroad Company, Cleveland-Cincinnati-Chicago & St. Louis Railway Company, Connecting Railway Company, Delaware Railroad Company, Detroit Manufacturers Railroad, Elmira and Williamsport Railroad Company, Erie and Pittsburgh Railroad Company, Little Miami Railroad Company, Mahoning Coal Railroad Company, Michigan Central Railroad Company, New York and Harlem Railroad Company, New York Connecting Railroad Company, New York-New Haven & Hartford Railroad Company, Northern Central Railway Company, Peoria and Eastern Railway Company, Philadelphia and Trenton Railroad Company, Philadelphia, Baltimore and Washington Railroad Company, Pittsburgh-Cincinnati-Chicago and St. Louis Railroad Company, Pittsburgh-Ft. Wayne and Chicago Railway Company, Pittsburgh-Youngstown and Ashtabula Railway Company, United New Jersey Railroad and Canal Company.

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the securities of

the above named issuers being traded on a national securities exchange or otherwise is required in the public interest and for the protection of investors;

Therefore, pursuant to section 12(k) of the Securities Exchange Act of 1934, trading in such securities on a national securities exchange or otherwise is suspended, for the period from 10:00 a.m. (EST) on December 13, 1976 through December 22, 1976.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-37218 Filed 12-17-76;8:45 am]

DEPARTMENT OF STATE

[CM-7/6]

ADVISORY COMMITTEE ON TRANSNATIONAL ENTERPRISES WORKING GROUP ON ILLICIT PAYMENTS

Meeting

A Working Group on Illicit Payments of the Department of State Advisory Committee on Transnational Enterprises will meet on Wednesday, January 5, 1977 at 2:00 p.m. in room 1205 of the Department of State, 2201 C Street, N.W., Washington, D.C. The meeting will be open to the public.

The purpose of the group's meeting will be to discuss the matter of an international agreement to combat illicit payments.

Requests for further information on the meeting should be directed to Stuart Benson, Department of State, Office of the Legal Adviser, 2201 C Street, N.W., Washington, D.C. 20520. He may be reached by telephone on (area code 202) 632-1989.

Members of the public wishing to attend the meeting must contact Mr. Benson's office in order to arrange entrance to the State Department building.

As time permits, oral comments from members of the public attending the meeting will be entertained.

Dated: December 16, 1976.

STEPHEN R. BOND,
Executive Secretary, Committee on Transnational Enterprises.

[FR Doc.76-37292 Filed 12-17-76;8:45 am]

[CM-7/7]

ADVISORY COMMITTEE ON TRANSNATIONAL ENTERPRISES WORKING GROUP ON TRANSFER OF TECHNOLOGY

Meeting

The Working Group on Transfer of Technology of the Department of State Advisory Committee on Transnational Enterprises will hold its first meeting on Friday, January 7, 1977, at 10:00 a.m. in Room 1205 of the Department of State, 2201 C Street, N.W., Washington, D.C. The meeting will be open to the public.

The purpose of the working group's meeting will be to discuss work within UNCTAD on a Code of Conduct for the Transfer of Technology.

Among the items on the agenda are:

(1) Organization of the Working Group.

(2) Organization of work program.

(3) Discussion of UNCTAD exercise on Technology Transfer Code of Conduct.

Requests for further information on the meeting should be directed to Walter Lockwood, or Stephen Bond, Department of State, 2201 C Street, N.W., Washington, D.C. 20520. Mr. Lockwood may be reached by telephone at (area code 202) 632-0266, Mr. Bond at (area code 202) 632-0349.

Members of the public wishing to attend the meeting must contact the office of either Mr. Lockwood or Mr. Bond in order to arrange entrance to the State Department building.

The Chairman will, as time permits, entertain oral comments from members of the public attending the meeting.

Dated: December 14, 1976.

STEPHEN R. BOND,
Executive Secretary, Committee on Transnational Enterprises.

[FR Doc.76-37293 Filed 12-17-76;8:45 am]

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 76-225]

CHEMICAL TRANSPORTATION INDUSTRY ADVISORY COMMITTEE

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Chemical Transportation Industry Advisory Committee's Subcommittee on Liquefied Gas Vessels to be held January 10 and 11, 1977, 9:00 a.m., Room 8334, Nassif Building, 400 7th St. S.W., Washington, D.C. 20590. The agenda for this meeting is as follows:

January 10th—Discussion of public comments on proposed rules for gas ships, 46 CFR Part 154.

January 11th—Discussion of papers submitted for IMCO's second session of the Subcommittee on Bulk Chemicals.

Attendance is open to the interested public. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to attend and persons wishing to present oral statements should notify, not later than the day before the meeting, and information may be obtained from, Mr. W. E. McConnaughey, Commandant (G-MHM), U.S. Coast Guard, Washington, D.C. 20590 (202-426-2306). Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, D.C. on December 6, 1976.

W. M. BENKERT,
Rear Admiral, U.S. Coast Guard Chief, Office of Merchant Marine Safety.

[FR Doc.76-37186 Filed 12-17-76;8:45 am]

Federal Aviation Administration

RADIO TECHNICAL COMMISSION FOR AERONAUTICS (RTCA) SPECIAL COMMITTEE 125—MLS IMPLEMENTATION

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub L. 92-463; 5 U.S.C. App. 1) notice is hereby given of a meeting of the RTCA Special Committee 125—MLS Implementation to be held January 11-12-13, 1977, Conference Room 3201, FAA Trans Point Building, 2100 Second Street, S.W., Washington, D.C. commencing at 9:30 a.m. The agenda for this meeting is as follows: 1) Approval of Minutes of Fourteenth Meeting held December 7-8-9, 1976, and 2) Review Remaining Chapters and Appendices of the Committee Report to Finalize content.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the hearing. Persons wishing to attend and persons wishing to present oral statements should notify, not later than the day before the meeting, and information may be obtained from, RTCA Secretariat, 1717 H Street, N.W., Washington, D.C. 20006; (202) 296-0484. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, D.C. on December 9, 1976.

KARL F. BIERACH,
Designated Officer.

[FR Doc.76-37187 Filed 12-17-76;8:45 am]

National Highway Traffic Safety Administration

FORD MOTOR CO.

Denials of Petitions To Commence Rulemaking

This notice sets forth the reasons for denial of three petitions for rulemaking to initiate or amend Federal motor vehicle safety standards promulgated under authority of section 103 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1391 et seq.). This notice is published in accordance with section 124 of the Act, which provides that the National Highway Traffic Safety Administration must grant or deny such petitions within 120 days, and "If the Secretary denies such petition he shall publish in the Federal Register his reasons for such denial" (§ 124(d)).

Ford Motor Company (July 2, 1976). Petition to amend Standard No. 219, Windshield Zone Intrusion, to specify the radio antenna as one of the excepted vehicle components in paragraph S5 of the standard. Ford's petition was denied because most antennas are fabricated with steel tubing that is capable of sustaining substantial axial loads, and the antenna could therefore easily impale a vehicle occupant if it intrudes into and

through the windshield zone set forth in the standard.

Rubber Manufacturers Association (RMA) (February 19, 1976). Petition to amend Standard No. 110, Tire Selection and Rims, to include rim dimension requirements and to extend the applicability of the standard to rims as well as passenger cars. The RMA petition was denied because the NHTSA has no evidence that rims being marketed currently and designated for use with specified tires are dimensionally incompatible with those tires.

R. E. Thomas Errectors (undated petition). Petition to amend Standard No. 121, Air Brake Systems, to exclude certain trailers used in logging from the standard's requirements. R. E. Thomas' petition for exclusion from requirements other than the "no lockup" requirement of S5.3.2 was denied, because no information was provided that would demonstrate that these requirements are inappropriate for the trailers.

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); sec. 106, Pub. L. 93-492, 88 Stat. 1482 (15 U.S.C. 1410); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8).

Issued on December 13, 1976.

ROBERT L. CARTER,
Associate Administrator,
Motor Vehicle Programs.

[FR Doc.76-37117 Filed 12-17-76;8:45 am]

National Highway Traffic Safety Administration

[Docket No. EX77-1; Notice 1]

MODULAR AMBULANCE CORP.

Petition for Temporary Exemption From Federal Motor Vehicle Safety Standard

Modular Ambulance Corporation of Grand Prairie, Texas, has petitioned for a temporary exemption from 49 CFR 571.301-75, Motor Vehicle Safety Standard No. 301-75, *Fuel System Integrity*, on the basis that compliance would cause it substantial economic hardship.

Petitioner is a final-stage manufacturer which mounts ambulance bodies on chassis manufactured by Chevrolet, Ford, and Dodge. In its last fiscal year ending April 30, 1976, it assembled 480 such vehicles. Apparently the incomplete vehicle manufacturers concerned have been unable to provide petitioner with sufficient information to enable it to certify the completed vehicle with assurances that it will comply with fuel system integrity requirements. The company "does not feel that any of the ambulances that we modify or convert would have to be modified to achieve compliance because we do not alter the fuel system at all other than to attach the fuel filler hoses provided by the chassis manufacturer." But it believes the only way to assure compliance with confidence is to submit its vehicles to testing and "we do not have the test facilities or equipment" necessary. It estimated that testing costs to meet September 1, 1976, requirements are are $218,500 and for those of September 1, 1977, almost $700,000. These estimates are based upon the presumed necessity of actually crash testing many different vehicles. The NHTSA advised the company that it may base its certification on computer simulations, mathematical calculations, and engineering judgment in lieu of crash testing but the company has not provided a written response. The company had a net loss of $278,000 in its 1976 fiscal year, and a net income of $228,000 in its 1975 fiscal year. A 3-year exemption is sought. Petitioner argued that the exemption is consistent with traffic safety objectives and in the public interest since it will allow cities and States to purchase ambulances in establishing "their Emergency Medical Services Systems as provided for by the Department of Transportation and Health, Education, and Welfare."

This notice of receipt of a petition for temporary exemption is published in accordance with the NHTSA regulations on this subject (49 CFR 555.7), and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Interested persons are invited to submit comments on the petition of Modular Ambulance 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 10 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, are available for examination in the docket both before and after the closing date. Comments received after the closing date will also be filed and will be considered to the extent possible. If the petition is granted, notice will be published in the FEDERAL REGISTER pursuant to the authority indicated below.

Comment closing date: January 19, 1977.

(Sec. 3, Pub. L. 92-548, 86 Stat. 1159 (15 U.S.C. 1410) delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on December 15, 1976.

ROBERT L. CARTER,
Associate Administrator,
Motor Vehicle Programs.

[FR Doc.76-37237 Filed 12-17-76;8:45 am]

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1976 Rev., Supp. No. 6]

IGF INSURANCE CO.

Surety Companies Acceptable on Federal Bonds

A Certificate of Authority as an acceptable surety on Federal bonds has been issued by the Secretary of the Treasury to the following company under Sections 6 to 13 of Title 6 of the United States Code. An underwriting limitation of $100,000 has been established for the company.

NAME OF COMPANY, LOCATION OF PRINCIPAL EXECUTIVE OFFICE, AND STATE IN WHICH INCORPORATED

IGF INSURANCE COMPANY
DES MOINES, IOWA
IOWA

Certificates of Authority expire on June 30 each year, unless sooner revoked, and new certificates are issued on July 1 so long as the companies remain qualified (31 CFR Part 223). A list of qualified companies is published annually as of July 1 in Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information. Copies of the circular, when issued, may be obtained from the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226.

Dated: December 14, 1976.

D. A. PAGLIAI,
Commissioner, Bureau of
Government Financial Operations.

[FR Doc.76-37252 Filed 12-17-76;8:45 am]

Internal Revenue Service

[Order No. 81 (Rev. 9)]

DIRECTOR, PERSONNEL DIVISION, ET AL.

Authority Delegation; Personnel Matters

Date of issue: December 15, 1976.

Effective Date: January 12, 1977.

The authority vested in the Commissioner of Internal Revenue by Treasury Department Order 177-19, Revision No. 1; Administrative Circular No. 46, Supplement 1, and Chapter 250, Treasury Personnel Manual, to approve personnel actions, including making decisions and taking final action for the Internal Revenue Service in grievances, appeals, and suitability and disciplinary cases; to approve outstanding performance ratings and incentive awards; to approve within-grade step increases for acceptable level of competence and within-grade step increases for high quality performance; and to classify General Schedule and Wage Board positions, is hereby delegated as follows:

A. The Director, Personnel Division, is authorized: 1. To approve personnel actions, and to take final action for the Internal Revenue Service for centralized positions as defined in Internal Revenue Manual 0250 and positions in the National Office, subject to the limitations specified in paragraphs A-2 and C below. This authority may be redelegated to National Office Branch employees but not lower than Section Chiefs in that Branch.

2. To approve personnel actions, including final determinations for the Internal Revenue Service of whether resignations or retirement applications were

voluntarily submitted, for positions of: Deputy Commissioner, Assistant Commissioner, Assistant to the Commissioner (Public Affairs), Division Director (National Office), Assistant Division Director (National Office), Regional Commissioner, Regional Inspector, Assistant Regional Commissioner, District Director, Service Center Director, Assistant District Director, Assistant Service Center Director, Director and Assistant Director, Data Center, and Director and Assistant Director, National Computer Center, except for accessions, reassignments, promotions, demotions, removals, suspensions, reductions in rank, and any other actions which involve a material change in duties or changes in post of duty. This authority may not be redelegated.

3. Except to the extent that authority is delegated in D.2., to classify all General Schedule and Wage Board positions in the National Office; to classify such regional positions when they are listed as requiring National Office classification action in Internal Revenue Manual 0511, when the operations of the positions are standardized in several regions, or when authorized regional officials request National Office action; and to put into effect wage schedules for Wage Board positions in the National Office as authorized by the Treasury Department Wage Board. This authority may be redelegated only to Chief, National Office Branch, Chief, Position Management Branch, Chief, Classification Section, and designated Position Classifiers.

4. To act as appellate official and take final action for the IRS on appeals of (a) adverse actions and suspensions of 30 days or less effected by officials of the Offices of the Regional Commissioners, and by Assistant Commissioners (except the Assistant Commissioner (Administration)), the Assistant to the Commissioner (Public Affairs) and Assistant Commissioners' authorized subordinates, including the delegates of the Assistant Commissioner (Administration) and the Assistant to the Commissioner (Public Affairs); and (b) oral admonishments confirmed in writing and written reprimands issued by Regional Commissioners, and by Assistant Commissioners (except those issued by the Assistant Commissioner (Administration)), and the Assistant to the Commissioner (Public Affairs). This authority may not be redelegated.

5. To take final action for the IRS as the second-level appellate official on grievance appeals on which the first-level appeal decisions were made by Regional Commissioners, Assistant Commissioners, and the Assistant to the Commissioner (Public Affairs), except decisions of the Assistant Commissioner (Administration). This authority may not be redelegated.

6. To review any personnel, classification, incentive award or outstanding performance action, or any action with regard to suitability and disciplinary cases, taken or approved under authority delegated by this Delegation Order, except actions taken or approved by the Deputy Commissioner and the Assistant Commissioner (Administration), and to take, direct, or recommend corrective action when determined to be required. This authority may not be redelegated.

7. To take final action on and make awards up to $1,000 for each individual or group contribution for Division Directors (National Office), Assistant Division Directors (National Office), Director and Assistant Director, Data Center, Director and Assistant Director, National Computer Center, Regional Commissioners, Assistant Regional Commissioners, District Directors, Service Center Directors, Assistant District Directors, Assistant Service Center Directors, Regional Inspectors and Assistant Regional Inspectors, in accordance with award scales set forth in Treasury Incentive Awards Regulations and in Internal Revenue Manual 0451. This authority may not be redelegated.

8. For positions listed in A–7, to take final action on requests for exceptions to standard award scales in accordance with Treasury Department Incentive Awards Regulations, subject to the monetary limitation in A–7. This authority may not be redelegated.

9. To approve details of 30 days or less to or from the Internal Revenue Service and another Federal Agency or Treasury Bureau. This authority may be redelegated only to Chief, National Office Branch.

10. To exercise the special personnel authorities to facilitate redeployment of personnel, including temporary and term appointments and waivers of qualification requirements, granted to the Service by the Civil Service Commission. This authority may not be redelegated.

B. Regional Commissioners are authorized: 1. To approve personnel actions, or to take final action for the IRS, for positions under their jurisdiction except actions involving centralized positions and personnel actions requiring prior approval of the Department of the Treasury as defined in Internal Revenue Manual 0250. This authority may be redelegated only to Chiefs, Personnel Branches, and Section Chiefs in those Branches. The authority to make suitability decisions, to take final disciplinary actions (other than oral admonishments) and to approve adverse actions, suspensions of 30 days or less, and Separations (Disqualification) may be delegated only to (a) Assistant Regional Commissioners for employees of the Regional Office and (b) District and Service Center Directors for District and Service Center employees.

2. To approve personnel actions for positions in Grade GS–13 and below in Regional Inspectors' offices. This authority may be redelegated only to Chiefs and Section Chiefs, Personnel Branches, in the regional headquarters organization.

3. To classify all General Schedule and Wage Board positions within their region, except those listed as requiring National Office classification action in Internal Revenue Manual 0511; and, to put into effect wage schedules for Wage Board positions within their regions as authorized by the Treasury Department Wage Board. This authority may be redelegated only to Chiefs, Personnel Branches, and Personnel Specialists in these Branches assigned position classification responsibilities.

4. To act as appellate official and take final action for the IRS on appeals of (a) adverse actions and suspensions of 30 days or less effected by District and Service Center Directors; and (b) oral admonishments confirmed in writing and written reprimands issued by District and Service Center Directors and Assistant Regional Commissioners. This authority may not be redelegated.

5. To take final action for the IRS as the second-level appellate official on grievance appeals on which the first-level appeal decisions were made by officials under their jurisdiction. This authority may not be redelegated.

6. To approve outstanding performance ratings and additional within-grade increases for high-quality performance for all employees under their jurisdiction, except Assistant Regional Commissioners, District Directors, and Service Center Directors. This authority may be redelegated only to (a) Assistant Regional Commissioners for employees of the Regional Office, and (b) District and Service Center Directors for District and Service Center employees.

7. (a) To determine for all employees under their jurisdiction that work is of an acceptable level of competence for within-grade step increases; this authority may be redelegated only to those supervisors who evaluate the work being performed.

(b) To process approved step increases for employees under their jurisdiction who occupy positions centralized to the National Office, and for Regional Inspectors and Counsel and their employees whose posts of duty are located within the region. This authority may be redelegated only to Chiefs and Section Chiefs, Personnel Branches.

8. Except for positions listed in A–7, to take final action on and make awards up to $1,000 for each individual or group contribution which can be adopted locally, in accordance with award scales set forth in Treasury Incentive Awards Regulations and in Internal Revenue Manual 0451. This authority may be redelegated but not below Branch Chiefs in the regional headquarters organization and Division Chiefs in the Districts and Service Centers.

9. To authorize payment of awards for employee contributions national in scope which the National Office has accepted for use. This authority may be redelegated but not below Branch Chiefs in the regional headquarters organization and Division Chiefs in the Districts and Service Centers.

10. Except for positions listed in A–7, to take final action on requests for exceptions to standard award scales in accordance with Treasury Department Incentive Awards Regulations, subject to the monetary limitations in B–8. This authority may be redelegated only to Assistant Regional Commissioners, District Directors and Service Center Directors.

11. To approve details of 30 days or less to or from offices under their jurisdiction and another Federal agency or Treasury bureau. This authority may be redelegated only to Chiefs, Personnel Branches, in the regional headquarters organization.

C. The Deputy Commissioner, Assistant Commissioners, and the Assistant to the Commissioner (Public Affairs) are authorized: 1. After obtaining technical assistance from the Personnel Division, to make decisions and take action on grievances, to make suitability decisions, and to take final disciplinary actions and effect adverse actions, suspensions of 30 days or less and separations (disqualification), with respect to National Office employees under their jurisdiction except that the Deputy Commissioner may not take final action on cases involving Assistant Commissioners, the Assistant to the Commissioner (Public Affairs), Division Directors, Directors and Assistant Directors, Data Center and National Computer Center, and Assistant Division Directors; and Assistant Commissioners, and the Assistant to the Commissioner (Public Affairs) may not take final action on cases involving Division Directors, Directors and Assistant Directors, Data Center and Natonal Computer Center and Assistant Division Directors. This authority (other than oral admonishment) may be delegated only to Deputy Assistant Commissioners, to Division Directors, to the Director, National Computer Center, and Director, Data Center. Technical assistance for the National Computer Center and the Data Center will be provided by the National Computer Center and the Data Center personnel offices respectively.

2. To approve outstanding performance ratings and additional within-grade increases for high-quality performance with respect to National Office employees under their jurisdiction. This authority may be redelegated only to Deputy Assistant Commissioners, to Division Directors, to the Director, Data Center, and the Director, National Computer Center.

3. To determine that work is of an acceptable level of competence for within-grade step increase with respect to National Office employees under their jurisdiction and to effect these increases. The authority to make determinations may be redelegated only to those supervisors who evaluate the work being performed.

4. Except for positions listed in A–7, to take final action and make awards up to $1,000 for each individual or group contribution, in accordance with award scales set forth in Treasury Incentive Awards Regulations and Internal Revenue Manual 0451. This delegation includes authority to take final action on awards for field employees engaged in National Office projects (except for positions listed in A–7). This authority may be redelegated only to Deputy Assistant Commissioners, to Division Directors, to the Director, Data Center, and to the Director, National Computer Center.

5. Except for positions listed in A–7, to take final action on requests for exceptions to standard award scales in accordance with Treasury Department Incentive Awards Regulations, subject to the monetary limitation in C–4. This authority may be redelegated only to Deputy Assistant Commissioners, to Division Directors, to the Director, Data Center, and to the Director, National Computer Center.

6. As the second-level appellate official, to take final action for the Internal Revenue Service on grievance appeals on which the first-level appeal decisions were made by National Office officials under their jurisdiction. This authority may not be redelegated.

7. The authority delegated to the Assistant Commissioner (Inspection) in C–1 through C–6, with respect to National Office employees under his jurisdiction, is also delegated to the Assistant Commissioner (Inspection) for Regional Inspection employees, except that the technical assistance cited in C–1 shall be obtained from the Personnel Division or the appropriate IRS field personnel office, and the authority in C–1 and C–2 (other than oral admonishments) may be delegated only to Regional Inspectors.

D. The Directors, Data Center and National Computer Center, are authorized: 1. To approve personnel actions for positions under their jurisdiction except actions involving centralized positions and personnel actions requiring prior approval of the Department of the Treasury as defined in Internal Revenue Manual 0250. This authority may be redelegated only to Chiefs, and Section Chiefs, Personnel Branches.

2. To classify all General Schedule and Wage Board positions under their jurisdiction, except those listed as requiring National Office classification action in Internal Revenue Manual 0511; and, to put into effect wage schedules for Wage Board positions in the Data Center and the National Computer Center as authorized by the Treasury Department Wage Board. This authority may be redelegated only to Chief, and Section Chiefs, Personnel Branches and Position Classifiers, in these Branches assigned position classification responsibilities.

3. To approve details of 30 days or less, to or from positions in the Data Center and the National Computer Center, and another Federal agency or Treasury bureau. This authority may not be redelegated.

E. Authorities delegated herein relating to positions and employees of the Office of the Chief Counsel and Office of Regional Counsel are based on and subject to specific agreements with the Office of the General Counsel of the Treasury Department and the Office of the Chief Counsel.

F. The Director of International Operations is authorized to approve all personnel actions for positions under his jurisdiction except actions involving centralized positions, removals, suspensions, reductions in rank or grade, furloughs without pay, retirements, and personnel actions requiring prior approval of the Department of the Treasury as defined in Internal Revenue Manual 0250. This authority may be redelegated only to the IOI Employment Officer.

G. This order supersedes Delegation Order No. 81 (Rev. 8), issued March 8, 1976.

DONALD C. ALEXANDER,
Commissioner.

[FR Doc.76-37201 Filed 12-17-76;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 215]

ASSIGNMENT OF HEARINGS

DECEMBER 15, 1976.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 123407 (Sub-304), Sawyer Transport, Inc., now assigned February 1, 1977 at Chicago, Illinois; will be held in Room 286 Everett McKinley Dirksen Building, 219 South Dearborn Street. MC 111302 (Sub-93), Highway Transport, Inc.; MC 112801 (Sub-186), Transport Service, Co. and MC 134477 (Sub-112), Scanno Transportation, Inc., now assigned February 3, 1977 at Chicago, Illinois, will be held in Room 286 Everett McKinley Dirksen Building, 219 South Dearborn Street.

MC 1931 (Sub-No. 16), Vonder Ahe Van Lines, Inc., MC 15735 (Sub-No. 27), Allied Van Lines, Inc., and MC 52793 (Sub-No. 21), Bekins Van Lines Co., now assigned January 24, 1977, at Chicago, Ill. will be held in Room 350, 230 South Dearborn Street. MC 95540 (Sub-No. 952), Watkins Motor Lines, Inc., now assigned January 31, 1977, at Chicago, Ill. will be held in Room 350, 230 South Dearborn Street.

MC 141853, C-B-C Transport Company, now assigned January 18, 1977, at Jackson, Miss., is postponed to January 25, 1977 (9 days), at Jackson, Miss., Grand Jury Room, U.S. Courthouse & Post Office Building, Corner of Capitol & South West Streets.

I&S M-29277, General Increase on Meats, December 1976, R.M.M.T.B. now being assigned February 1, 1977 at the Offices of the Interstate Commerce Commission in Washington, D.C.

MC 35835 (Sub-31), Jensen Transport, Inc.; MC 67450 (Sub-53), Peterlin Cartage Co.; MC 107496 (Sub-1027), Ruan Transport Corporation; MC 112801 (Sub-180), Transport Service Co.; MC 114194 (Sub-182), Kreider Truck Service, Inc.; MC 115331 (Sub-404), Truck Transport Incorporated; MC 119974 (Sub-52), L.C.L. Transit Company; MC 124078 (Sub-684), Schwerman Trucking Co.; MC 127840 (Sub-44), Montgomery Tank Lines, Inc. and MC 136774 (Sub-5), Mc-Mor-Han Trucking Co., Inc., has been continued to January 4, 1977, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC-C-8959, Kraftours Corporation, DBA Kraftours and Allan S. Kraft, DBA Universal Travel Service Investigation of Operations and Revocation of Certificate and License and MC 120781 (Sub-No. 5) Kraftours Corporation Extension-Special Operation, now being assigned for continued hearing on January 13, 1976, at the Offices of the Interstate Commerce Commission, Washington, D.C. MC 141675 (Sub-1), Economy Trucking Service, Inc., application dismissed.

MC 136899 (Sub-No. 17), Higgins Transportation LTD., now assigned February 1, 1977, at Chicago, Ill. will be held in Room 350, 230 South Dearborn Street.

MC 138824 (Sub-No. 4), Redway Carriers, Inc., now assigned February 2, 1977, at Chicago, Ill. will be held in Room 350, 230 South Dearborn Street.

MC 119619 (Sub-No. 87), Distributors Service Co., now assigned February 3, 1977, at Chicago, Ill. will be held in Room 350, 230 South Dearborn Street.

MC-F-11025, Virginia Carolina Freight Lines, Inc.—Purchase—Merit Transport Corporation (Joseph Keane, Statutory Receiver), now being assigned January 24, 1976, at the Office of the Interstate Commerce Commission, Washington, D.C.

MC 121684 (Sub-2), Orlando Transit Company, now assigned continued hearing February 15, 1977 at Washington, D.C., has been postponed to March 22, 1977, at the Offices of the Interstate Commerce Commission, Washington, D.C.

MC 59856 Sub 64, Salt Creek Freightways, A Corp., now being assigned March 7, 1977 (1 week), at Boise, Idaho, in a hearing room to be later designated.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-37303 Filed 12-17-76;8:45 am]

[EX PARTE NO. 334]

CAR SERVICE COMPENSATION; BASIC PER DIEM CHARGES

Formula Revision in Accordance With the Railroad Revitalization and Regulatory Reform Act of 1976

DECEMBER 14, 1976.

NOTICE TO THE PARTIES

A request for an informal conference has been received from the Association of American Railroads. Since the Commission by order served December 14, 1976, has extended the date for filing initial statements to February 9, 1977, an informal conference may be of substantial benefit to the parties in clarifying any technical problems that may have arisen.

The informal conference will take place at the Offices of the Interstate Commerce Commission, Washington, D.C., on December 21, 1976, at 2:00 p.m.

Notice of this informal conference shall be given to the general public by depositing a copy of this notice in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. for public inspection and by delivering a copy of the notice to the Director, Office of the Federal Register for publication therein as notice to interested persons.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-37300 Filed 12-17-76;8:45 am]

[Notice No. 90]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under Section 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application.

Protests against approval of the application, which may include a request for oral hearing, must be filed with the Commission on or before January 19, 1977. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicants' representative(s), or applicants (if no representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopses form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

No. MC-FC-76820, filed November 9, 1976. Transferee: South Tahoe Shell, a partnership, P.O. Box 9697, South Lake Tahoe, CA 95731. Transferor: Thornton's Incorporated, P.O. Box 1258, Truckee, CA 95734. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC-118625 Sub 1 issued by the Commission September 9, 1960, and acquired by transferor herein pursuant to approval and consummation of No. MC-FC-75745 on August 19, 1975, as follows: Wrecked or disabled automobiles, trucks, tractors, semi-trailers, and full trailers, and wrecked or disabled house trailers, using wrecker type tow trucks, in truckaway service, between points in a described part of California and points in a described part of Nevada.

Transferee presently holds no authority from this Commission.

Application has not been filed for temporary authority under section 210a(b).

No. MC-FC-76835, filed November 22, 1976. Transferee: American Pacific Forwarders, 7914 7th St., Downey, Calif. 90241. Transferor: S & M Freight Lines, 2017 Violet St., Los Angeles, Calif. 90021. Applicants' representative: R. Y. Schureman, Attorney at law, 1545 Wilshire Blvd., Los Angeles, Calif. 90017. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC-10381 and a portion of Sub 3, issued September 13, 1957, and March 18, 1964, as follows: General commodities, with exceptions, over irregular routes, (1) between Redondo Beach, Calif., on the one hand, and, on the other, Los Angeles, Hyde Park, Inglewood, Lennox, Hawthorne, Hermosa Beach, and Manhattan Beach, Calif. and (2) between points in the Los Angeles, Calif., Commercial Zone, on the one hand, and, on the other, points in the Los Angeles Harbor, Calif., Commercial Zone, as those zones are defined in Los Angeles, Calif., Commercial Zone, 3 M.C.C. 248. Also *fireworks* and *materials, supplies and equipment* incidental to, and used in, the manufacture of fireworks, from Los Angeles Harbor, Calif., to Redondo Beach, Calif. Also general commodities, with specified exceptions between points in the specified Los Angeles Basin Area. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

No. MC-FC-76853, filed December 2, 1976. Transferee: Raiders Express, Inc., 6 Senate Place, Jersey City, N.J. 07306. Transferor: Chandler Transportation, Inc., One Penn Plaza, New York, N.Y. 10001. Applicants representative: M. F. Rolla, attorney-at-law, One Penn Plaza, New York, N.Y. 10001. Authority sought for purchase by transferee of the operating rights of transferor set forth in Certificate No. MC-106010, issued January 17, 1973, as follows: General commodities, with the usual exceptions, between New York, N.Y., on the one hand, and, on the other, points in New Jersey (with specified exceptions); between points in New Jersey within 30 miles of City Hall, New York, N.Y., on the one hand, and, on the other, Camden County, N.J.; between points in Philadelphia County, Pa., between points in Philadelphia County, Pa., on the one hand, and, on the other, Camden, N.J.; and furniture, radios, refrigerators, washing machines, vending machines, and confectionary, pool and billiard tables and radiators and boilers, from, to and between specified points in Pennsylvania, Delaware, New Jersey, Maryland, and the District of Columbia. Transferee presently holds no authority from the Commission. Application has

not been filed for temporary authority under Section 210a(b).

No. MC-FC-76855, filed December 2, 1976. Transferee: Direct Van Lines, Inc., 6121 Lincolnia Road, Alexandria, Va. 22314. Transferor: Regent Van & Storage, Inc., 1327 Wilkes St., Alexandria, Va. 22314. Applicants' representative: Martin R. Martino, attorney-at-law, 475 L'Enfant Plaza, S.W., Suite 4400, Washington, D.C. 20024. Authority sought for purchase by transferee of the operating rights of transferor set forth in Certificate No. MC 134924, issued December 8, 1970, as follows: Household goods as defined by the Commission, between Washington, D.C., on the one hand, and, on the other, points in Maryland, Delaware, New Jersey, Pennsylvania, West Virginia, Ohio, Indiana, Illinois, Wisconsin, Michigan, Virginia, Kentucky, North Carolina, South Carolina, Georgia, New York, Connecticut, Rhode Island, and Massachusetts; and between Washington, D.C., on the one hand, and, on the other, points in Maryland and Virginia within 40 miles of Washington, D.C. Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under Section 210a(b).

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-37304 Filed 12-17-76;8:45 am]

[Notice No. 168]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

DECEMBER 14, 1976.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than January 4, 1977. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 1641 (Sub-No. 104TA) filed December 6, 1976. Applicant: PEAKE TRANSPORT SERVICE, INC., P.O. Box 1050, El Dorado, Kans. 67042. Applicant's representative: T. M. Brown, 223 Ciudad Bldg., Oklahoma City, Okla. 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Residual fuel oil*, from the storage site of N and W Electric Cooperative, Inc., at or near Missouri City, Mo., to points in Nebraska, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Carter-Waters Corporation, P.O. Box 19676, Kansas City, Mo. 64141. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, Suite 101 Litwin Bldg., Wichita, Kans. 67202.

No. MC 13087 (Sub-No. 4TA) filed December 6, 1976. Applicant: STOCKBERGER TRANSFER & STORAGE, INC., 524 Second St., S.W., Mason City, Iowa 50401. Applicant's representative: James M. Hodge, 1980 Financial Center, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages*, from Peoria, Ill., to Mason City, Iowa, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Blue Ribbon, Inc., 640 19th St., S.E., Mason City, Iowa 50401. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Bldg., Des Moines, Iowa 50309.

No. MC 29079 (Sub-No. 90TA), filed December 6, 1976. Applicant: BRADA MILLER FREIGHT SYSTEM, INC., 1210 S. Union, P.O. Box 935, Kokomo, Ind. 46901. Applicant's representative: Richard H. Streeter, 704 Southern Bldg., 15th & H Streets N.W., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizers, herbicides and pesticides* (except in bulk), from the plantsite of Knox Fertilizer, at or near Knox, Ind., to points in Illinois, Kentucky, Lower Peninsula of Michigan, Missouri, New York, Ohio, Pennsylvania, West Virginia, Wisconsin, Minnesota, Kansas, Iowa and Nebraska, for 180 days. Supporting shipper: Knox Fertilizer & Chemical Co., Inc., P.O. Box 116, Knox, Ind. 46534. Send protests to: J. H. Gray, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 343 W. Wayne St., Suite 113, Fort Wayne, Ind. 46802.

No. MC 38921 (Sub-No. 8TA), filed December 6, 1976. Applicant: WM. H. P., INC., 1342 N. Howard St., Philadelphia, Pa. 19122. Applicant's representative: A. Davis Millner, 167 Fairfield Road, Fairfield, N.J. 07006. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers*, from the plantsite of Anchor Hocking Corporation, at Salem, N.J., to the plantsite of C. Schmidt & Sons Brewery, in Philadelphia, Pa., for 180 days. Supporting shippers: Anchor Hocking Corporation, Lancaster, Ohio 43130. C. Schmidt & Sons Brewery, 127 Edward St., Philadelphia, Pa. 19123. Send protests to: Monica A. Blodgett, Transportation Assistant, Interstate Commerce Commission, 600 Arch St., Room 3238, Philadelphia, Pa. 19106.

No. MC 66531 (Sub-No. 6TA) filed November 30, 1976. Applicant: INTERSTATE GROCERY DISTRIBUTION SYSTEM, INC., 2200 48th St., North Bergen, N.J. 07047. Applicant's representative: George A. Olsen, 69 Tonnele Ave., Jersey City, N.J. 07306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Drugs, medicines, chemicals, pharmaceuticals, cleaning, scouring or washing compounds, NOI, paper impregnated with cleansing agent, corn syrup* not medicated, *dental instruments*, NOI: *needles*, NOI: *glassware*, O/T cut NOI: actual value not exceeding $1.50 per pound, vermin exterminators, NOI: insecticides O/T agricultural, NOI: petroleum naphtha; coal tar dyes O/T indigo; coal tar colors O/T synthetic indigo; bathroom or lavatory fixtures, NOI; O/T china; flour enriching compound; flavouring compounds NOI, dry; advertising matter; bottles, glass or plastic; caps, bottles, steel aluminum or plastic, paper or paperboard, NOI, KD; tubes cellulose film, in straight or mixed shipments, between East Brunswick, Clifton, Lodi and East Rutherford, N.J., on the one hand, and, on the other, Piers in New York Harbor, N.Y., as defined by the Commission, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Winthrop Products Inc., 90 Park Ave., New York, N.Y. 10016. Send protests to: Julia M. Papp, Transportation Assistant, Interstate Commerce Commission, 9 Clinton St., Newark, N.J. 07102.

No. MC 98952 (Sub-No. 40TA) filed December 6, 1976. Applicant: GENERAL TRANSFER, INC., 2880 N. Woodford St., Decatur, Ill. 62525. Applicant's representative: John E. Harvey, P.O. Box 1470, 4666 Faries Parkway, Decatur, Ill. 62525. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alcohol, liquid*, in bulk, from the plant and storage facilities of Archer Daniels Midland Company, Decatur, Ill., to points in the United States (except Alaska and Hawaii), restricted to traffic originating at and destined to named points, for 180 days. Supporting shipper: Jerry C. Slaughter, General Traffic Manager, Archer Daniels Midland Company, P.O. Box 1470, Decatur, Ill. 62525. Send protests to: Harold C. Jolliff, District Supervisor, Interstate Commerce Commission, P.O. Box 2418, Springfield, Ill. 62705.

No. MC 103051 (Sub-No. 382TA) filed December 7, 1976. Applicant: FLEET TRANSPORT COMPANY, INC., 934 44th Ave., North, Nashville, Tenn. 37209. Applicant's representative: Russell E. Stone, P.O. Box 90408, Nashville, Tenn. 37209. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lard*, in bulk, in tank vehicles, from Nashville, Tenn., to Bradley, Ill., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Swift Fresh Meats Company, A Division of Swift & Company, Chicago, Ill. 60604. Send protests to: Joe J. Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Suite A-422 U.S. Courthouse, 801 Broadway, Nashville, Tenn. 37203.

No. MC 121489 (Sub-No. 11TA) filed December 10, 1976. Applicant: NEBRASKA-IOWA XPRESS, INC., 3219 Nebraska Ave., Council Bluffs, Iowa 51501. Applicant's representative: William S. Rosen, 630 Osborn Bldg., St. Paul, Minn. 55102. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, between Denver, Colo., and Chappell, Nebr., from Denver, over Interstate Highway 80 to Chappell, and return over the same route, serving intermediate and off-route points in Sedgwick County, Colo. Applicant intends to tack its existing authority with MC 121489 Sub-No. 2. Applicant also intends to interline at Denver, Omaha, Kansas City, St. Joseph, Sioux City, Iowa and any other convenient tack points in applicant's system, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: There are approximately 12 statements of support attached to the application, which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 N. 14th St., Omaha, Nebr. 68102.

No. MC 129326 (Sub-No. 25TA) filed December 6, 1976. Applicant: CHEMICAL TANK LINES, INC., P.O. Drawer 437, Highway 60 West, Mulberry, Fla. 33860. Applicant's representative: L. Agnew Myers, Jr., 734 15th St., N.W., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Amines*, in bulk, in tank vehicles, from Mulberry, Fla., to Aurora, N.C., for 180 days. Supporting shipper: Westvaco Corporation, P.O. Box 237, Mulberry, Fla. 33860. Send protests to: Joseph B. Teichert, District Supervisor, Interstate Commerce Commission, Monterey Bldg., Suite 101, 8410 N. W. 53rd Terrace, Miami, Fla. 33166.

No. MC 129537 (Sub-No. 16TA) (Correction) filed October 13, 1976, published in the FEDERAL REGISTER issue of October 26, 1976, and republished as corrected this issue. Applicant: REEVES TRANSPORTATION CO., Route 5, Dews Pond Road, Calhoun, Ga. 30701. Applicant's representative: John C. Vogt, Jr., 406 N. Morgan St., Tampa, Fla. 33602. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Carpets and rugs*, from points in Floyd, Bartow, Chatooga, Muscogee, Gordon, Whitfield, Muraay, Walker, Catoosa and Troup Counties, Ga., to points in Duval County, Fla., for 180 days. Supporting shippers: There are approximately 38 statements of support attached to the application, which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: William L. Scroggs, District Supervisor, Interstate Commerce Commission, 1252 W. Peachtree St., N.W., Room 546, Atlanta, Ga. 30309. The purpose of this republication is to state that there are more than one supporting shippers in this proceeding.

No. MC 135410 (Sub-No. 6 TA) (Correction) filed November 12, 1976, published in the FEDERAL REGISTER issue of November 24, 1976, and republished as corrected this issue. Applicant: COURTNEY J. MUNSON, doing business as MUNSON TRUCKING, 700 S. Main St., Monmouth, Ill. 61462. Applicant's representative: Courtney J. Munson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lard, tallow, shortening, vegetable oil shortening, margarine, and cooking oils*, in packages, from the facilities of Swift Edible Oil Company, located at or near Bradley, Ill., to points in New Jersey, New York, Maryland, Pennsylvania, Massachusetts and the District of Columbia, and the specified points on Manassas, Williamsburg, Richmond and Newport News, Va.; Dover, Rehoboth Beach and Wilmington, Del.; Levitt City, New Haven, New London, Hartford, Meriden, Colchester and Stamford, Conn.; Burlington, Brattleboro, Rutland and White River Jct., Vt.; Doven, Concord and Manchester, N.H.; Fairfield, Lewiston, Portland and Augusta, Maine, and Providence and Cranston, R.I., and the Commercial Zones of the respectively named cities, for 180 days. Supporting shipper: Swift Edible Oil Company, Division of Swift & Company, Arnold A. Johnson, Distribution Manager, 115 W. Jackson Blvd., Chicago, Ill. 60604. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission Everett McKinley Dirksen Bldg., 219 S. Dearborn St., Room 1386, Chicago, Ill. 60604. The purpose of this republication is to correct the territorial description in this proceeding.

No. MC 135640 (Sub-No. 5TA) filed December 6, 1976. Applicant: STALEY EXPRESS, INC., 2501 N. Brush College Road, Decatur, Ill. 62526. Applicant's representative: John E. Harvey, P.O. Box 1470, 4666 Faries Parkway, Decatur, Ill. 62525. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alcohol, liquid*, in bulk, from the plant and storage facilities of Archer Daniels Midland Company, Decatur, Ill., to points in the United States (except Alaska and Hawaii), restricted to traffic originating at and destined to named points, for 180 days. Supporting shipper: Jerry C. Slaughter, General Traffic Manager, Archer Daniels Midland Company, P.O. Box 1470, Decatur, Ill. 62525. Send protests to: Harold C. Jolliff, District Supervisor, Interstate Commerce Commission, P.O. Box 2418, Springfield, Ill. 62705

No. MC 139967 (Sub-No. 2TA), filed December 6, 1976. Applicant: S.P.S. TRANSPORT CO., 837 W. State St., Ontario, Calif. 91761. Applicant's representative: Bruce A. Bullock, 530 Univac Bldg., 7100 W. Center Road, Omaha, Nebr. 68106. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Pressure sensitive tape;* (a) from Beacon, N.Y., to Carbondale, Ill., and points in California and Nevada; and (b) from Carbondale, Ill., to points in California and Nevada, under a continuing contract with Tuck Industries, Inc., for 180 days. Supporting shipper: Tuck Industries, Inc., 248 Tioranda Ave., Beacon, N.Y. Send protests to: Mary A. Francy, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, Room 1321, Federal Bldg., 300 N. Los Angeles St., Los Angeles, Calif. 90012.

No. MC 141156 (Sub-No. 4TA), filed December 7, 1976. Applicant: SWIFT-O CARRIER, INC., 2053 St. Deville, N.E., Atlanta, Ga. 30345. Applicant's representative: Kim G. Meyer, 1600 First Federal Bldg., Atlanta, Ga. 30303. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as marketed by Home Products Distributors for the account of Amway Corporation, from the plantsite and storage facilities of Amway Corporation in Fulton County, Ga., to points in Louisiana and Arkansas, under a continuing contract with Amway Corporation, for 180 days. Supporting shipper: Amway Corporation, 300 Villanova Drive, Atlanta, Ga. 30336. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 W. Peachtree St., N.W., Room 546, Atlanta, Ga. 30309.

No. MC 142603TA (Correction), filed November 5, 1976, published in the FEDERAL REGISTER issue of November 22, 1976, and republished as corrected this issue. Applicant: CONTRACT CARRIERS OF AMERICA, INC., P.O. Box 1968, Springfield, Mass. 01101. Applicant's representative: S. Michael Richards, 44. North Ave., P.O. Box 225, Webster, N.Y. 14580. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Abrasives*, from Chester and Westfield, Mass., to Fort Smith, Ark.; Compton, Los Angeles, Oakland, San Leandro, Whittier, Calif.; Hartford, Conn.; Coral Gables, Fla.; Atlanta, Ga.; Chicago, Moline, Morton

Grove, Skokie, Ill.; Fortville, LaPorte, North Manchester, Ind.; Ottumwa, Iowa; Kansas City, Kans.; Louisville, Ky.; Frederick, Md.; Methuen, Mass.; Chelsea, Detroit, Grand Rapids, Jackson, Kalamazoo, Owosso, Oxford, Whitehall, Mich.; Minneapolis, St. Paul, Minn.; Liberty, Mo.; Belvidere, Cinnaminson, Dover, Glen Ridge, Irvington, Linden, Matawan, Paterson, Riverton, N.J.; Fruitland, N. Mex.; Brooklyn, N. Tonawanda, Tonawanda, N.Y.; Aberdeen, N.C.; Barberton, Cincinnati, Columbus, Evendale, Newcomerstown, Oakley, Tiffin, Wooster, Ohio; Midwest City, Oklahoma City, Tulsa, Okla.; Altoona, Bridesburg, Lock Haven, Montgomery, Montgomeryville, Morgan, Pennsburg, Philadelphia, Sproul, Worcester, Zelienople, Pa.; Charleston, S.C.; Arlington, Dallas, Ft. Worth, Highland, Houston, Laredo, Marshall, Tex.; Hampden, Hampton, Norfolk, Petersburg, Richmond, Va.; Brookfield, Sun Prairie, Wis., under a continuing contract with Bendix-Abrasives Division, for 180 days. Supporting shipper: Bendix-Abrasives Division, Jackson, Mich. 49204. Send protests to: J. D. Perry, Jr., District Supervisor, 436 Dwight St., Room 338, Springfield, Mass. 01103. The purpose of this republication is to correct the territorial description in this proceeding.

No. MC 142693TA, filed November 30, 1976. Applicant: CUSTOM DELIVERIES, INC., 24680 Mound Road, Warren, Mich. 48091. Applicant's representative: J. A. Kundtz, 1100 National City Bank Bldg., Cleveland, Ohio 44114. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Motor vehicle parts and accessories, and related publications, advertising material and packaging and shipping supplies*, between points in Cook County, Ill., on the one hand, and, on the other, points in Indiana, Illinois, Wisconsin and Michigan, under a continuing contract with Chrysler Corporation, Parts Supply Division, for 180 days. Supporting shipper: Chrysler Corporation, Parts Supply Division, Manager, Traffic & Distribution Dept., Daniel F. McNamara, 26311 Lawrence Ave., Center Line, Mich. 48015. Send protests to: James A. Augustyn, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1110 Broderick Tower, 10 Witherell Ave., Detroit, Mich. 48226.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-37302 Filed 12-17-76;8:45 am]

[Notice No. 169]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

DECEMBER 15, 1976.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than January 4, 1977. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 1380 (Sub-No. 20TA), filed December 7, 1976. Applicant: COLONIAL MOTOR FREIGHT LINE, INC., P.O. Box 7027, High Point, N.C. 27262. Applicant's representative: Max H. Towery (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture*, from points in North Carolina, in and east of Macon and Swain Counties, points in South Carolina; and points in Virginia on and south of a line beginning at Cape Henry, Va., and extending along U.S. Highway 60 to Richmond, Va., thence along U.S. Highway 250 to Staunton, Va., thence along U.S. Highway 11 to Bristol, Va., to points in Tennessee, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: There are approximately 17 statements of support attached to the application, which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Archie W. Andrews, District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 26896, Raleigh, N.C. 27611.

No. MC 20783 (Sub-No. 109TA), filed December 6, 1976. Applicant: TOMPKINS MOTOR LINES, INC., P.O. Box 1830, Highway 77, Gadsden, Ala. 35902. Applicant's representative: Larry Smith (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products and articles distributed by meat packinghouses* as described in *Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plantsite and/or storage facilities of Stark Wetzel Foods, at Indianapolis, Ind., to points in Alabama, Georgia, Kentucky, North Carolina, South Carolina and Tennessee, for 180 days. Supporting shipper: The Rath Packing Company, Sycamore & Elm St., Waterloo, Iowa 50704. Send protests to: Clifford W. White, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Bldg., Birmingham, Ala. 35203.

No. MC 35807 (Sub-No. 64TA), filed December 7, 1976. Applicant: WELLS FARGO ARMORED SERVICE CORPORATION, P.O. Box 4313, 210 Baker St., N.W., Atlanta, Ga. 30302. Applicant's representative: D. E. Wells (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Unique (currency) paper*, between Dalton, Mass., and Washington, D.C., under a continuing contract with General Services Administration, for 180 days. Supporting shipper: General Services Administration, Crystal Mall Bldg., No. 4, Washington, D.C. 20406. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 W. Peachtree St., NW., Room 546, Atlanta, Ga. 30309.

No. MC 110525 (Sub-No. 1175TA), filed December 8, 1976. Applicant: CHEMICAL LEAMAN TANK LINES, INC., 520 E. Lancaster Ave., P.O. Box 200. Applicant's representative: Thomas J. O'Brien (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Hydrochloric acid (Muriatic acid)*, in bulk, in tank vehicles, from Freeport, Tex., to points in Louisiana and Mississippi, for 180 days. Supporting shipper: Dow Chemical, U.S.A., Texas Division, Drawer K, Freeport, Tex. 77541. Send protests to: Monica A. Blodgett, Transportation Assistant, Interstate Commerce Commission, 600 Arch St., Room 3238, Philadelphia, Pa. 19106.

No. MC 114274 (Sub-No. 37TA), filed December 8, 1976. Applicant: VITALIS TRUCK LINES, INC., 137 N.E. 48th St., Place, Des Moines, Iowa 50313. Applicant's representative: William H. Towle, 180 N. LaSalle St., Chicago, Ill. 60601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat by-products, and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in Descriptions In Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from Spencer and Hartley, Iowa, and Schuyler, Nebr., to points in New Jersey, New York, Massachusetts, Pennsylvania, Maryland, and the District of Columbia, restricted to the transportation of traffic originating at the origins and destined to the named destinations, for 180 days. Supporting shipper: Spen-

cer Foods, Inc., P.O. Box 1228, Spencer, Iowa 51301. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Bldg., Des Moines, Iowa 50309.

No. MC 114632 (Sub-No. 87TA), filed December 7, 1976. Applicant: APPLE LINES, INC., 212 S.W. Second, P.O. Box 287, Madison, S. Dak. 57042. Applicant's representative: Robert A. Applewick (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products and articles distributed by meat packinghouses* (except hides and commodities in bulk), from the facilities of Flavorland Industries, Sioux City, Iowa, to points in Illinois, Indiana, in the Chicago Commercial Zone, points in Ohio and Michigan, for 180 days. Supporting shipper: Flavorland Industries, Inc., 1911 Cunningham Drive, Sioux City, Iowa 51107. Send Protests to: J. L. Hammond, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 369, Federal Bldg., Pierre, S. Dak. 57501.

No. MC 114632 (Sub-No. 88TA), filed December 8, 1976. Applicant: APPLE LINES, INC., 212 S.W. Second St., P.O. Box 287, Madison, S. Dak. 57042. Applicant's representative: Robert A. Applewick (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products and meat by-products*, as described in Section A of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), in vehicles equipped with mechanical refrigeration, from points in Nebraska, Iowa, Missouri, Kansas, Minnesota, South Dakota, North Dakota, to the plantsite of Landy of Wisconsin, at Eau Claire, Wis.; and from the plantsite of Landy of Wisconsin, at Eau Claire, Wis., to points in Iowa, Missouri, Kansas, Nebraska, South Dakota, North Dakota, Illinois, Minnesota, and Indiana, for 180 days. Supporting shipper: Landy of Wisconsin, Inc., 2411 3rd St., Eau Claire, Wis. 54701. Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 369, Federal Bldg., Pierre, S. Dak. 57501.

No. MC 118159 (Sub-No. 191TA), filed December 6, 1976. Applicant: NATIONAL REFRIGERATED TRANSPORT, INC., P.O. Box 51366-Dawson Station, Tulsa, Okla. 74151. Applicant's representative: Neil A. DuJardin, P.O. Box 2298, Green Bay, Wis. 54306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Plastic products and related advertising materials and supplies*, from Tyngsboro and Lawrence, Mass., to points in Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Family Products Corporation, P.O. Box 1800, Lowell, Mass. 01836. Send protests to: Joe Green, District Supervisor, Room 240 Old Post Office Bldg., 215 N.W. Third St., Oklahoma City, Okla. 73102.

No. MC 118159 (Sub-No. 192TA), filed December 8, 1976. Applicant: NATIONAL REFRIGERATED TRANSPORT, INC., P.O. Box 51366-Dawson Station, Tulsa, Okla. 74151. Applicant's representative: Neil A. DuJardin, P.O. Box 2298, Green Bay, Wis. 54306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are manufactured and distributed by manufacturers and distributors of office supplies; and equipment, materials and supplies used in the manufacture and distribution of the above-described commodities, between the plantsites and warehouse facilities of National Blank Book Company, Inc., at Holyoke and Springfield, Mass., and Meridian, Miss., and points in Alabama, Arkansas, Florida, Georgia, Louisiana, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, Mississippi, and Texas. Restriction: The operations authorized above are restricted to the transportation of traffic originating at the named origins and destined to the named destinations, for 180 days. Supporting shipper: National Blank Book Co., 655 Page Blvd., Springfield, Mass. 01104. Send protests to: Joe Green, District Supervisor, Room 240 Old P.O. Bldg., 215 N.W. Third St., Oklahoma City, Okla. 73102.

No. MC 123407 (Sub-No. 344TA), filed December 6, 1976. Applicant: SAWYER TRANSPORT, INC., South Haven Square. U.S. 6, Valparaiso, Ind. 46383. Applicant's representative: William L. Fairbank, 1980 Financial Center, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, lumber products and wood products*, from points in Oregon and Washington, to points in Illinois, Indiana, Iowa, Michigan and Wisconsin, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Northern Pacific Lumber Co., P.O. Box 2915, Portland, Oreg. 97208. Send protests to: J. H. Gray, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 343 W. Wayne St., Suite 113, Fort Wayne, Ind. 46802.

No. MC 123407 (Sub-No. 345TA), filed December 7, 1976. Applicant: SAWYER TRANSPORT, INC., South Haven Square, U.S. 6, Valparaiso, Ind. 46383. Applicant's representative: William L. Fairbank, 1980 Financial Center, Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, from the facilities of Louisiana-Pacific Corporation, at or near Riverton, Wyo., to points in Illinois, Iowa, Kansas, Missouri, Nebraska and Wisconsin, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Louisiana-Pacific Corporation, 1300 S.W. 5th Ave., Portland, Oreg. 97201. Send protests to: J. H. Gray, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Suite 113, 343 W. Wayne St., Fort Wayne, Ind. 46802.

No. MC 124979 (Sub-No. 4TA), filed December 7, 1976. Applicant: CONRAD BERG, doing business as C. BERG CO., Route 1, Box 185A, Saginaw, Minn. 55779. Applicant's representative: Val M. Higgins, 1000 First National Bank Bldg., Minneapolis, Minn. 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Salt*, in bulk, in vehicles other than tank or hopper type, from Duluth, Minn., to points in Wisconsin and the Upper Peninsula of Michigan, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: Sifto Salt Division, Domtar Chemicals, Inc., Suite 406, 9950 W. Lawrence Ave., Shiller Park, Ill. 60176. Morton Salt Company, 110 N. Wacker Drive, Chicago, Ill. 60606. Send protests to: Marlon L. Cheney, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Bldg., & U.S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 125433 (Sub-No. 90TA), filed December 6, 1976. Applicant: F-B TRUCK LINE COMPANY, 1945 S. Redwood Road, Salt Lake City, Utah 84104. Applicant's representative: Michael J. Norton, P.O. Box 2135, Salt Lake City, Utah 84110. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and lumber products*, treated or untreated, from Whitewood, S. Dak., to points in Utah and Nevada, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Whitewood Post and Pole, P.O. Box 97, Whitewood, S. Dak. 57793. Send protests to: Lyle D. Helfer, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 5301 Federal Bldg., 125 S. State St., Salt Lake City, Utah 84138.

No. MC 134872 (Sub-No. 9TA), filed December 7, 1976. Applicant: GOSSELIN EXPRESS LTD., 141 Smith Boulevard, Thetford Mines, Quebec, Canada. Applicant's representative: Mr. Cahill, 1111 Twin Towers, 99 Washington Ave., Albany, N.Y. 12210. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Asbestos*, in bags, from ports of entry on the International Boundary line between the United States and Canada, located at Champlain, N.Y., and Detroit and Sault Ste. Marie, Mich., to Paulding, Lockland, Dayton, Cincinnati, and Canton, Ohio; Warsaw, Ft. Wayne, Gary, Huntington, Newcastle, and East Chicago, Ind.; Kankakee and Chicago, Ill.; Detroit, Kalamazoo, Trenton, and Warren, Mich.; Milwaukee and Green Bay,

Wis.; and Danville, Ky.; and (2) Lawnmowers, tractors (garden or lawn) and attachments, snowblowers, hand-operated rotary tillers, self-propelled machinery parts, from Brillion, Wis., to the ports of entry on the International Boundary line between the United States and Canada, located at Champlain, N.Y., and Detroit and Sault Ste. Marie, Mich., for 180 days. Supporting shippers: Asbestos Corporation Limited; Bell Asbestos Mines Ltd., Thetford Mines, Quebec, and Morin Equipment Co., Ltd., 2075 Branly St., Ste Foy, Quebec. Send protests to: Ross J. Seymour, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 208 Federal Bldg., 55 Pleasant St., Concord, N.H. 03301.

No. MC 135874 (Sub-No. 61TA), filed December 7, 1976. Applicant: LTL PERISHABLES, INC., 550 E. 5th St., South, S. St. Paul, Minn. 55075. Applicant's representative: Paul Nelson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products and articles distributed by meat packinghouses* as described in Sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the plantsite and storage facilities utilized by Whitehall Packing Company, Inc., at or near Whitehall and Eau Claire, Wis., to points in Connecticut, for 180 days. Supporting shipper: Whitehall Packing Company, Inc., P.O. Box 215, Whitehall, Wis. 54773. Send protests to: Marion L. Cheney, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Bldg., & U.S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 138274 (Sub-No. 39TA), filed December 8, 1976. Applicant: SHIPPERS BEST EXPRESS, INC., 2151 N. Redwood Road, Salt Lake City, Utah 84116. Applicant's representative: Chester Zyblut, 266 Executive Bldg., 1030 Fifteenth St., N.W., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Inedible meat and return with empty drums*, from Gooding, Idaho, to Midvale, Utah, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Chase Products, P.O. Box 1, Hagerman, Idaho 83332. Send protests to: Lyle D. Helfer, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 125 S. State St., Salt Lake City, Utah 84138.

No. MC 139112 (Sub-No. 9TA), filed December 3, 1976. Applicant: CALEX EXPRESS, INC., 149 Warden Ave., Trucksville, Pa. 18708. Applicant's representative: Joseph F. Hoary, 121 S. Main St., Taylor, Pa. 18517. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Automotive parts, supplies and accessories, and commodities* exempt from economy regulation pursuant to Section 203(b)(6) of the Act when transported in mixed loads with automotive parts, supplies and accessories, from Los Angeles, Calif., to Exeter, Pa.; Automotive parts, supplies, and accessories, from Exeter, Pa., to Los Angeles, Calif.; from Flint, Mich., to Exeter, Pa.; from Pulaski, Tenn., to Exeter, Pa., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Keystone Automotive Warehouse Company, 44 Tunkhannock Ave., Exeter, Pa. 18643. Send protests to: Paul J. Kenworthy, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 314 U.S. Post Office Bldg., Scranton, Pa. 18503.

No. MC 139112 (Sub-No. 10TA), filed December 2, 1976. Applicant: CALEX EXPRESS, INC., 149 Warden Ave., Trucksville, Pa. 18708. Applicant's representative: Joseph F. Hoary, 121 S. Maine St., Taylor, Pa. 18517. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General merchandise*, mainly *electronic scrap and salvage materials*, from Government Depots and outlets at San Diego, Los Angeles, Barstow, Tracy, Oakland, Sacramento, Fresno, and San Jose, Calif., area, to Wilkes-Barre Pa., and from Wilkes-Barre, Pa., to San Diego, Los Angeles, Barstow, Tracy, Oakland, Sacramento, Fresno, and San Jose, Calif., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Anker Electronics, 1617 S. Main St., and Anker Road, Wilkes-Barre, Pa. 18702. Send protests to: Paul J. Kenworthy, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 314 U.S. Post Office Bldg., Scranton, Pa. 18503.

No. MC 139261 (Sub-No. 5TA) filed December 6, 1976. Applicant: BUCKEY EXPRESS, INC., 1st and H Streets, P.O. Box 368, Perrysburg, Ohio 43551. Applicant's representative: Michael M. Dilley, 300 Madison Ave., Toledo, Ohio 43603. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, in bottles or cans restricted to service to be performed under a continuing contract with New England Apple Products Co., Inc., from the plantsites and facilities of New England Apple Products Co., Inc., at or near Perrysburg, Ohio and Littleton, Mass., to points in the United States (except Alaska and Hawaii), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: New England Apple Products Co., Inc., Narvard Road, Littleton, Mass. 01460. Send protests to: Keith D. Warner, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 313 Federal Office Bldg., 234 Summit St., Toledo, Ohio 43604.

No. MC 139379 (Sub-No. 3TA), filed December 7, 1976. Applicant: LES MATHRE TRUCKING, INC., 417 8th St., Story City, Iowa 50248. Applicant's representative: Larry D. Knox, 900 Hubbell Bldg., Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766, and in connection therewith, equipment, materials, and supplies used in the conduct of packinghouses (except commodities in bulk), between the facilities of Farmland Foods, Inc., at or near Crete, Nebr., and Denison, Carroll, and Iowa Falls, Iowa, and between such facilities on the one hand, and on the other, points in North Dakota, South Dakota, Minnesota, Wisconsin, Illinois, Missouri, Iowa, Nebraska and Kansas, for 180 days. Supporting shipper: Farmland Foods, Inc., 435 Charles St., Denison, Iowa 51442. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Bldg., Des Moines, Iowa 50309.

No. MC 139379 (Sub-No. 4TA), filed December 7, 1976. Applicant: LES MATHRE TRUCKING, INC., 417 8th St., Story City, Iowa 50248. Applicant's representative: Larry D. Knox, 900 Hubbell Bldg., Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except commodities in bulk), from the facilities of Farmland Foods, Inc., at or near Crete, Nebr., and Denison, Carroll and Iowa Falls, Iowa, to points in Washington, Oregon, California, Arizona, New Mexico, Nevada, Utah, Colorado, Idaho, Wyoming and Montana, for 180 days. Supporting shipper: Farmland Foods, Inc., 435 Charles St., Denison, Iowa 51442. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Bldg., Des Moines, Iowa 50309.

No. MC 141921 (Sub-No. 2TA), filed December 7, 1976. Applicant: SAV-ON TRANSPORTATION, INC., 143 Frontage Road, Manchester, N.H. 03101. Applicant's representative: Daniel McCoy (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products and meat by-products and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and pieces thereof and commodities in bulk), from the plantsite and storage facilities of the Great Plains Beef Company, at or near Council Bluffs, Iowa, to points in Alabama, Florida, Georgia, North Carolina and South Carolina, for 180 days. Applicant has also filed an

underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Great Plains Beef Packers, Inc., 2700 23rd Ave., P.O. Box 527, Council Bluffs, Iowa 51501. Send protests to: Ross J. Seymour, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 208 Federal Bldg., 55 Pleasant St., Concord, N.H. 03301.

No. MC 142649 (Sub-No. 1TA) filed December 8, 1976. Applicant: H. O. SMESTAD CO., P.O. Box 2904, Great Falls, Mont. 59403. Applicant's representative: G. Robert Crotty, Jr., 400 First National Bank Bldg., Great Falls, Mont. 59401. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt and carbonated beverages and related advertising materials, equipment and supplies*, from Minneapolis-St. Paul, Minn., to points in Colorado and Wyoming; *empty containers on return*, for 180 days. Supporting shipper: There are approximately 10 statements of support attached to the application, which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, 2602 First Ave., North, Billings, Mont. 59101.

No. MC 142705 (Sub-No. 1TA), filed December 3, 1976. Applicant: LADY-TRUCKERS LTD., 325 8th St., Coronado, Calif. 92118. Applicant's representative: William R. Daly, 8135 Binney Place, La Mesa, Calif. 92041. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Stage properties, sound equipment, lighting equipment*, both crated and uncrated; plus personal properties of Touring Companies including but not limited to musical instruments, costumes, etc., crated and uncrated, between the United States (except Alaska and Hawaii), under a continuing contract with See Factor Pacific; and Sundance Lighting, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: See Factor Pacific; and Sundance Lighting, 1420 N. Beechwood Drive, Hollywood, Calif. Send protests to: Mary A. Francy, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, Room 1321 Federal Bldg., 300 N. Los Angeles St., Los Angeles, Calif. 90012.

No. MC 142707 (Sub-No. 1TA), filed December 6, 1976. Applicant: CENTRAL VIRGINIA TRUCKING CO., INC., 3719 Old Forest Road, Lynchburg, Va. 24501. Applicant's representative: Frank B. Hand, Jr., P.O. Box 187, Berryville, Va. 22611. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Metal castings*, between the facilities of Lynchburg Foundry, a Mead Company, at Archer Creek, Va., on U.S. Highway 460, eight miles east of Lynchburg, on the one hand, and, on the other, the facilities of Carolina Commercial Heat Treat Corp., Reidsville, N.C., under a continuing contract with Lynchburg Foundry, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Lynchburg Foundry, Lynchburg, Va. Send protests to: Danny R. Beeler, District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 210, Roanoke, Va. 24011.

No. MC 142718TA, filed December 7, 1976. Applicant: LEO A. BRIDEAU, Beech Hill Road, Mount Vernon, N.H. 03057. Applicant's representative: Leo A. Brideau (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wood chips*, in bulk, from Brookline, N.H., to Jay and Westbrook, Maine, and from Milford, N.H., to Jay, Rumford and Westbrook, Maine, and Providence, R.I., for 180 days. Supporting shippers: Riley Bros. Lumber, Inc., Christmas Tree Lane, Milford, N.H. 03055. William R. Tapply & Son Lumber Co., Inc., Quimby Road, Brookline, N.H. 03033. Send protests to: Ross J. Srymour, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 208 Federal Bldg., 55 Pleasant St., Concord, N.H. 03301.

No. MC 142719 TA, filed December 7, 1976. Applicant: ROBERT J. KIRKPATRICK, doing business as KIRK'S TOWING SERVICE, 411 Seventh St., La Grange, Ill. 60525. Applicant's representative: Richard A. Kerwin, 180 N. La Salle St., Chicago, Ill. 60601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wrecked, disabled, repaired, used, stolen, repossessed, and replacement motor vehicles*, in tow away service, between points in Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin, for 180 days. Supporting shippers: There are approximately 6 statements of support attached to the application, which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Bldg., 219 S. Dearborn St., Room 1386, Chicago, Ill. 60604.

No. MC 142721 TA, filed December 8, 1976. Applicant: JOHN B. DOTSON, doing business as DOT TRUCKING COMPANY, 1220 Murphy Ave., S.W., Atlanta, Ga. 30310. Applicant's representative: Virgil H. Smith, Suite 12, 1587 Phoenix Blvd., Atlanta, Ga. 30349. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Steel pilings, structural steel, reinforcing steel, construction equipment and materials, including structural pipe*, from points in the United States on and east of the Mississippi River, to the job sites and storage facilities of Metropolitan Atlanta Transit Authority in Cobb, Clayton, Gwinnett, DeKalb, and Fulton Counties, Ga., for 180 days. Supporting shippers: Underground Construction Co., Inc., 191 E. Howard Ave., Decatur, Ga. 30030. J. A. Jones Construction Co., 805 Lambert Dr., N.E., Atlanta, Ga. 30324. Hensel Phelps Construction Co., 250 Arizona Ave., P.O. Box 27296. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 W. Peachtree St., N.W., Room 546, Atlanta, Ga. 30309.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-37301 Filed 12-17-76;8:45 am]

[Notice No. 93]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to Sections 212(b), 206(a), 211, 312 (b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 C.F.R. Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's Special Rules of Practice any interested person may file a petition seeking reconsideration of the following numbered proceedings on or before January 10, 1977. Pursuant to Section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-76436. By order of December 1, 1976, the Motor Carrier Board approved the transfer to TCI, Inc., Cincinnati, Ohio, of that portion of Certificate No. MC 108449 Sub 397 issued by the Commission, November 11, 1976, to Indianhead Truck Line, Inc., St. Paul, Minn., authorizing the transportation of general commodities, except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities which, because of size or weight, require the use of special equipment, commodities in bulk, and automobiles as defined by Section 203(a) (13) of Part 2 of the Interstate Commerce Act, between Cincinnati, Ohio, on the one hand, and, on the other, points in Ohio, restricted to traffic having an immediately prior or subsequent movement by rail or water. Paul F. Beery, Esquire, 8 East Broad Street, Columbus, Ohio 43215. Paul C. Gartzke, Esquire, 121 W. Doty Street, Madison, Wis. 53703.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-37480 Filed 12-17-76;8:45 am]

federal register

MONDAY, DECEMBER 20, 1976

PART II:

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

■

PRACTICE AND PROCEDURES FOR COMPLIANCE HEARINGS

Compliance With Standards for Access to and Use of Buildings by Handicapped

Title 36—Parks, Forests, Public Property

CHAPTER XI—ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

PART 1150—PRACTICE AND PROCEDURES FOR COMPLIANCE HEARINGS

Compliance With Standards for Access to and Use of Buildings by Handicapped

The Architectural and Transportation Barriers Compliance Board (hereinafter referred to as A&TBCB) was established under § 502 of the Rehabilitation Act of 1973, Pub. L. 93–112, 87 Stat. 391. Section 502(d) (29 U.S.C. 792(d)) provides that the A&TBCB shall hold hearings and issue orders it deems necessary to ensure compliance with the standards of buildings and facilities issued under the Architectural Barriers Act of 1968, Pub. L. 90–480, as amended (42 U.S.C. 4151 et seq.). The provisions of Subchapter II of Chapter 5 and Chapter 7 of Title 5, U.S.C., apply to the A&TBCB procedures. An order of compliance issued by the A&TBCB is a final order for purposes of judicial review. Pub. L. 93–516, 88 Stat. 1621, the Rehabilitation Act Amendments of 1974, provides that an order of compliance may include the withholding or suspension of Federal funds with respect to any building found not to be in compliance with applicable standards.

The A&TBCB is concerned that ready access to and use of buildings be effective through voluntary compliance with applicable standards. Nevertheless, the A&TBCB has received and is processing numerous complaints of alleged noncompliance.

The A&TBCB on June 10, 1976, 41 FR 23598 et seq., published proposed rules for a formal system for disposition of those complaints which cannot be amicably resolved to ensure accessibility by means of compliance with the applicable standards. The A&TBCB received a total of twenty-seven (27) comments, many of which were very detailed. The agencies of three (3) members of the A&TBCB, the Department of Transportation, Department of Housing and Urban Development, and the United States Postal Service, were among the Federal commentors. Significant input was also received from concerned individuals, public interest law centers, handicapped interested organizations, as well as state and local governments. Those comments are discussed at length in the next part of this preamble. The A&TBCB feels that soliciting public comments concerning the regulations was most helpful to the A&TBCB and is grateful for the constructive suggestions and support expressed by all who participated.

The A&TBCB is continuing development of additional parts of Chapter XI, Part 1150, to fully implement section 502 of the Rehabilitation Act, as amended. This will include guidelines for voluntary compliance for agencies and programs subject to the jurisdiction of the A&TBCB. A more elaborate Guidance for Compliance System Development was published on July 1, 1976, 41 FR 27191 et seq.

PUBLIC COMMENTS

The A&TBCB now turns to the substance of the comments received, addressing them in the sequential order of the regulations.

A. PURPOSE AND APPLICATION OF THE REGULATIONS

A Federal agency proposed adding a new paragraph to § 1150.1 to the effect that these regulations apply only to complaints which have been considered through the full administrative processes of agencies involved. The A&TBCB believes the spirit of this comment has been adopted into the expanded section on informal resolution, § 1150.41. The A&TBCB strongly favors informal resolution of complaints by the agencies involved to provide compliance with the applicable standards and has revised § 1150.1 to that effect.

The A&TBCB wishes to note that as part of the overall Federal compliance program, agencies will be developing inquiry and response systems which will serve to receive and resolve complaints. Such an informal resolution process achieves the same objectives as the above referenced agency proposal.

B. DEFINITIONS

Several of the definitions in § 1150.1 were the subject of comments. The intent of the A&TBCB in preparing the proposed rules was to draw upon the statutory and regulatory terms being commonly used by public and private agencies.

One Federal agency commented that several terms, including "building," "construction," "handicapped individual," and "privately owned residential structure" were inappropriate and should be deleted. The definitions form the basic rubrics for implementation of the A&TBCB compliance function. It is the objective of the regulations to provide in one part of the Code of Federal Regulations a complete document, including a glossary of all pertinent terms. Thus, the above-noted terms have been retained in the regulations.

Other comments addressing specific definitions are taken in the sequence of the terms in § 1150.2. It should be noted that the definitions herein are similarly identical to those of the standard issuing agencies.

The A&TBCB has revised the definition of "building" to implement the 1976 Amendments to the Architectural Barriers Act, Pub. L. 94–541. This affects application of the Architectural Barriers Act to various privately owned residential buildings and leased facilities. The expansion of coverage of the Architectural Barriers Act to buildings and facilities of the United States Postal Service does not require any further special elaboration of the definition of "building." USPS buildings and facilities are within the ambit of the definition set out.

This should not be construed as hereby covering USPS facilities. USPS must issue its standards after consultation with the Secretary of Health, Education, and Welfare. These regulations will apply to USPS buildings and facilities as soon as standards are issued.

The term "building," § 1150.2(d), has also been revised by deleting the phrase "may be" in (iii) and substituting the word "is" in lieu thereof. One Federal commentor felt that the proposed language might be construed as a substantive change. That was not intended and the change has been made to more closely follow the definition of "building" in Pub. L. 90–480. This does not effect any change in interpreting the statute. See Opinion of General Counsel, General Services Administration, "First Report of the Architectural and Transportation Barriers Compliance Board" at pages 49–50.

The exclusion of certain military facilities from the definition of the statute follows the statutory language. The issue to be resolved in applying the exception is whether the building is intended primarily for use by able-bodied military personnel, not whether the building is intended for military operations. Consumers cautioned that the statutory exclusion may be difficult to apply. The Department of Defense has embarked upon a program to ensure that all of its facilities are accessible unless they are intended for use exclusively by the able-bodied military personnel. The criterion of "exclusive use" goes beyond the requirement of the statute which establishes "primary use" as the measure of when a facility is covered and when it is not. Thus, while under the statute a new facility intended as a work place for fifty-one (51) able-bodied military personnel and forty-nine (49) civilian workers could be interpreted as not being covered, the Defense Department policy will assure that it is accessible. This exclusive use criterion has, as additional advantages, ease of definition and application.

Including "acquisition" within the definition of "construction," § 1150.2(f), was objected to by two (2) Federal commentors. The definition of construction is taken directly from the Rehabilitation Act which places no limitation on "acquisition" as the commentors proposed.

The definition of "physically handicapped," § 1150.2(i), is the definition in Pub. L. 93–516, the Rehabilitation Amendments of 1974. If an individual has a mental disability which has a physical manifestation, such an individual is an intended beneficiary of the Rehabilitation Act. Thus there has been no deletion of references to mentally handicapped as proposed by Federal agency comments.

A Federal commentor suggested broadening the coverage of the term "privately owned residential structure," § 1150.2(l), to be more consistent with intent under Pub. L. 90–480 and the Housing Act, 42 U.S.C. 1401 et seq. One commentor made a similar type recommendation and the revisions reflect these helpful suggestions.

Several commentors called the A&TBCB's attention to the fact that the A&TBCB enforces all standards issued

under the Architectural Barriers Act, not only ANSI 117.1 cited in the proposed rules. Appropriate revision has been made.

There appears to be some slight confusion as to the role of the A&TBCB in the standard-making process. The statutes do not grant the A&TBCB standard-making authority. The Secretary of Health, Education, and Welfare, in his capacity as Chairman of the A&TBCB, consults with GSA, HUD, DoD, and USPS, the standard issuing agencies. While revisions to the current American National Standard Institute Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped. ANSI 117.1 are now under consideration and nearing completion, such revisions will be for the standard-making agencies in the first instance. The A&TBCB does not currently have authority to compel their use or the use of higher standards. Such matters are, of course, within the policy making ambit of the A&TBCB. At such time as new standards are available, the A&TBCB may consider making such policy recommendations or taking other appropriate actions.

C. SCOPE OF RULES

In § 1150.3, Scope of Rules, the references to the Administrative Procedure Act and Federal Rules of Civil Procedure are included to provide the statutory and procedural background for the enforcement proceedings.

D. SUSPENSION OF RULES

Some concern has been expressed about § 1150.5, Suspension of Rules. That section is commonly found in rules for other administrative proceedings, e.g. 45 CFR 81.4. To the knowledge of the A&TBCB this section has never been the source of any difficulty. Should problems be encountered, appropriate revision will be considered.

E. PARTIES-PARTICIPATION

The subject of the parties to the proceeding elicited significant comments from consumer organizations and Federal agencies. The issue raised by two of the Federal agencies was that the physically handicapped have a right to a hearing. One commenter notes, without specific citation of any authority, that while it does not believe that every complaining handicapped person must necessarily be afforded a hearing either under the statute (presumably the Rehabilitation Act) or constitutional due process (again, presumably the 5th and 14th Amendments) requirements, the exclusion of such persons from participation in a hearing involving the subject of their complaint might be vulnerable to court challenge.

The other Federal agency comment expressed concern about the limited role proposed for complainants, many of whom will be physically handicapped, whom the commentor characterizes as the intended beneficiaries of the Rehabilitation Act of 1973. A local government agency expressed a desire that the Board seek legislative change to permit the participation of complainants as a matter of right. This issue is one with wide ranging implications. The test is not merely one of who is the intended beneficiary of the Act. Moreover, it is not always the case that an intended beneficiary of a statute is entitled to an administrative hearing. The intended beneficiaries may well be intended to have a direct right of court action. See *Cort* v *Ash*, 422 U.S. 66 (1975) and authorities cited therein.

This issue of the individual's right to bring a private law suit under the Architectural Barriers Act, Pub. L. 90-480, as affected by the enactment of subsequent social-welfare legislation, including Pub. L. 93-112, is now pending before the Court in *Washington Urban League* v. *WMATA*, Civil No. 776-72, United States District Court, District of Columbia. The A&TBCB does not wish to prejudice the Court's decision in any way and, therefore, is expressly stating that its revision to § 1150.13, Participation on Petition, is based solely on policy grounds. The section creates a presumption that the interest of a person as a complainant is sufficient to permit participation in compliance proceedings. The A&TBCB expects and intends this provision to lead to participation in compliance proceedings by all complainants who so desire.

Adoption of this policy has several benefits. It permits a complainant to participate if it so elects. Yet, at the same time, the onus of initiating compliance remains on the Executive Director so that there must not be enforcement proceedings in every instance, particularly if the Executive Director can effect informal resolution. The A&TBCB recognizes that many disabled individuals are first beginning to come into contact with Federally occupied or funded buildings. The A&TBCB also recognizes that some disabled individuals would prefer not to participate out of a fear of possible recriminations against them. The instant revision will permit full participation as intervenor or in the more limited role as amicus curiae by those who so elect. The A&TBCB believes this policy is responsive to the public comment received on the issue. Whether or not a complainant participates in proceedings, he will be kept apprised by A&TBCB staff of all developments in the proceedings.

Before passing from this area, it must be observed that ablebodied, as well as disabled, individuals benefit from accessible and usable buildings. A barrier-free environment permits the meaningful contribution of all individuals to society.

A consumer group felt that there should be a document in lay terms explaining the procedures to be followed. It is the A&TBCB practice to prepare pertinent informational materials readily understandable by lay people. These enforcement procedures will assuredly be incorporated into that effort. In this connection, it must be observed that copies of the proposed rules were made available in braille and cassettes. Copies of the finalized rules will similarly be available.

There were some comments to the effect that the distinction between intervenors and amicus curiae, §§ 1150.13 and 1150.14, was somewhat blurred. The proposed distinctions did not serve any purpose in an administrative process, which should lean towards informality and permissiveness. Much discretion in this area has been provided the administrative law judge in the revised consolidated § 1150.13, Participation on Petition.

One of the public interest law centers suggested regarding § 1150.14, Appearance, (formerly numbered § 1150.15), that there should be provision allowing for appointment of counsel for prospective intervenors and amici that the Board feels would be more effectively represented if counsel were speaking for them. The commenter realizes the limits of the A&TBCB to pay for attorneys and suggests that a volunteer pool be assembled for service. The A&TBCB does not want to raise the spectre of offering assistance which in fact it may not be able to provide. The compliance hearings will undoubtedly be held all across the country, commensurate with the Federal physical and financial presence. Establishment of a volunteer pool may prove quite difficult and, before changing its regulations in a manner which would encourage such volunteer participation, the A&TBCB will have to ascertain the extent of commitment of such aid.

F. SIGNATURE OF DOCUMENTS

The need for the last sentence of § 1150.22 was questioned by one Federal agency. It was included to discourage the imposition of unnecessary documents. Cf. 45 CFR 81.32.

G. INFORMAL RESOLUTION

By far the most significant dialogue produced by the comments pertained to the initiation of compliance proceedings and the informal resolution process.

The A&TBCB will be looking to the affected agencies in the first instance to informally resolve complaints of alleged noncompliance with the standards. Section 1150.41 has been expanded to reflect this. The regulations provide for the immediate forwarding to all concerned parties of complaints. All complaints received by the A&TBCB will be treated in a manner so as to preserve the confidentiality of complainants noted under § 1150.12.

The A&TBCB recognizes that the enforcement process may have a profound impact if Federal funds are withheld or suspended as the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, do indeed authorize. Enforcement proceedings do not suddenly arise. Invariably there is an adequate prelude to litigation.

In § 1150.41, Informal Resolution, the A&TBCB is providing an opportunity for the parties to amicably resolve their differences. The parties, during this initial period, will have the opportunity, as one of the Federal commentors noted, to gather pertinent information thereby alleviating any problems in connection with the timing of the litigation. In seek-

ing to informally resolve complaints, the A&TBCB is mindful of the August 31, 1976, decision in *Washington Urban League* v *WMATA*, Civil No. 776–72, D.D.C., in which the Court held that for a building to be in compliance with the Architectural Barriers Act it must have operational facilities for the disabled. It is not enough for such facilities to be planning to or in the process of installation. Thus informal resolution by the A&TBCB will be with a view, consistent with consumer comment, to providing full compliance with applicable standards.

The objective of the informal resolution process is to amicably achieve compliance with the prescribed standards, not to satisfy individual complainants. The A&TBCB recognizes that the physical changes may not be completed within the voluntary compliance period. The Executive Director in determining whether to issue a citation will consider the totality of the compliance situation.

As a necessary adjunct to the informal resolution, the A&TBCB realizes it will be necessary for it to interpret the accessibility standards it is enforcing, cognizant, of course, of the significant expertise of the standard issuing agencies who consult with the Secretary of Health, Education, and Welfare in his statutory capacity of Chairman, A&TBCB. Accordingly, the suggestion of a Federal agency that the A&TBCB delete "standard interpretation" has not been incorporated. The A&TBCB trusts that this preamble mirrors its views on the primacy of interpretation of the agencies issuing the Architectural Barriers Act standards.

Several comments were received from consumers and affected agencies about the informal resolution under § 1150.41 and the commencement of formal proceedings under § 1150.42. The A&TBCB is mindful that the President issued Executive Order 11914 on April 28, 1976, Nondiscrimination With Respect to the Handicapped in Federally assisted Programs. Under E.O. 11914, the Secretary of Health, Education, and Welfare is authorized to adopt rules and regulations and issue orders implementing section 504 of the Rehabilitation Act, 29 U.S.C. 794. The Secretary is to ensure that such rules, regulations, and orders are not inconsistent with, or duplicative of, other Federal government policies relating to the handicapped, including those policies adopted in accordance with section 502 of the Rehabilitation Act and the Architectural Barriers Act. Subsequent to the issuance of the A&TBCB proposed rules, the Secretary of Health, Education, and Welfare issued proposed rules under which a complaint involving a facility of a recipient subject to section 504, as well as section 502, will be deferred for a period not to exceed sixty (60) days pending review by the A&TBCB, proposed 45 CFR 84.23, 41 FR 29564 (July 16, 1976). While the referenced regulations apply only to HEW programs and only affect the A&TBCB jurisdiction over HEW buildings and facilities receiving financial assistance from HEW, it is the A&TBCB's understanding that the HEW issuance will become the model for future regulations implementing section 504 to be issued by other governmental departments and agencies. In this respect, the A&TBCB will execute a Memorandum of Understanding, formalizing its arrangements with the Secretary of HEW once regulations under sections 502 and 504 are finalized.

Accordingly, the A&TBCB has imposed a maximum sixty-day (60) period on the informal resolution process. At the end of the time period, a citation or a determination not to proceed will be issued and served upon all interested parties, including the complainant. Failure of the A&TBCB to act upon a citation within (60) days will be deemed a determination not to proceed thereon. Thus, the delay in processing a complaint will not preclude exhaustion of the administrative remedy of the A&TBCB. Sections 1150.41 and 1150.42 have been appropriately revised, thereby providing a timely mechanism for both the agencies and consumers. A similar approach is currently used in connection with equal employment opportunity actions under Title VII of the Civil Rights Act, 42 U.S.C. 2000e et seq.

The A&TBCB hastens to add that the sixty (60) day period is the maximum period allowed because of the nature of the work, i.e., construction, involved. The A&TBCB also hastens to reiterate its previous urgings of a prompt, voluntary compliance with all standards.

H. INITIATION OF COMPLIANCE PROCEEDINGS

Federal agencies expressed concern about the Executive Director issuing citations. One Federal commentor suggested that the citation should be issued by the Executive Director only after approval by the Board, or if time does not permit, after approval by a subcommittee.

The A&TBCB complaint initiation process is not unique. The National Labor Relations Board has successfully utilized a process similar to the procedures here. See 29 CFR Part 101. The Department of Labor implements enforcement of the Occupational Safety and Health Act construction standards, as well as the Longshoremen's and Harbor Workers' Compensation Act in similar federally initiated processes, 29 CFR Parts 1926 and 1921, respectively. For an illustrative implementation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq. (employment discrimination) providing a similar process, see 45 CFR Part 80 et seq.

The Rehabilitation Act Amendments of 1974, Pub. L. 93–516, authorized the A&TBCB to order the suspension or withholding of funds for a building found not to be in compliance with accessibility standards. The Congressional intent in 1974 was to augment the A&TBCB as an enforcing body. In that context, the Congress authorized the Board to have permanent staff under the direction of the Executive Director, thereby providing basic continuity and consistency in compliance and other A&TBCB matters, Sen. Reps. 93–1130, 93–1297, 94th Cong., 2nd Sess. (1974).

In establishing the system of reliance on the permanent staff and administrative law judges at the trial level, the A&TBCB recognizes that the Board member should primarily be functioning at a high level as a policymaker. Also, by insulating the Board from the initial stages of the process while providing judicial safeguards, there can be no question, as one consumer group implied, about the integrity of the A&TBCB proceedings.

The Federal comment to have A&TBCB approve the issuance of a citation would have precluded further Board participation at the more policy oriented appellate level as a clear conflict of interest would exist. The trial and appellate functions must be carefully separated. Further, A&TBCB, at its March 1976 meeting, has decided not to establish committees commensurate with A&TBCB staffing functions, including compliance.

The A&TBCB deems it advisable that all Federal agencies designate liaison persons upon whom the citation may be served. This will facilitate the agencies' participation in the formal proceedings.

Minor technical clarifying changes have also been made.

I. PER (PROVISIONAL EXPEDITED RELIEF)

The subject of PER, particularly §§ 1150.42 and 1150.82, elicited strong comments from consumers advocating its retention as essential. The Federal agencies objecting to PER did so principally on the basis of the inadequacy of time frames for the process, including for an appeal. These comments overlook the informal resolution process of § 1150.41 during which all potential litigants will be apprised of the potential charges of noncompliance that may be lodged. Also, the time periods in the appeal of PER have been extended in the revised § 1150.103. Moreover, since the Federal Rules of Civil Procedure are applicable here, § 1150.3, all motions permitted thereunder, such as for extension of time to file a pleading, will be available. It is not necessary to specify, as one commentor suggested, precisely all the motions, including summary judgments, which are available under the Federal Rules of Civil Procedure.

All too often the delays attendant to processing valid complaints may make any subsequent victory pyrrhic at most. Justice must not be denied by delaying it. PER is designed to ensure that does not occur here. By providing an expeditious determination, at least preliminarily, the nominal cost impact of a situation may be minimized. The costs of redoing and remodeling a completed structure to make it accessible far exceeds the .1% (one tenth of one percent) the Comptroller General found to be the net cost of incorporating barrier-free-design in the initial design. See GAO Report, "Further Action Needed to Make Public Buildings Accessible," B–182030—July 15, 1975.

There was concern by a Federal agency over the possible amendment of the ini-

tial PER pleading. Section 1150.44 provides for amendment of such pleadings only with permission of the judge to preclude any undue hardship.

J. JUDGES

Section 1150.51 relating to who presides at hearings was of some concern. A Federal agency felt that the Chairman or Board members should not exercise the responsibilities of a judge since it would be inconsistent with the separate judicial function intended by the Congress. The A&TBCB shares the agency's concern. However, at present, the active caseload of the A&TBCB is not sufficient to permit the A&TBCB to retain an administrative law judge on its staff. Arrangements have been made with the Civil Service Commission to have such judges designated and available to hear A&TBCB cases on a reimbursable basis. This is the standard operating procedure for new adjudicatory bodies.

As the caseload rises and a permanent judge is employed by the A&TBCB, neither the Chairman nor members of the A&TBCB will be involved at the trial level. At present, the Vice Chairman and other members may have to participate since the Chairman may be disqualified because of a conflict of interest if, for example, an HEW facility were involved. To preclude any possible conflict of function between the trial and appellate levels, while recognizing the abbreviated nature of the member's participation of the trial level, an additional section (b) has been added to § 1150.114 regarding conflict of interests. This is responsive to suggestions by state government agencies.

The Chairman of the A&TBCB on behalf of the A&TBCB is to delegate the assignment of the judge. At such time as the A&TBCB employs more than one judge then § 1150.52 may require further revision. In the interim, while using the system of reimbursing judges made available through the Civil Service Commission, the Chairman or, in the event of his unavailability another member of the A&TBCB will designate the judge made available by the Civil Service Commission and eventually the A&TBCB's judge.

K. DISCOVERY

Discovery should be of little difficulty as the procedures here are patterned after other like provisions. The discretion of the judge in § 1150.62 is patterned in part on the experience of the Interior Board of Contract Appeals, an administrative tribunal well versed in construction cases. See 43 CFR Part 4. The prehearing order under §1150.61 could include agreements reached in the informal resolution period. It has not been included in § 1150.61 as one consumer group suggested since the parties may well elect to include it in either the citation or the answer.

L. WITNESS FEES

It was commented that the A&TBCB pay for aides attending witnesses to A&TBCB proceedings. The A&TBCB recognizes this problem and pays for travel expenses of attendants consistent with Federal travel guidelines. Section 1150.-73(d) is consistent with this.

M. TRIAL TRANSCRIPT

The A&TBCB received several clarifying suggestions concerning the trial transcript and the appeal process. There is currently no provision for third parties proceeding "in forma pauperis" receiving free transcripts. Should such a situation arise, the A&TBCB will make such a transcript available should the judge in granting a third party's motion to appear not make such a ruling.

N. APPEALS IN GENERAL AND TIMING THEREOF

To correct an inconsistency concerning the decision process in §§ 1150.101(a) and § 1150.102(a), § 1150.102(a) has been revised to reflect that the judge's decision is to be issued within twenty (20) days after the close of the adversarial phase of the trial, whether or not briefs and findings are required.

Under the A&TBCB procedure the administrative law judge issues a recommended decision which becomes final if no appeal is taken. The judge, in his discretion and as the record warrants, may make specific recommendations as to corrective actions and sanctions to be taken to effectuate compliance. If a record does not warrant it, the judge will not make any recommendations.

Some concern was expressed by Federal agencies, as well as one of the public interest law organizations, about the times for appealing the judge's decision. To avoid any possible suggestion that the appeal times and other time frames in the Part are so short as to be a denial of due process and violative of the Administrative Procedure Act, the previously proposed time frames in § 1150.103 have been extended for both the regular and PER proceedings.

There have been further changes to make clear that an intervening party has standing to take an administrative appeal and to avoid confusion with § 1150.-76 regarding exceptions. Consistent corrective changes have been made in §§ 1150.104 and 1150.105.

Section 1150.104 provides that the record for the A&TBCB decision includes the record for the decision of the judge. Under § 1150.91, this will include the transcript of the proceedings before the judge.

There was considerable consumer comment that there should be some time limit for the totality of the compliance process and the time for the A&TBCB decision. No Federal agency expressed any view on this aspect of the regulations. It is the current A&TBCB expectation that appeals will be acted upon within the context of the A&TBCB's present bimonthly meetings. The A&TBCB organizational procedures for its public meetings do permit special meetings to be convened. The A&TBCB decision will be on the basis of the standard Administrative Procedure Act criteria which provide the overall framework, § 1150.3, for these proceedings. Constitutional error, as one consumer organization noted, may be also a basis for A&TBCB decision. In this light, the A&TBCB, while not delineating any specific decisional criteria, will strive to make its decisions within a maximum of sixty (60) days after filing of the appeal and one hundred eighty (180) days after filing the complaint. However, the potential complexity of a large construction project precludes the imposition of any more definite time. A policy statement to this effect is included in § 1150.105(e). The stated time objectives will not automatically give rise to court review, but are strictly goals to provide an effective administrative process. The one hundred eighty (180) day limitation is similar to that found in Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-5(f)(1). The overall limitation is the maximum period feasible in light of the nature of the subject matter, construction, and the need to provide a timely solution for all interested parties.

The A&TBCB is aware that other statutes such as the Education Act Amendments of 1976, Pub. L. 94-482, may necessitate a different time period for the totality of the administrative process to run its course. The aforementioned Pub. L. 94-482 provides a maximum period of one hundred fifty (150) days to terminate financial assistance to a local educational agency on a basis of noncompliance with civil rights statutes. Therefore, the A&TBCB has added the qualifying "or other time period applicable by law" to the Board's time frame objectives.

The word "recommended" in § 1150.-105(d) has been deleted as superfluous.

O. JUDICIAL REVIEW

Section 1150.106 restates the provision for judicial review of the Federal Act. The A&TBCB believes it is sufficiently clear at this point.

P. EX PARTE COMMUNICATIONS AND CONFLICT OF INTERESTS

The Conflict of Interests and Ex Parte Communication provisions have been made into separate sections with appropriate renumbering. The staff of the A&TBCB, as well as the Board, must seek to avoid any conflict of interest or the appearance of one. Staff will be expected to perform separate functions in the compliance network. Thus, those individuals involved in the initiation of the enforcement function, in an administrative, investigatory, or legal role, shall not and will not be similarly involved advising on an appeal of such a matter.

The A&TBCB policy has been and continues to be to hold all of its meetings open to the public. Should the A&TBCB elect to consider the initiation, conduct, or disposition of a particular case of formal agency adjudication in executive session, it will do so as authorized by the Sunshine Law, Pub. L. 94-409, after a vote by a majority of the entire membership of the Board. The A&TBCB will be consulting with the Office of the Chairman of the Administrative Conference and will duly publish necessary regulations implementing the Sunshine Law.

CONCLUSION

This Part 1150 is issued under the authority of section 502 of the Rehabilitation Act of 1973, Pub. L. 93-112, 29 U.S.C. 792, 87 Stat. 391, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 88 Stat. 162.

The Architectural and Transportation Barriers Compliance Board has determined that this document does not contain a major proposal requiring preparation of an Inflationary Impact Statement under Executive Order 11821 and OMB Circular A-107.

In consideration of the foregoing, Part 1150 is added to Title 36 of the Code of Federal Regulations to read as set forth below and as approved at the December 7, 1976, special meeting of the A&TBCB.

Effective: These procedures are effective December 7, 1976.

Dated: December 14, 1976.

STANLEY B. THOMAS, Jr.,
Chairman, Architectural and Transportation Barriers Compliance Board.

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Subpart A—General Information

§ 1150.1 Purpose and application.

The purpose of the regulations in this part is to implement section 502 of the Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 391, 29 U.S.C. 792, as amended, to provide procedures for public hearings to require compliance with the standards issued pursuant to the Architectural Barriers Act of 1968, Pub. L. 90-480, as amended, 42 U.S.C. 4151 et seq. It is the policy of the Architectural and Transportation Barriers Compliance Board to ensure maximum compliance through amicable resolution of compliance related matters. To this end, the Architectural and Transportation Barriers Compliance Board encourages the voluntary informal resolution of compliance related matters.

These regulations apply to all buildings designed, constructed, or altered after the effective date of a standard issued under the Architectural Barriers Act of 1968 applicable to such buildings.

§ 1150.2 Definitions.

(a) "A&TBCB" means the Architectural and Transportation Barriers Compliance Board.

(b) "Agency" means Federal department, agency or instrumentality as defined in Subchapter II and Chapter 7 of Title 5 of the United States Code or an official thereof.

(c) "Architectural Barriers Act" means the Architectural Barriers Act of 1968, Pub. L. 90-480, as amended, 42 U.S.C. 4151 et seq.

(d) "Building" means any building or facility, including the site thereof and structures appurtenant thereto (other than (1) A privately owned structure not leased by the government on or after January 1, 1977, for subsidized housing programs including any renewal of a lease entered before January 1, 1977, which renewal is on or after such date, and (2) any building or facility on a military installation designed and constructed primarily for use by able-bodied military personnel) the intended use of which either will require that such building or facility be accessible to the public, or may result in the employment or residence therein of physically handicapped persons, which building or facility is (i) To be constructed or altered by or on behalf of the United States; or (ii) to be leased in whole or in part by the United States (a) After August 12, 1968, and before January 1, 1977, after construction or alteration in accordance with plans and specifications of the United States, or (b) on or after January 1, 1977, including any renewal of a lease entered into before January 1, 1977, which renewal is on or after such date; or (iii) to be financed in whole or in part by a contract, grant or loan made by the United States after August 12, 1968, if such building or facility is subject to standards for design, construction or alteration issued under the law authorizing the grant or loan; or (iv) to be constructed under the authority of the National Capital Transportation Act of 1965 or Title III of the Washington Metropolitan Area Transit Regulation Compact.

(e) "Chairman" means the Chairman of A&TBCB.

(f) "Construction" means the construction of a new building, the acquisition, expansion, remodeling, alteration, and renovation of existing buildings, and initial equipment of such buildings.

(g) "Day" means calendar day.

(h) "Executive Director" means the A&TBCB Executive Director.

(i) "Handicapped Individual" means any person who (1) has a physical or mental impairment which substantially limits one or more of such person's major life activities, (2) has a record of such impairment, or (3) is regarded as having such an impairment.

(j) "Judge" means the Administrative Law Judge appointed or designated by the A&TBCB pursuant to Section 502 (e) of the Rehabilitation Act.

(k) "PER" means Provisional Expedited Relief.

(l) "Privately Owned Residential Structure" means a residential building or facility not owned by a Federal agency or instrumentality, a state, county, municipal or other governmental entity, or a political subdivision thereof, or an instrumentality of a state, county, municipal or other governmental entity or of a political subdivision thereof.

(m) "Rehabilitation Act" means the Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 391, 29 U.S.C. 792, as amended.

(n) "Respondent" means a party answering the citation, including PER citation.

(o) "Standard" means any standard for accessibility and usability prescribed pursuant to the Architectural Barriers Act.

§ 1150.3 Scope of rules.

(a) These rules shall govern all compliance proceedings before the A&TBCB and judges.

(b) In the absence of a specific provision in these rules, procedure shall be in accordance with the Administrative Procedure Act, Subchapter II of Chapter 5 and Chapter 7, of Title 5, United States Code, and the Federal Rules of Civil Procedure, in that order.

§ 1150.4 Use of gender and number.

(a) Words importing the singular number may extend and be applied to a plural and vice versa.

(b) Words importing the masculine gender may be applied to feminine gender.

§ 1150.5 Suspension of rules.

Upon notice to all parties, the Chairman or the judge, with respect to matters pending before them, may modify or waive any rule in these regulations upon determination that no party will be unduly prejudiced and that the ends of justice will thereby be served.

Subpart B—Parties

§ 1150.11 Parties.

(a) The term party shall include any agency, state body, or other person to whom a notice of hearing or opportunity for hearing has been mailed naming them as respondent.

(b) The Executive Director shall be the party initiating proceedings hereunder by the issuance of a citation under § 1150.42.

§ 1150.12 Complainants.

(a) A person submitting a written complaint alleging noncompliance with the standards issued pursuant to the Architectural Barriers Act is not a party as a matter of course to the proceedings governed by these regulations, but may petition to participate under § 1150.13. Whether or not the petition to participate is granted, the complainant shall receive a copy of the final order issued by the judge and the A&TBCB.

(b) The identity of all persons submitting complaints shall be held in confidence unless such person requests otherwise in writing.

(c) All persons submitting written complaints shall be given or mailed, by certified mail, return receipt requested, a copy of these regulations.

§ 1150.13 Participation on petition.

(a) Any interested person may petition the judge to participate in the proceedings upon showing that such a person has an interest in the proceedings and may contribute materially to their proper disposition. It shall be presumed that the interest of a person as a complainant is a sufficient interest to permit participation in the proceedings.

(b) The judge may, in his discretion, determine the extent of participation of petitioners, including as an intervening party or participant. The judge may, in his discretion, limit participation to submitting documents and briefs, or permit the introduction of evidence and questioning of witnesses.

§ 1150.14 Appearance.

(a) A party may appear in person or by counsel or other representative and participate fully in any proceedings. An agency, state body, or corporation may appear by any of its officers or by any employee it authorizes to appear on its behalf.

(b) A representative of a party or participant shall be deemed to control all matters respecting the interest of such party or participant in the proceedings.

(c) Nothing contained herein shall be construed to require any representative to be an attorney-at-law.

(d) Withdrawal of appearance of any representative will be effective by filing a written notice of withdrawal and by serving a copy thereof on all parties and participants.

Subpart C—Form, Execution, Service and Filing of Documents

§ 1150.21 Form of documents to be filed.

Documents to be filed under the rules in this part shall be dated, the original signed in ink, shall show the docket description and title of the proceeding and shall show the title, if any, and address of the signatory. Copies need not be signed but the name of the person signing the original shall be reproduced. Documents shall be legible and shall not be more than 8½ inches wide and 12 inches long.

§ 1150.22 Signature of documents.

The signature of a party, authorized officer, employee or attorney constitutes a certification that he has read the document, that to the best of his knowledge, information, and belief there is a good ground to support it, and that it is not interposed for delay. If a document is not signed or is signed with intent to defeat the purpose of this section, it may be stricken as sham and false and the proceeding may proceed as though the document had not been filed.

§ 1150.23 Filing and service.

All notices by a member of the A&TBCB or A&TBCB staff, and all written motions, requests, petitions, memoranda, pleadings, appeals, briefs, decisions, and correspondence to the judge, or an A&TBCB member or A&TBCB staff from a party, or vice versa, relating to a proceeding after its commencement shall be filed and served on all parties and participants. Parties shall submit for filing the original and two copies of documents, exhibits, and transcripts of testimony. Filings shall be made with the hearing clerk at the address stated in the notice of hearing or notice of opportunity for hearing, during regular business hours. Regular business hours are every Monday through Friday (Federal legal holidays excepted) from 9 a.m. to 5:30 p.m., Eastern Standard or Daylight Savings Time, whichever is effective in the District of Columbia at the time. Filing may be in person or by mail.

§ 1150.24 Service—how made.

Service of one copy shall be made on each party and participant by personal delivery or by certified mail, return receipt requested, properly addressed with postage prepaid. When a party or participant has appeared by attorney or other representative, service upon such attorney or representative will be deemed service upon the party or participant.

§ 1150.25 Date of Service.

The date of service shall be the day when the matter is deposited in United States mail or is delivered in person, except that the date of service of the initial notice of hearing or opportunity for hearing shall be the date of its delivery, or the date that its attempted delivery is refused.

Subpart D—Time

§ 1150.31 Computation.

In computing any period of time under the rules in this part or in an order issued hereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, or Federal legal holiday, in which event it includes the next following business day. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and Federal legal holidays shall be excluded from the computation.

§ 1150.32 Extension of time or postponement.

Requests for extension of time shall be served on all parties and participants, and should set forth the reasons for the application. Applications may be granted by the judge upon a showing of good cause by the applicant. From the designation of a judge until the issuance of his decision, such requests should be addressed to him. Answers to such requests are permitted if made promptly.

Subpart E—Proceedings Prior to Hearings; Pleadings and Motions

§ 1150.41 Informal resolution.

(a) The A&TBCB immediately shall serve copies of complaints on all relevant agencies and interested parties.

(b) All such complaints should be resolved informally and expeditiously, if possible, by the responsible parties. Should compliance with the applicable standards not be achieved informally or an impasse concerning the allegations of compliance or noncompliance be reached, the A&TBCB will review the matter and take such actions including, but not limited to, surveying and investigating buildings, monitoring compliance programs of agencies, furnishing technical assistance, including standard interpretation, to agencies, and obtaining such assurances, certifications, and plans of action as may be necessary to ensure compliance.

(c) To the extent practicable, in the course of informally resolving allegations of noncompliance, any person who might be a party to compliance proceedings should be apprised of the alleged instances of noncompliance and afforded the opportunity to respond or submit pertinent documents.

(d) All actions under this § 1150.41 shall be completed within sixty (60) days after receipt of the complaint by the A&TBCB and all affected agencies either by the issuance of a citation under § 1150.42 or by the issuance by the Executive Director of a written determina-

tion that a citation will not be issued stating the reasons therefor.

(e) A determination not to issue a citation shall be served in accordance with § 1150.24 on all interested parties upon whom a citation would have been served if a citation had been issued.

§ 1150.42 Citations.

(a) If there appears to be a failure or threatened failure to comply with the standards issued pursuant to the Architectural Barriers Act, and if the noncompliance or threatened noncompliance cannot be corrected or resolved by informal means under § 1150.41 within sixty (60) days after receipt of the complaint by the A&TBCB, all affected agencies, and interested parties, the Executive Director shall issue a written citation requesting the A&TBCB to order such relief as is necessary to ensure compliance with the standards issued pursuant to the Architectural Barriers Act, which relief may include the suspension or withholding of funds. The citation shall be served upon all interested parties, including the complainant, the agency having custody or control of, and the agency funding by contract, grant, or loan, the allegedly noncomplying building. The citation shall contain a concise jurisdictional statement reciting the provisions of the Rehabilitation Act and Architectural Barriers Act pursuant to which the requested action may be taken, as well as a short and plain basis for requesting the imposition of the sanctions. The citation shall also (1) (a) advise the agency and interested parties that a hearing concerning the matter in question will be scheduled within fifteen (15) days at which time they will be advised of the time and place of hearing or (b) fix a date, not less than fifteen (15) days after the date of citation within which the agency or affected parties may request a hearing, and (2) contain a list of all pertinent documents necessary for the judge to make a decision on the alleged noncompliance, including, but not limited to, contracts, invitations for bids, specifications, contract or grant drawings, and correspondence.

(b) In addition to all other forms of relief requested, the citation shall request PER when it appears to the Executive Director that immediate and irreparable harm from noncompliance with the standards issued pursuant to the Architectural Barriers Act is occurring or is about to occur. Citations requesting PER shall recite specific facts and the affidavit or the notarized complaint upon which the PER request is based. Citations requesting PER shall recite that a hearing regarding PER has been scheduled eight (8) days after receipt of the citation. Citations requesting PER may be filed without prejudice to proceedings in which PER is not requested. The time and place of hearing fixed in the citation shall be reasonable and shall be subject to change for cause.

(c) The Executive Director shall file copies of all pertinent documents listed in the citation simultaneously with filing the citation.

§ 1150.43 Answers.

(a) Answers shall be filed by respondents within fifteen (15) days after receipt of a citation. The answer shall admit or deny specifically and in detail, matters set forth in each allegation of the citation, unless the respondent is without knowledge, in which case the answer shall so state and such statement shall be deemed a denial. Matters not specifically denied shall be deemed admitted. Failure to file an answer shall constitute an admission of all facts recited in the citation. Answers shall contain a list of additional pertinent documents not listed in the citation which documents, respondent believes, are necessary for the Board or the judge to make a decision in the proceedings herein. Copies of the listed documents shall be filed with the answer.

(b) Answers to citations requesting PER shall be in the form of all answers, as set forth in subparagraph (a) above, shall be filed within four (4) days after receipt of the citation, and shall recite in detail by affidavit or by notarized answer why the PER requested should not be granted.

(c) When a citation contains a request for relief to ensure compliance with standards issued pursuant to the Architectural Barriers Act, as well as PER, an answer to the PER request shall be filed in accordance with subparagraph (a) above.

§ 1150.44 Amendments.

(a) The Executive Director may amend the citation as a matter of course before an answer is filed. A respondent may amend its answer once as a matter of course, not later than five (5) days after the filing of the original answer. Other amendments of the citation or the answer shall be made only by leave of judge. An amended citation shall be answered within five (5) days of its service, or within the time for filing an answer to original notice, whichever is longer.

(b) Citations and answers in PER proceedings may not be amended prior to hearing. However, citations and answers in such proceedings may be amended at the hearing with the permission of the judge.

§ 1150.45 Request for hearing.

Within fifteen (15) days from service of a citation which does not fix a date for a hearing, the respondent, either in its answer in a separate paragraph thereof, or in a separate document, may request a hearing. Failure of a respondent to request a hearing shall be deemed a waiver of the right to a hearing and to constitute consent to the making of a decision on the basis of such information as is available.

§ 1150.46 Motions.

Motions and petitions shall state the relief sought, the authority relied upon, and the facts alleged. If made before or after the hearing, these matters shall be in writing. If made at the hearing, they may be stated orally or the judge may require that they be reduced in writing and filed and served on all parties. Except as otherwise ordered by the judge, responses to a written motion or petition shall be filed within ten (10) days after the motion or petition is served. An immediate oral response may be made to an oral motion. All arguments on motions will be at the discretion of the judge.

§ 1150.47 Disposition of motions and petitions.

The A&TBCB or the judge may not sustain or grant a written motion or petition prior to expiration or the time for filing responses thereto, but may overrule or deny such motion or petition without awaiting response; providing, however, that prehearing conferences, hearings, and decisions need not be delayed pending disposition of motions or petitions. All motions and petitions may be ruled upon immediately after response. Motions and petitions not disposed of in separate rulings or in decisions will be deemed denied.

Subpart F—Responsibilities and Duties of Judge

§ 1150.51 Who presides.

(a) A judge assigned under 5 U.S.C. 3105 or 3344 (formerly section 11 of the Administrative Procedure Act) shall preside over the taking of evidence in any hearing to which these rules of procedure apply.

(b) Pending designation of a judge, the responsibilities, duties and authorities of the judge under these regulations shall be executed by the A&TBCB through the Chairman or other member of the A&TBCB designated by the Chairman.

(c) The Chairman, or other member of the A&TBCB designated by the Chairman, shall preside over proceedings before the A&TBCB.

§ 1150.52 Designation of judge.

The Chairman or other member of the A&TBCB designated by the Chairman shall designate a judge as presiding. Such designation shall be in writing and may also fix the time and place of hearing. A copy of such designation order shall be served upon all parties. Motions and petitions shall be submitted to the designated judge. In the case of the death, illness, disqualification or unavailability of the designated judge, a replacement shall be designated in accordance with this paragraph.

§ 1150.53 Authority of judge.

The judge shall have the duty to conduct a fair hearing, to take all necessary action to avoid delay, and maintain order. He shall have all powers necessary to effect these ends, including (but not limited to) the power to:

(a) Arrange and issue notice of the date, time, and place of hearings, or, on due notice to the parties, to change the date, time, and place of hearings previously set.

(b) Hold conferences to settle, simplify, or fix the issues in proceedings, or to consider other matters that may aid

in the expeditious disposition of the proceedings.

(c) Require parties and participants to state their position with respect to the various issues in the proceedings.

(d) Administer oaths and affirmations.

(e) Rule on motions, and other procedural items on matters pending before him.

(f) Regulate the course of the hearing and conduct of counsel therein.

(g) Examine witnesses and direct witnesses to testify.

(h) Receive, rule on, exclude or limit evidence.

(i) Fix the time for filing motions, petitions, briefs, or other items in matters pending before him.

(j) Issue decisions.

(k) Take any action authorized by the rules in this part or the provisions of 5 U.S.C. 551–559 (the Administrative Procedure Act).

§ 1150.54 Disqualification of judge.

(a) A judge may withdraw from a proceeding whenever he deems himself disqualified.

(b) Any party may request the judge, at any time following his designation and before the filing of his decision, to withdraw on ground of personal bias or disqualification, by promptly filing with him an affidavit setting forth in detail the matters alleged to constitute grounds for disqualification.

(c) If, in the opinion of the judge, the affidavit referred to in paragraph (b) of this section is filed with due diligence and is sufficient on its face, the judge shall forthwith disqualify himself and withdraw from the proceeding.

(d) If the judge does not disqualify himself and withdraw from the proceeding, he shall so rule upon the record, stating the grounds for his ruling and shall proceed with the hearing, or, if the hearing has closed, he shall proceed with the issuance of his decision, and the provisions of § 1150.102 shall thereupon apply.

Subpart G—Prehearing Conferences and Discovery

§ 1150.61 Prehearing conference.

(a) At any time before a hearing, the judge, on his own motion or on motion of a party, may direct the parties or their representatives to exchange information or to participate in a prehearing conference for the purpose of considering matters which tend to simplify the issues or expedite the proceedings.

(b) The judge may issue a prehearing order which includes the agreements reached by the parties. Such order shall be served upon all parties and participants and shall be a part of the record.

§ 1150.62 Discovery.

(a) Parties are encouraged to engage in voluntary discovery procedures. For good cause shown under appropriate circumstances, but not as a matter of course, the judge will entertain motions for permission for discovery, issue orders including orders for the taking of testimony upon oral examination or written interrogatories before an officer authorized to administer oaths, to permit service of written interrogatories upon the opposing party, to produce and permit inspection of designated documents, and to permit service upon the opposing party a request for the admission of specified facts.

(b) Motions for discovery shall be granted only to the extent and upon such terms as the judge in his discretion considers to be consistent with and essential to the objective of securing a just and inexpensive determination of the merits of the citation without unnecessary delay.

(c) In connection with any discovery procedure, the judge may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression or undue burden or expense, including limitations on the scope, method, time and place for discovery, and provisions for protecting the secrecy of confidential information or documents. If any party fails to comply with a discovery order of the judge under these rules, without an excuse or explanation satisfactory to the judge for such failure, the judge may decide the fact or issue relating to the material requested to be produced, or the subject matter of the probable testimony, in accordance with claims of the other party in interest or in accordance with the other evidence available to the judge, or make such other ruling as he determines just and proper.

Subpart H—Hearing Procedures

§ 1150.71 Briefs.

The judge may require parties and participants to file written statements of position prior to the beginning of a hearing. The judge may also require the parties to submit trial briefs.

§ 1150.72 Evidentiary purpose.

Hearings for the receipt of evidence will be held only in cases where issues of fact must be resolved. Where it appears from the citation, the answer, stipulations, or other documents in the record, that there are no matters of material fact in dispute, the judge may enter an order so finding, vacating the hearing date, if one has been set, and fixing the time for filing briefs.

§ 1150.73 Testimony.

(a) Formal rules of evidence shall not apply, but rules or principles designed to assure production of the most probative evidence available will be applied. Testimony shall be given orally under oath or affirmation; but the judge, in his discretion, may require or permit the direct testimony of any witness be prepared in writing and served on all parties in advance of the hearing. Such testimony may be adopted by the witness at the hearing, and filed as part of the record.

(b) All witnesses shall be available for cross-examination and, at the discretion of the judge, may be cross-examined without regard to the scope of direct examination as to any matter which is relevant and material to the proceeding.

(c) When testimony is taken by deposition, an opportunity shall be given, with appropriate notice, for all parties to cross-examine the witness. Objections to any testimony or evidence presented therein shall be deemed waived unless raised at the time of the deposition.

(d) Witnesses appearing before the judge shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witness appears, and the person taking a deposition shall be paid by the party at whose instance the deposition is taken.

§ 1150.74 Exclusion of evidence.

The judge may exclude evidence which is immaterial, irrelevant or unduly repetitious.

§ 1150.75 Objections.

Objections to evidence or testimony shall be timely and shall briefly state the grounds.

§ 1150.76 Exceptions.

Exceptions to rulings of the judge are unnecessary. It is sufficient that a party, at the time the ruling of the judge is sought, makes known the action which he desires the judge to take, or his objection to an action taken, and his grounds therefor.

§ 1150.77 Official Notice.

Where official notice is taken or is to be taken of a material fact not appearing in the evidence of record, any party, on timely request, shall be afforded an opportunity to show the contrary.

§ 1150.78 Public document items.

Whenever there is offered (in whole or in part) a public document, such as an official report, decision, opinion, or published scientific or economic statistical data issued by any of the executive departments (or their subdivisions), legislative agencies or committees or administrative agencies of the Federal government (including government-owned corporations), or a similar document issued by a State or its agencies, and such document (or part thereof) has been shown by the offeror to be reasonably available to the public, such document need not be produced or marked for identification, but may be offered for official notice, as a public document item by specifying the document or relevant part thereof.

§ 1150.79 Offer of proof.

An offer of proof made in connection with an objection taken to a ruling of the judge rejecting or excluding proffered oral testimony shall consist of a statement of the substance of the evidence which counsel contends would be adduced by such testimony; and, if the excluded evidence consists of evidence in documentary or written form or of reference to documents or records, a copy of such

evidence shall be marked for identification and shall accompany the record as the offer of proof.

§ 1150.80 Appeals from ruling of judge.

(a) Rulings of the judge may not be appealed to the A&TBCB prior to his consideration of the entire proceeding except with the consent of the judge and where he certifies on the record or in writing that the allowance of an interlocutory appeal is clearly necessary to prevent exceptional delay, expense, or prejudice to any party, or substantial detriment to the public interest. If an appeal is allowed, any party may file a brief with the A&TBCB within such period as the judge directs.

(b) There shall be no oral argument or appearances on any appeal or any motion unless the A&TBCB directs otherwise.

§ 1150.81 Consolidated or joint hearing.

In cases in which the same or related facts are asserted to constitute noncompliance with standards issued pursuant to the Architectural Barriers Act, the judge may order all such related cases consolidated and may make such other orders concerning proceedings therein as will be consistent with the objective of securing a just and inexpensive determination of the case without unnecessary delay.

§ 1150.82 PER proceedings.

(a) In proceedings in which a citation, or part thereof, seeking PER has been filed, the judge shall make necessary rulings with respect to time for filing of pleadings, the conduct of the hearing and with respect to all other matters, and shall do all other things necessary to complete the proceeding in the minimum time consistent with the objective of securing an expeditious, just and inexpensive determination of the case. The times for actions set forth in these rules shall be followed unless otherwise ordered by the judge.

(b) Orders of PER shall be on such terms and conditions as the judge directs, consistent with preserving the rights of all parties so as to permit the timely processing of the citation, or part thereof, not requesting PER, as well as the provisions and objectives of the Architectural Barriers Act and the Rehabilitation Act. In issuing an order for PER, the judge shall make specific findings of fact and conclusions of law that the Executive Director or another party, or participant, has shown:

(i) Likelihood of succeeding on the merits of a proceeding; and

(ii) That the threatened injury or violation outweighs the threatened harm to the respondent if PER is granted; and

(iii) Granting PER is in the public interest.

(c) The judge may order dismissed any citation or part thereof seeking PER when the judge finds that the timely processing of a citation not requesting PER will adequately ensure the objective of section 502 of the Rehabilitation Act and that immediate and irreparable noncompliance with the standards issued pursuant to the Architectural Barriers Act is not occurring or about to occur.

Subpart I—The Record

§ 1150.91 Record for decision.

The transcript of testimony, exhibits, and all papers, documents and requests filed in the proceeding, including briefs and proposed findings and conclusions, shall constitute the record for decision.

§ 1150.92 Official transcript.

The A&TBCB will designate the official reporter for all hearings. The official transcripts of testimony taken, together with any exhibits, briefs, or memoranda of law filed therewith, shall be filed with the judge. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the A&TBCB and the reporter. Upon notice to all parties, the judge may authorize such corrections to the transcript as are necessary to reflect accurately the testimony.

Subpart J—Posthearing Procedures; Decisions

§ 1150.101 Posthearing briefs; proposed findings.

(a) The judge shall fix the terms, including time for filing post-hearing statements of position or briefs, which may contain proposed findings of fact and conclusions of law. The judge may fix a reasonable time for such filing, but such period shall not exceed thirty (30) days from the receipt by the party of the transcript of the hearing.

(b) No briefs or statements shall be required in proceeding seeking PER unless specifically ordered by the judge.

§ 1150.102 Decision.

(a) The judge shall issue a decision within twenty (20) days after the close of the hearing, or within twenty (20) days after the filing of briefs of proposed findings, if required. The decision shall state findings of fact, conclusions of law, and the reasons therefor, upon all material issues of fact or law presented on the record, and may recommend action be taken. The decision shall contain such terms, conditions and other provisions as are consistent with, and will effectuate the purposes of the Architectural Barriers Act and the Rehabilitation Act, and may provide for the suspension or withholding of Federal funds with respect to any building found not to be in compliance with the standards issued pursuant to the Architectural Barriers Act.

(b) In proceedings seeking PER the decision may be given orally at the close of the hearing and shall be made in writing within three (3) days after the hearing.

(c) The findings, conclusion and decision shall be served on all parties and participants to the proceedings.

§ 1150.103 Appeal of decisions.

(a) Within fourteen (14) days after receipt of the judge's decision any party or participant may appeal to the A&TBCB by filing an appeal from the decision with the Chairman. The appeal shall briefly state the reasons for the appeal. The parties and participants shall have ten (10) days from receipt of the appeal to respond.

(b) In proceedings seeking PER, any party or participant may appeal to the A&TBCB by filing an appeal from the decision with the Chairman within four (4) days after receipt of the decision, if written, or four (4) days after announcement of the judge's decision, if oral, whichever occurs first. The appeal shall be responded to by the other parties and participants within four (4) days after receipt of the appeal.

§ 1150.104 Record for final A&TBCB decision.

The record for the A&TBCB's final decision shall consist of the record for the decision, the rulings, and decision of the judge, and the appeals and briefs filed subsequent to the judge's decision.

§ 1150.105 Final A&TBCB decision.

(a) If no appeal to the decision of the judge is filed within the period specified in § 1150.103 above, such decision shall become the final decision of the A&TBCB under section 502 of the Rehabilitation Act.

(b) Upon the filing of an appeal of the judge's decision, the A&TBCB shall review the judge's decision and issue its own decision thereon, which shall constitute the final decision of the A&TBCB under section 502 of the Rehabilitation Act.

(c) The decisions of the A&TBCB shall contain findings of fact, conclusions of law, and the reasons therefor. The decision of the A&TBCB shall contain such terms, conditions, and other provisions as are consistent with, and will effectuate the purposes of the Architectural Barriers Act and the Rehabilitation Act, and may provide for the suspension or withholding of Federal funds with respect to any building found not to be in compliance with the standards issued pursuant to the Architectural Barriers Act.

(d) The decision of the A&TBCB may affirm, modify, set aside, or remand to the judge, in whole or in part, the findings, conclusions and decision of the judge, and shall be based upon the record for the decision.

(e) All final decisions shall be promptly served on all parties and participants. The A&TBCB has the objectives of issuing its decision on any matter hereto within sixty (60) days after filing of an appeal and within a total of one hundred eighty (180) days after the filing of the complaint, or other time period applicable by law.

§ 1150.106 Judicial review.

Action taken pursuant to section 502 of the Rehabilitation Act is subject to judicial review as provided therein. A final order of compliance affecting any

Federal department, agency or instrumentality of the United States shall be final and binding on such department, agency or instrumentality.

Subpart K—Miscellaneous Provisions

§ 1150.111 Ex parte communications.

No person having an interest in such case shall make or cause to be made an ex parte communication to the judge or the A&TBCB with respect to such case. In the event an ex parte communication occurs, the judge or the A&TBCB shall issue such orders and take such action as fairness requires.

§ 1150.112 Post order proceedings.

(a) Any party adversely affected by an order issued by a judge or the A&TBCB may make a motion to the judge or the A&TBCB, whichever issued the order the party seeks to vacate, to have such order vacated upon a showing that the building complies with the standards issued pursuant to the Architectural Barriers Act.

(b) Notice of motion and copies of all pleadings shall be served on all parties and participants to the original proceeding. Responses to the motion to vacate shall be filed within ten (10) days after receipt of the motion unless the judge or the A&TBCB for good cause shown grants additional time to respond.

(c) Oral argument on the motion may be ordered by the judge under such terms as he may direct, consistent with the objective of securing a prompt, just, and inexpensive determination of the motion.

(d) Within ten (10) days after receipt of all answers to the motion, the judge shall issue his decision in accordance with § 1150.102.

(e) The judge's decision shall be subject to finality and reviewable by the A&TBCB in accordance with § 1150.105.

(f) Exceptions to the decision on the motion to vacate shall be filed within three (3) days after receipt of the judge's decision.

(g) By service of an order on all parties and participants, the A&TBCB may remand motions to vacate filed with the A&TBCB to the judge.

(h) Decisions of the judge not appealed to the A&TBCB for decision under § 1150.105 shall be considered decisions of the judge for purposes of this section.

§ 1150.113 Amicable resolution.

(a) Amicable resolution is encouraged at any stage of proceedings where such resolution is consistent with the provisions and objectives of the Architectural Barriers Act and Rehabilitation Act.

(b) Agreements to amicably resolve pending proceedings shall be submitted by the parties and shall be accompanied by an appropriate proposed order.

(c) The Executive Director shall be authorized to resolve any proceeding on behalf of the A&TBCB unless otherwise specifically directed by the A&TBCB and may file appropriate stipulations or notices of discontinuance.

§ 1150.114 Conflict of interests.

(a) No member of the A&TBCB shall participate in any decision of the A&TBCB concerning a building in any proceeding to which such member's agency is a party or otherwise participates.

(b) No member of the A&TBCB shall participate in the consideration of an appeal of a matter in which member participated or over which such member presided as a judge, provided, however, the mere designation of a judge by any member or the Chairman or the designation of the Chairman or member as presiding judge shall not be a basis for disqualification from participation in the consideration of any subsequent appeal.

§ 1150.115 Effect of partial invalidity.

If any section, subsection, paragraph, sentence, clause or phrase of these regulations shall be declared invalid for any reason whatever, the remaining portions of these regulations that are severable from the invalid part shall remain in full force and effect. If a part of these regulations is invalid in one or more of its applications, the part shall remain in effect in all valid applications that are severable from the invalid applications.

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MONDAY, DECEMBER 20, 1976

PART III:

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

■

AIRWORTHINESS REVIEW PROGRAM

Amendments

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 14324; Amendment Nos. 21–44; 23–17; 25–38; 27–11; 29–12; 31–3; 33–7; 35–3; 91–135; 121–132; 127–33; 133–5; and 135–43]

AIRWORTHINESS REVIEW PROGRAM

Amendment No. 3: Miscellaneous Amendments

The purpose of these amendments is to update and improve—(1) the aircraft, engine, and propeller certification regulations; (2) the operating regulations containing airworthiness standards; and (3) related procedural requirements.

These amendments are based on a notice of proposed rule making (Notice 75–10) published in the FEDERAL REGISTER on March 7, 1975 (40 FR 10802) and are the third in a series of amendments to be issued as part of the First Biennial Airworthiness Review Program. The following series of amendments have previously been issued as part of this Airworthiness Review Program:

Title	*Federal Register citation*
Form number and clarifying revisions	(40 F.R. 2576; Jan. 14, 1975)
Rotorcraft anticollision light standards	(41 F.R. 5290; Feb. 5, 1976)

Interested persons have been afforded an opportunity to participate in the making of these amendments 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 the relevant comments received and upon further review within the FAA. Except for the minor editorial and clarifying changes and the substantive changes discussed hereinafter, these amendments and the reasons therefore are the same as those contained in Notice 75–10.

After issuing Notice 75–10, the following six additional notices of proposed rule making were issued as part of the First Biennial Airworthiness Review Program.

Notice No.	Federal Register citation	Title
75–19	40 F.R. 21866; May 19, 1975:	Notice No. 3: Powerplant Proposals.
75–20	40 F.R. 22110; May 20, 1975:	Notice No. 4: Equipment Deviation List.
75–23	40 F.R. 23048; May 27, 1975:	Notice No. 5: Equipment and Systems Proposals:
75–25	40 F.R. 24664; June 9, 1975:	Notice No. 6: Flight Proposals:
75–26	40 F.R. 24802; June 10, 1975:	Notice No: 7: Airframe Proposals.
75–31	40 F.R. 29410; July 11, 1975:	Notice No: 8: Aircraft, Engine, and Propeller Airworthiness, and Procedural Proposals.

Based upon further review by the FAA, a number of proposals which were contained in Notice 75–10 are not being dealt with herein but will be considered in conjunction with other proposals contained in one of the later Airworthiness Review Program Notices of proposed rule making.

The following discussion is keyed to the like-numbered proposals contained in Notice 75–10:

Proposal 2–1. One commentator suggested that the proposed change to § 21.33(a) be revised to limit the new aircraft engine and propeller inspection and test provisions to prototypes only. The FAA does not agree. The intent of the proposal was to make the inspection and test requirements in § 21.33(a) compatible for aircraft, aircraft engines, and propellers. The provision applies to the item presented for type certification tests irrespective of whether or not the item is considered a prototype by the applicant for the type certificate. The proposal is therefore, adopted without substantive change.

Proposal 2–2. No unfavorable comments were received on the proposal to amend § 23.23. Accordingly, the proposal is adopted without substantive change.

Proposal 2–3. No unfavorable comments were received on the proposal to amend § 23.141. Accordingly, the proposal is adopted without substantive change.

Proposal 2–4. No unfavorable comments were received on the proposal to amend § 23.143(b). Accordingly, the proposal is adopted without substantive change.

Proposal 2–5. No unfavorable comments were received on the proposal to amend § 23.145. Accordingly, the proposal is adopted without substantive change.

Proposal 2–6. The proposed change to § 23.149(b) concerning the language "without exceptional piloting skill, alertness, or strength" is related to a proposed amendment to § 23.149 that is contained in Airworthiness Review Program, Notice No. 6: Flight Proposals (Notice 75–25; 40 FR 24664; June 9, 1975). The proposed amendment to § 23.149(b) contained in Notice No. 2 is therefore being deferred until final rulemaking action is taken with respect to the related proposal in Notice 75–25. Comments submitted for Proposal 2–6 will be considered at that time.

Proposal 2–7. Although no unfavorable comment was received on the proposal to amend § 23.175(c), the FAA believes that clarification is necessary. The term "or thrust" has been added to the end of the language "maximum cruising power" in proposed § 23.175(c)(3). Proposed § 23.175(c)(4) was intended to clarify the requirement concerning trim speed, but the FAA believes the conflict in language with a similar provision in § 23.175(b)(2)(iii) may cause confusion. Therefore, proposed § 23.175(c)(4) is withdrawn.

Proposal 2–8. The proposed change to § 23.253(b) is related to a proposed amendment to § 23.253(b)(3) that is contained in Airworthiness Review Program, Notice No. 8: Aircraft, Engine, and Propeller Airworthiness, and Procedural Proposals (Notice 75–31; 40 FR 29410; July 11, 1975). The proposed amendment to § 23.253(b) contained in Notice No. 2 is therefore being deferred until final rulemaking action is taken with respect to the related proposal in Notice 75–31. Comments submitted for Proposal 2–8 will be considered at that time.

Proposal 2–9. No unfavorable comments were received on the proposal to amend § 23.397. Accordingly, the proposal is adopted without substantive change.

Proposal 2–10. No unfavorable comments were received on the proposal to add a new § 23.479(d). Accordingly, the proposal is adopted without substantive change.

Proposal 2–11. One commentator objected to the proposed use of the language "materials used for parts, the failure of which could adversely affect safety" in place of the language "materials used in the structure" in §§ 23.603(a) and 25.603. The FAA does not agree with the commentator's suggestion that all parts of the airplane should, unless specifically excluded, be considered structure. The FAA believes that consideration of the suitability and durability of materials used should be broadened to include parts not normally considered airplane structure.

Proposal 2–12. No unfavorable comments were received on the proposal to amend § 23.607. Accordingly, the proposal is adopted without substantive change.

Proposal 2–13. A commentator questioned whether proposed § 23.675 would require that stops provided to limit the range of motion of an aerodynamic surface be located only on the aerodynamic surface or whether the stop could be located adjacent to the surface. Section 23.675, as proposed and as adopted herein, without change, requires that stops positively limit the range of motion of moveable aerodynamic surfaces. This can be accomplished by locating the stop on structure adjacent to the surface.

Proposal 2–14. No unfavorable comments were received on the proposal to amend § 23.685(a). Accordingly, the proposal is adopted without substantive change. See proposal 2–109.

Proposal 2–15. No unfavorable comments were received on the proposal to add a new § 23.733(c). Accordingly, the proposal is adopted without substantive change.

Proposal 2–16. No unfavorable comments were received on the proposed new § 23.787(f). However, one commentator pointed out that the word "contract" in the proposal as printed in the Federal Register should be "contact." The proposal has been corrected to eliminate the printing error. The proposal has also been clarified based on a comment received on Proposal 2–111, to avoid any implication that lamps will be required in cargo compartments.

Proposal 2–17. One commentator questioned the need in proposed § 23.841(b)(6) for a warning indicator at the pilot station to indicate when a cabin pressure altitude of 10,000 feet is exceeded. But as noted by the commentator it is a general industry practice to provide this

warning at a cabin altitude of 10,000 feet. The FAA believes that due to the larger number of small airplanes having such a warning many pilots may come to rely on the warning at this cabin altitude. The proposal is therefore adopted without substantive change.

Proposal 2–18. The proposed changes to §§ 23.853, 27.853, and 29.853 concerning the certification requirements necessary to permit smoking in certain aircraft categories are related to proposed standards for § 25.853. The amendments proposed for § 25.853 are contained in Airworthiness Review Program Notice No. 2: Miscellaneous Proposals (Notice 75–10; 40 FR 10802; March 7, 1975) and in Airworthiness Review Program Notice No. 8: Aircraft, Engine, and Propeller Airworthiness, and Procedural Proposals (Notice 75–31; 40 FR 29410; July 11, 1975). The proposal for § 25.853 in Notice 75–10 is being deferred until final rulemaking action is taken with respect to the related proposal in Notice 75–31. The proposed amendments to §§ 23.853, 27.853 and 29.853 contained in Notice 75–10 are therefore being deferred until final rulemaking action is taken with respect to the related proposal for § 25.853. Comments submitted for Proposals 2–18, 2–114, and 2–160 will be considered at that time.

Proposal 2–19. One commentator suggested a clarification of proposed new § 23.903(b) noting that the language, "must be designed to give reasonable assurance" would be subject to divergent application. The same language is now used in § 25.903(d)(2), and the FAA believes that experience with this provision in transport category type certification has been satisfactory.

One commentator suggested that a provision similar to § 25.903(d)(1) concerning design precautions to minimize hazards to the airplane in the event of an engine rotor failure be included in proposed §§ 23.903(b), 27.903(c), and 29.903(f). Although several airworthiness directives have been issued to prevent the failure of engine rotors in one engine type, the FAA does not believe that a general requirement for §§ 23.903 (b), 27.903(c), or 29.903(f) that is identical to § 25.903(d)(1) is necessary at this time.

Proposal 2–20. No unfavorable comments were received on the proposal to amend § 23.933(b). Accordingly, the proposal is adopted without substantive change.

Proposal 2–21. One commentator objected to proposed new § 23.941 concerning airplanes with variable inlet or exhaust system geometry as being unnecessary and unjustified in Part 23. The FAA agrees that this provision should not be added to Part 23 at this time and is therefore withdrawing the proposal.

Proposal 2–22. One commentator suggested that the proposed changes to §§ 23.971 and 23.999 be revised to require a quick actuation drain valve on each fuel tank. The proposal, however, was not to require new drainage outlets but to establish standards for the drains set forth in proposed § 23.971(b) and present § 23.999(a). The FAA does not have sufficient information to indicate that a need exists for a quick actuation drain valve on each fuel tank considering the large number of different types of fuel tanks which are included on Part 23 airplanes and the use of sediment bowls and chambers. The proposal is therefore adopted without substantive change.

Proposal 2–23. One commentator questioned the proposed requirement in § 23.977(a)(2) that a turbine engine fuel strainer prevent the passage of any object that could restrict fuel flow or damage any fuel system component. The commentator asserted that a strainer which met this requirement would have an opening so small that ice accumulation with the use of turbine fuels would be a problem. The FAA does not agree. This is identical to the provision in § 25.977(a)(2). Experience with fuel strainers that would meet the proposed standards in § 23.977(a)(2) has shown that a strainer can prevent the passage of the noted objects and also prevent ice accumulation.

One commentator noted that the clear area of each fuel tank outlet strainer should be at least six times the area of the outlet line instead of five times as proposed in § 23.977(b). This provision is identical to § 25.977(c) and the FAA considers that experience with this requirement in Part 25 has been satisfactory.

Proposal 2–24. The intent of the proposal to add a new § 23.979(e) was to provide strength requirements including load factors, applicable to the airplane defueling system to cover surge pressure during defueling. Upon further review the FAA believes that the proposed amendment is premature. Therefore, the proposal is withdrawn.

Proposal 2–25. No unfavorable comments were received on the proposal to amend § 23.995(d). Accordingly, the proposal is adopted without substantive change.

Proposal 2–26. One commentator suggested that there should be sufficient clearance between the quick actuation drain and other parts of the airplane to allow the fuel sample to be drained into a typical, small container. The FAA believes fuel system drains which meet the proposed requirements of paragraphs (b)(1) and (b)(3) of § 23.999, that the drain discharge clear of all parts of the airplane and that it be readily accessible, will have sufficient clearance to allow a fuel sample to be drained into a small container.

One commentator suggested that the requirement in § 23.999(b)(1) that the drain must discharge clear of all parts of the airplane, would create unnecessary design and construction restraints. The FAA believes that by coating some airplane surfaces with fuel or by trapping quantities of fuel in certain locations a fire hazard exists. This fire hazard should be limited by this proposal. Further, the FAA believes this requirement can be met without an undue restraint on airplane design.

A commentator asserted that the proposed requirement in § 23.999(b)(3), that the drain valve be either located or protected so that it will not be damaged in the event of a landing with landing gear retracted cannot be justified. The commentator noted that the fuel tanks would be ruptured in such a landing and nothing would be gained if the drain was protected. The FAA disagrees, similar fuel tank installation requirements are set forth in § 23.967 and experience indicates that the fuel system can and should be either located or protected to prevent fuel leakage in such a landing. The FAA does agree that the proposal needs to be clarified to more specifically provide a design specification and has so modified paragraph (b)(3). Also see Proposal 2–70.

Proposal 2–27. No unfavorable comments were received on the proposal to add a new § 23.1093(c). Accordingly, the proposal is adopted without substantive change.

Proposal 2–28. Proposed § 23.1111(c) was misunderstood by one commentator who asserted that it is not possible to assure the impossibility of failure of the engine lubricating system. The proposal, however, was directed toward the elimination of hazardous contamination of the cabin air assuming a failure of the engine lubricating system. In consideration of the misunderstanding, the language has been revised to emphasize the prevention of hazardous contamination of cabin air system.

Proposal 2–29. Although no unfavorable comment was received on the proposed § 23.1125, the FAA believes that the proposal could be misunderstood as to whether use of the heat exchanger would permit or prohibit the passage of exhaust gases through the exchanger when hot air was not being directed to the area where it was intended to be used. The FAA's intention was to require cooling of the exchanger wherever it was in contact with exhaust gases, regardless of its usage status. The proposal is revised to make this clear using the language of §§ 25.1125(a)(3) and 29.1125(a)(3). The FAA believes that the exhaust heat exchange requirements should be paralleled in Parts 23, 25 and 29. Therefore the proposed changes to §§ 25.1125(a)(3) and 29.1125(a)(3) are withdrawn.

Proposal 2–30. No unfavorable comments were received on the proposal to amend § 23.1143. Accordingly, the proposal is adopted without substantive change.

Proposal 2–31. One commentator believed that proposed § 23.1165(e) was unnecessarily restrictive in requiring all ignition systems to be independent of all other electrical systems. The FAA agrees with respect to reciprocating engines since § 33.37 requires a dual ignition system or an ignition system of equivalent inflight reliability for reciprocating engines and § 23.903 requires each engine installed on small airplanes to be type certificated under Part 33. However, the FAA disagrees with respect to turbine engines since two separate primary electrical circuits are not required in § 33.69. The rule as adopted is applicable to turbine engines installed on small airplanes only.

Proposal 2–32. One commentator objected to the proposal to add a speed warning device for turbopropeller powered airplanes. The FAA believes that due to the characteristics of turbopropeller powered airplanes that make it desirable to operate at the maximum operating limit speed (V_{MO}/M_{MO}), and the increasing preoccupation of pilots with air traffic and other duties which distract them from continuous monitoring of airspeed instruments overspeed conditions can be a problem. Therefore, to insure early warning and thus to make a major portion of the speed margin available for pilot reaction and recovery maneuvers, the amendment requires that the speed warning device must give effective aural warning (differing distinctively from aural warnings used for other purposes) to the pilots whenever the speed exceeds V_{MO} plus 6 knots or $M_{MO}+0.01$.

It should also be noted that the proposal for § 23.1303(d) has been revised to make it like § 25.1303(a)(1) to allow for an air temperature indicator which provides indications that are convertible to free-air temperature.

Proposal 2–33. No unfavorable comments were received on the proposal to amend § 23.1309. Accordingly, the proposal is adopted without substantive change.

Proposal 2–34. One commentator suggested that proposed §§ 23.1322 and 25.1322 concerning warning, caution, and advisory lights be revised. The commentator noted that requiring a blue light for position indication was not always appropriate since blue was difficult, to see in direct sunlight but was readily distinguishable in heavily shaded installations. The FAA agrees that blue should not be an established standard applicable to all installations. Therefore proposed §§ 23.1322(d), 25.1322(d), 27.1322(d) and 29.1322(d), concerning blue lights, are withdrawn. Also see Proposal 2–82.

Proposal 2–35. The proposed amendments to §§ 23.1325, 25.1325, and 29.1325 concerning the static pressure sources are related to proposed amendments to § 27.1325 that are contained in Airworthiness Review Program, Notice No. 2: Miscellaneous Proposals (Notice 75–10; 40 FR 10812; March 7, 1975) and in Airworthiness Review Program, Notice No. 5: Equipment and System Proposals (Notice 75–23; 40 FR 23048; May 27, 1975). The proposed amendment to § 27.1325 in Notice 75–10 is being deferred until final rulemaking action is taken with respect to the related proposal in Notice 75–23. The proposed amendments to §§ 23.1325, 25.1325, and 29.1325 contained in Notice 75–10 are therefore being deferred until final rulemaking action is taken with respect to the related proposed amendments to § 27.1325. Comments submitted for Proposals 2–35, 2–83, and 2–183 will be considered at that time.

Proposal 2–36. One commentator questioned the proposed lead-in for § 23.1331(b). The commentator interpreted the proposal to mean that each instrument must have independent power sources and noted that the explanation did not indicate this to be intended. The FAA agrees that the proposal is not clear, and the proposal is withdrawn.

Proposal 2–37. The proposed change to § 23.1335 concerning the deletion of the section is related to a proposed amendment to § 23.1335 that is contained in Airworthiness Review Program, Notice No. 5: Equipment and Systems Proposals (Notice 75–23; 40 FR 23048; May 27, 1975). The proposed amendment to § 23.1335 contained in Notice No. 2 is therefore being deferred until final rulemaking action is taken with respect to the related proposals in Notice 75–23. Comments submitted for Proposal 2–37 will be considered at that time.

Proposal 2–38. No unfavorable comments were received on the proposal to amend § 23.1351. Accordingly, the proposal is adopted without substantive change.

Proposal 2–39. Proposed § 23.1353(f) concerning nickel-cadmium batteries is related to a proposed amendment to § 23.1581 that is contained in Airworthiness Review Program, Notice No. 6: Flight Proposals (Notice 75–25; 40 FR 24664; June 9, 1975). The proposed amendment to § 23.1353 contained in Notice No. 2 is therefore being deferred until final rulemaking action is taken with respect to the related proposal in Notice 75–25. Comments submitted for Proposal 2–39 will be considered at that time.

Proposal 2–40. For comments related to the proposed amendment of § 23.1385, see Proposal 2–89.

Proposal 2–41. One commentator suggested that proposed § 23.1411(b)(2) be revised to conform to the language in § 25.1411(b)(2). The FAA, however, believes a more specific standard is appropriate for §§ 23.1411 and 27.1411. Therefore, the proposed amendments to §§ 23.1411 and 27.1411 are adopted without substantive change.

Proposal 2–42. One commenator suggested that the proposed change to § 23.1549 be revised to accommodate horizontal scale powerplant instruments. The FAA agrees, and §§ 23.1549, 27.1549 and 29.1549, as adopted, will provide marking standards appropriate to circular, horizontal and vertical scale powerplant instruments.

Proposal 2–43. The proposed change to § 23.1555 concerning the information requirements of usable fuel in a restricted use fuel tank is related to a proposed amendment to § 23.1581 that is contained in Airworthiness Review Program, Notice No. 6: Flight Proposals (Notice 75–25; 40 FR 24664; June 9, 1975). The proposed amendment to § 23.1555 contained in Notice No. 2 is therefore being deferred until final rulemaking action is taken with respect to the related proposal in Notice 75–25. Comments submitted for Proposal 2–43 will be considered at that time.

Proposal 2–44. The proposed change to § 23.1557 concerning the system voltage marking requirement adjacent to its external power connection is related to a proposed amendment to § 23.1557 that is contained in Airworthiness Review Program, Notice No. 3: Powerplant Proposals (Notice 75–19; 40 FR 21866; May 19, 1975). The proposed amendment to § 23.1557 contained in Notice No. 2 is therefore being deferred until final rulemaking action is taken with respect to the related proposal in Notice 75–19. Comments submitted for Proposal 2–44 will be considered at that time.

Proposal 2–45. The proposed change to § 23.1581 concerning the Airplane Flight Manual is related to a proposed amendment to § 23.1581 that is contained in Airworthiness Review Program, Notice No. 6: Flight Proposals (Notice 75–25; 40 FR 24664; June 9, 1975). The proposed amendment to § 23.1581 contained in Notice No. 2 is therefore being deferred until final rulemaking action is taken with respect to the related Proposal in Notice 75–25. Comments submitted for Proposal 2–45 will be considered at that time.

Proposal 2–46. The proposed change to § 23.1587(a)(2) is related to proposed amendments to § 23.1587 that were contained in Airworthiness Review Program, Notice 6: Flight Proposals (Notice 75–25; 40 FR 24664; June 9, 1975). The proposed amendment to § 23.1587 contained in Notice No. 2 is therefore being deferred until final rulemaking action is taken with respect to the related proposal in Notice 75–25. Comments submitted for Proposal 2–46 will be considered at that time.

Proposal 2–47. One commentator suggested that considering the proposed deletion of §§ 25.45 through 25.75, current § 25.161(e) will need to be amended to replace the reference to § 25.69. The FAA agrees, and § 25.161(e)(1) is amended by striking the reference to § 25.69 and inserting in place thereof a reference to § 25.123(a). In addition, the FAA has found that § 25.201(c)(1) refers to § 25.49(c)(2)(i) that would also be deleted. Therefore, § 25.201(c)(1) as amended strikes the phrase "§ 25.49(c)(2)(i) for reciprocating engine powered airplanes, or in" and the phrase "for turbine engine powered airplanes".

Proposal 2–48. No unfavorable comments were received on the proposed change to strike the words "turbine powered" from § 25.101(a). Accordingly, proposed § 25.101(a) is adopted without substantive change.

No unfavorable comments were received on proposed § 25.101(b) and it is adopted as proposed except that it is clarified to indicate that the 80% relative humidity for reciprocating engines is based on standard atmospheric temperature (the vapor pressure values in the table in proposed § 25.101(b)(2) correspond to 80% relative humidity with a standard atmosphere).

Proposal 2–49. Based on comments received on the proposal to amend § 25.105 and on the related proposals to §§ 25.125, 25.241 and 25.1533(c), and upon further review by the FAA, Proposals 2–49, 2–51, 2–52 and the portion of 2–93 dealing with the new operating limitation requirements for transport category airplanes intended to be used in operations on unpaved runways are withdrawn.

Proposal 2–50. No unfavorable comments were received on the proposal to amend § 25.107. Accordingly, the proposal is adopted without substantive change.

Proposal 2–51. For comments related to the withdrawal of the proposed amendment of § 25.125, see Proposal 2–49.

Proposal 2–52. For comments related to the withdrawal of the proposal to add a new § 25.241, see Proposal 2–49.

Proposal 2–53. No unfavorable comments were received on the proposal to amend § 25.397. Accordingly, the proposal is adopted without substantive change.

Proposal 2–54. For comments related to the proposed amendment of the lead-in of § 25.603, see Proposal 2–11.

Proposal 2–55. No unfavorable comments were received on the proposal to amend § 25.675. Accordingly, the proposal is adopted without substantive change. Also see Proposal 2–13.

Proposal 2–56. No unfavorable comments were received on the proposal to amend § 25.685(a). Accordingly, the proposal is adopted without substantive change. See Proposal 2–109.

Proposal 2–57. No unfavorable comments were received on the proposal to add a new § 25.733(c). Accordingly, the proposal is adopted without substantive change.

Proposal 2–58. One commentator questioned whether the proposed § 25.775(e) would require that there be at least two windshield panels in the windshield for each pilot. The intent of the proposal, however, is to provide at least one windshield panel through which at least one pilot could see if vision was lost through another panel.

Proposal 2–59. Proposed § 25.783(g) concerning integral stairs installed in passenger entry doors that qualify as passenger exits is related to a proposed amendment to § 25.783 that is contained in Airworthiness Review Program, Notice No. 8: Aircraft, Engine, and Propeller Airworthiness, and Procedural Proposals (Notice 75–31; 40 FR 29410; July 11, 1975). The proposed amendment to § 25.783(g) contained in Notice No. 2 is therefore being deferred until final rulemaking action is taken with respect to the related proposal in Notice 75–31. Comments submitted for Proposal 2–59 will be considered at that time.

Proposal 2–60. The proposed change to § 25.785 is related to a proposed amendment to § 25.785 that is contained in Airworthiness Review Program, Notice No. 8: Aircraft, Engine, and Propeller Airworthiness, and Procedural Proposals (Notice 75–31; 40 FR 29410; July 11, 1975). The proposed amendment to § 25.785 contained in Notice No. 2 is, therefore, being deferred until final rulemaking action is taken with respect to the related proposal in Notice 75–31. Comments submitted for Proposal 2–60 will be considered at that time.

Proposal 2–61. No unfavorable comments were received on the proposed new § 25.787(c). However, based on a comment received on Proposal 2–111, this proposal has been revised to avoid any implication that lamps will be required in cargo compartments.

Proposal 2–62. Four of the five comments received were in favor of the proposal for § 25.815 that would provide for the approval of an aisle width of less than 12 inches, but not less than 9 inches, in transport airplanes with a passenger seating capacity of 10 or less if the aisle width is substantiated by necessary tests. One commentator requested that the proposal be withdrawn because it would result in a reduction in the margin of passenger safety. The FAA disagrees. Service experience with aircraft certificated with less than a 12 inch aisle width in the past has been satisfactory.

Moreover, the FAA will not certificate transport category aircraft with less than a 12 inch aisle width unless the Administrator finds by necessary test that the narrower aisle is safe.

The proposal is adopted without change.

Proposal 2–63. The proposed change to § 25.831 concerning the temperature and ventilation controls for the crew compartment is related to a proposed amendment to § 25.831 that is contained in Airworthiness Review Program Notice No. 5: Equipment and Systems Proposals (Notice 75–23; 40 FR 23048, May 27, 1975). The proposed amendment to § 25.831 contained in Notice No. 2 is therefore being deferred until final rulemaking action is taken with respect to the related proposal in Notice 75–23. Comments submitted for Proposal 2–63 will be considered at that time.

Proposal 2–64. One commentator recommended that proposed § 25.841(b)(1) be revised to make it clear that the pressure relief function may be combined with the regulating valve. The proposal would delete the requirement that one of the pressure relief valves be a pressure regulating valve, but it would still allow such a design. This was specifically covered in Notice 75–10.

One commentator suggested that the language "passenger or crew compartment" in proposed § 25.841(b)(8) be changed to read "occupiable area in the cabin" to ensure that a pressure sensor is located in the lower deck service compartment. The FAA believes the language "occupiable area in the cabin" does not clarify the proposed requirements. The language "passenger and crew compartment" is not limited to the main deck of the airplane, but includes a lower deck service compartment even though this lower deck service compartment may not be occupied during takeoff and landing. For clarification, the parenthetical "(including upper and lower lobe galleys)" has been added to § 25.841(b)(8) as adopted.

Proposal 2–65. The proposed change to § 25.853 concerning the certification requirements necessary to permit smoking in transport category airplanes is related to a proposed amendment to § 25.853 that is contained in Airworthiness Review Program, Notice No. 8: Aircraft, Engine, and Propeller Airworthiness, and Procedural Proposals (Notice 75–31, 40 FR 29410; July 11, 1975). The proposed amendment to § 25.853 contained in Notice No. 2 is therefore being deferred until final rulemaking action is taken with respect to the related proposal in Notice 75–31. Comments submitted for Proposal 2–65 will be considered at that time.

Proposal 2–66. No unfavorable comments were received on the proposal to amend § 25.933(b). Accordingly, the proposal is adoped without substantive change.

Proposal 2–67. A commentator suggested that a cross-reference to § 25.143 should be added to proposed § 25.941. The FAA agrees that the pilot strength limits now set forth in § 25.143 should be referenced in § 25.941 in order to define appropriately what constitutes "exceptional strength on the part of the pilot". Accordingly, a paragraph (c) has been added to proposed § 25.941 for that purpose.

Proposal 2–68. Two commentators agreed with the intent of the proposed § 25.951(a) concerning fuel system design and operation of the auxiliary power unit (APU) but requested that it be withdrawn to allow time to review other Part 25 provisions for applicability to APU installations. The FAA does not believe that a further review of Part 25 should in this case, delay completion of this rulemaking action. However, if the FAA determines that the language "auxiliary power unit" should be specifically set forth in other provisions to avoid misinterpretation, the FAA will take action to clarify these provisions.

One commentator stated that the fuel system for an APU operated on the ground would be unnecessarily subject to the same requirement as the engine fuel system. The FAA does not agree that this is unnecessary. If certain operating conditions are the same for both the engine fuel system and the APU fuel system, the FAA believes that the requirements during such periods should be the same. The proposal is therefore adopted without substantive change.

Proposal 2–69. One commentator suggested that the language "proof and ultimate factors" in the proposal for new paragraphs (d) and (e) of § 25.979 be revised to be consistent with § 25.301. The FAA agrees that the terminology should be consistent and the section as adopted is reworded to use the term ultimate load.

One commentator questioned whether the design criteria for the pressure fueling system was applicable to fuel tanks and fuel tank vents. The proposed amendment to § 25.979 was not intended to apply to fuel tanks and vents. The section as adopted has been revised to make this clear.

Proposal 2–70. Several commentators questioned the meaning of the term "quick actuation drain valve" in proposed § 25.999(b)(3). The FAA agrees that the term may be subject to misinterpretation and that the provision is complete without the words "quick actuation".

One commentator asserted that the proposed requirement in § 25.999(b)(3) that the drain valve not be damaged in

the event of a landing with landing gear retracted was not a proper design specification since damage was beyond the control of the manufacturer. The FAA agrees that the language "so that it will not be damaged" is not proper for this requirement, but the FAA believes that the valve, the location of the valve, or both, can be designed to prevent fuel spillage, assuming that a landing is made with the landing gear retracted. The section as adopted has been revised to clarify this intent.

Proposal 2–71. One commentator suggested that proposed § 25.1027(d) be revised to limit the design consideration to sludge or other foreign matter entering the feathering system from the oil tank. The FAA disagrees. Design consideration and flexibility should not be limited to preventing entry of material into the feathering system. All sources of sludge and foreign matter must be considered since the purpose of the regulation is the safe operation of the propeller feathering system. The proposal, therefore is adopted without substantive change.

Proposal 2–72. One commentator suggested that the word "critical" be added before the language "ground, water, and flight operating conditions" in the proposal for § 25.1041, but no reason was given. As noted in the explanation to this proposal, § 25.1041 contains a general cooling requirement, while §§ 25.1043 and 25.1045 are more specific with respect to the type of operating conditions which must be considered during tests. Critical conditions are included in the test requirements of §§ 25.1043 and 25.1045. However, the FAA believes that cooling provisions must be adequate under all ground, water, and flight operating conditions.

Proposal 2–73. No unfavorable comments were received on the proposal to amend § 25.1091(c)(2). Accordingly, the proposal is adopted without substantive change.

Proposal 2–74. One commentator agreed with the proposal for § 25.1093 but suggested that the proposal be changed to agree with the format of the previous paragraphs. The FAA agrees, and the proposal as adopted has been structured the same as the previous paragraphs.

Proposal 2–75. One commentator objected to the proposed lead-in for § 25.1125 that limited the applicability of the section to reciprocating engines. The FAA does not believe that the requirements of this section are applicable to other than reciprocating engine powered airplanes. While some early turbine powered airplanes have had an ejector installation in the exhaust stream to pull cooling air through the nacelle, the FAA does not consider this to be an exhaust heat exchanger within the meaning of the language of § 25.1125. Therefore, the proposed lead-in for § 25.1125 is adopted without substantive change.

Proposed § 25.1125(a)(3) is withdrawn. For a discussion of the withdrawal, see Proposal 2–29.

Proposal 2–76. A commentator stated that the phrase "automatically controlled with relation to the amount of power produced by the engine" in proposed § 25.1143(d) is not appropriate for all fluid injection systems. The FAA agrees that the phrase is not appropriate for certain turbine engine powered airplanes and that further revision of § 25.1143(d) should be considered. Proposed § 25.1143(d) has therefore been withdrawn for further study.

No unfavorable comment was received concerning proposed § 25.1143(e) and this paragraph has been adopted without substantive change.

Proposal 2–77. No unfavorable comments were received on the proposal to add a new § 25.1167. Accordingly, the proposal is adopted without substantive change.

Proposal 2–78. No unfavorable comments were received on the proposal to amend § 25.1197(a). Accordingly, the proposal is adopted without substantive change.

Proposal 2–79. One commentator suggested that proposed § 25.1303(a)(2) be revised to clarify the method of clock indication which would be permitted under the regulation. The FAA agrees that the intent of the proposal was only to recognize the development of accurate digital clocks and that the minimum information presented should be the same. Proposed §§ 25.1303(a)(2) and 29.1303(d) as adopted are revised to make this clear.

Proposal 2–80. Several commentators suggested that the proposed change to § 25.1305 be revised to except antidetonant injection (ADI) systems from the powerplant instrument proposal for fluid augmentation systems. The commentators expressed the opinion that the proposal for § 25.1143(d) concerning automatic controls for fluid injection systems (other than fuel) eliminated the need for a powerplant instrument for the ADI system. The FAA believes that the flight crew should be able to monitor the proper functioning of any fluid system that is used for thrust or power augmentation and the section as adopted is applicable to ADI systems. However, the section has been clarified to ensure application only to fluids systems that are used for thrust or power augmentation.

Proposal 2–81. No unfavorable comments were received on the proposal to amend § 25.1309. Accordingly, the proposal is adopted without substantive change.

Proposal 2–82. One commentator questioned the proposed color standardization of warning, caution, and advisory lights in new § 25.1322. The commentator stated "arbitrary standards for specific light colors cannot always be stated" because of the design objective to minimize red lights that require immediate crew action and of the need to consider past experience, test, crew acceptance, and the specific application. The FAA agrees that considerations other than the need for standardization of light colors may dominate in special circumstances, and the section as adopted provides for approval by the Administrator of light colors that are different than the standard. As stated by the commentator and in the section as adopted, a design objective is to have red warning lights only if a hazard is to be indicated which may require immediate corrective action.

One commentator noted that the language "warning light" is used in other sections of the regulations, such as § 25.812(e)(2), and a hazard which may require immediate corrective action will not be indicated. The FAA does not agree; the light noted in § 25.812(e)(2) should be red in future designs unless otherwise approved by the Administrator. The FAA believes that in other sections, if the language "warning light" is used, it is consistent with proposed new § 25.1322. However, if the language "warning light" is determined to be not generally applicable, later rulemaking action can be instituted.

One commentator suggested a clarification of the lead-in of the proposal to limit its applicability to lights installed in the cockpit as indicated in the explanation to the proposal. The FAA agrees, and the lead-ins of §§ 23.1322, 25.1322, 27.1322, and 29.1322 have been clarified.

Also see Proposal 2–34 for a discussion of the withdrawal of the blue light proposal.

Proposal 2–83. For comments related to the deferral of proposed § 25.1325(g), see Proposal 2–35.

Proposal 2–84. The proposed change to § 25.1329 concerning the redesignation of § 25.1329 as § 25.1311 and the addition of provisions for automatic flight control systems is related to a proposed amendment to § 25.1329 that is contained in Airworthiness Review Program, Notice No. 5: Equipment and Systems Proposals (Notice 75–23; 40 FR 23048, May 27, 1975). The proposed amendment to § 25.1329 contained in Notice No. 2 is therefore being deferred until final rulemaking action is taken with respect to the related proposal in Notice 75–23. Comments submitted for Proposal 2–84 will be considered at that time.

Proposal 2–85. Proposed § 25.1331(a)(2) concerning instruments using a power supply is related to proposed amendments to §§ 25.1331 and 25.1333 that are contained in Airworthiness Review Program, Notice No. 5: Equipment and Systems Proposals (Notice 75–23; 40 FR 23048; May 27, 1975). The proposed amendment to § 25.1331(a)(2) contained in Notice No. 2 is therefore being deferred until final rulemaking action is taken with respect to the related proposals in Notice 75–23. Comments submitted for Proposal 2–85 will be considered at that time.

Proposal 2–86. Proposed § 25.1337(a) concerning auxiliary power unit instrument lines is related to a proposed amendment to § 25.1337(a) that is contained in Airworthiness Review Program, Notice No. 3: Powerplant Proposals (Notice 75–19; 40 FR 21866; May 19, 1975). The proposed amendment to § 25.1337(a) contained in Notice No. 2 is therefore deferred until final rulemaking action is taken with respect to the related proposal in Notice 75–19. Comments submitted for

Proposal 2–86 will be considered at that time.

Proposal 2–87. Proposed § 25.1353(c)(5) is related to a proposed amendment to § 25.1585 that is contained in Airworthiness Review Program, Notice No. 6: Flight Proposals (Notice 75–25; 40 FR 24664; June 9, 1975). The proposed amendment to § 25.1353(c)(5) contained in Notice No. 2 is therefore being deferred until final rulemaking action is taken with respect to the related proposal in Notice 75–25. Comments submitted for Proposal 2–87 will be considered at that time.

Proposal 2–88. No unfavorable comments were received on the proposal to amend § 25.1355(c). Accordingly, the proposal is adopted without substantive change.

Proposal 2–89. Several commentators suggested that the list of factors to consider for locating forward and rear position lights in proposed §§ 23.1385, 25.1385, 27.1385, and 29.1385 was incomplete.

Two commentators, also suggested that proposed §§ 23.1385(c) and 25.1385(c) be revised to permit a new position light to be installed on each wing tip. The FAA agrees that further study is necessary to develop factors of general applicability for position lights on all aircraft but that a rear position light as far aft as practical on each wing tip of an airplane is a reasonable alternative location. Accordingly, proposed §§ 23.1385(c) and 25.1385(c) have been revised. The proposals concerning the list of factors to be considered for locating forward and rear position lights in § 25.1385 and paralleled in proposed §§ 23.1385, 27.1385, and 29.1385 are withdrawn. However, the deletion of the passing light requirement from current § 25.1385(e) will be made.

Proposal 2–90. One commentator asserted that proposed new § 25.1403 was an operating requirement, not an airworthiness requirement and therefore was not appropriate for Part 25. Although a similar requirement currently exists in § 121.341(b), the FAA believes that such a requirement should be applicable to all newly certificated transport category airplanes.

Two commentators pointed out that the proposal differs from § 121.341(b) in that the proposal was not limited to the area of the wings that are critical from the standpoint of ice accumulation. The FAA agrees, and the section as adopted has been revised accordingly.

A comment was also received that expressed the belief that under the proposal, illumination or other means of ice detection would not be necessary if the wing was shown to have acceptable ice accumulation characteristics. The FAA does not agree. Unless an operating limitation prohibits operations at night in known or forecast icing conditions, the means set forth are required.

Proposal 2–91. Several commentators said that the proposed change to § 25.1439(b)(2)(ii) concerning standards for masks and eye coverings was premature in view of the current testing being conducted on this type of equipment by the FAA. The FAA agrees that this proposed amendment is premature, and new standards are being considered for a later rulemaking action. The proposed change to § 25.1439(b)(2)(ii) is therefore withdrawn.

No unfavorable coments were received on the proposal to amend paragraph (a) of § 25.1439. Accordingly, the proposal is adopted without substantive change.

Proposal 2–92. No unfavorable comments were received on the proposal to amend § 25.1515. Accordingly, the proposal is adopted without substantive change.

Proposal 2–93. No unfavorable comments were received on the proposal to amend the heading of § 25.1533 and on the proposal to amend § 25.1533(a). Accordingly, this amendment is adopted without substantive change. For comments related to the withdrawal of the proposed new § 25.1533(c), see Proposal 2–49.

Proposal 2–94. The proposed change to § 25.1549 concerning the marking requirements for powerplant instruments is related to a proposed amendment to § 25.1549 that is contained in Airworthiness Review Program, Notice No. 3: Powerplant Proposals (Notice 75–19; 40 FR 21866; May 19, 1975). The proposed amendment to § 25.1549 contained in Notice No. 2 is therefore deferred until final rulemaking action is taken with respect to the related proposal in Notice 75–19. Comments submitted for Proposal 2–94 will be considered at that time.

Proposal 2–95. One commentator took exception to the proposed deletion of the requirement for marking fuel and oil tank capacities at the filler openings in § 25.1557(b). The FAA believes this method of providing the usable fuel tank capacity and the oil tank capacity is no longer necessary. The pilot has the fuel quantity gage and the Airplane Flight Manual, and the servicing personnel usually have no interest in the usable fuel tank capacity. The determination of oil level in oil tanks is usually accomplished with the dipstick. Accordingly, the proposal is adopted without substantive change.

Proposal 2–96. The proposed change to § 25.1581 concerning the Airplane Flight Manual is related to a proposed amendment to § 25.1581 that is contained in Airworthiness Review Program, Notice No. 6: Flight Proposals (Notice 75–25; 40 FR 24664; June 9, 1975). The proposed amendment to § 25.1581 contained in Notice No. 2 is therefore being deferred until final rulemaking action is taken with respect to the related proposal in Notice 75–25. Comments submitted for Proposal 2–96 will be considered at that time.

Proposal 2–97. No unfavorable comments were received on the proposal to amend § 25.1583. Accordingly, the proposal is adopted without substantive change.

Proposal 2–98. The proposed change to § 25.1587 concerning performance information is related to a proposed amendment to § 25.1587 that is contained in Airworthiness Review Program, Notice No. 6: Flight Proposals (Notice 75–25; 40 FR 24664; June 9, 1975). The proposed amendment to § 25.1587 contained in Notice No. 2 is therefore being deferred until final rulemaking action is taken with respect to the related proposal in Notice 75–25. Comments submitted for Proposal 2–98 will be considered at that time.

Proposal 2–99. Two commentators questioned the applicability of proposed § 27.25(c) concerning a total weight that was greater than the maximum weight established under § 27.25(a) and noted that a clarification of the applicable flight requirements was needed. The FAA agrees that proposed § 27.25(c) should be clarified. Proposed §§ 27.25(c) and 29.25(c) are intended to provide only a total weight standard for approving the rotorcraft structure for rotorcraft that will be operated under Part 133. Proposed §§ 27.25(c) and 29.25(c) as adopted have been revised to clarify this intent.

Proposal 2–100. Proposed § 27.65(a)(2)(i) concerning climb gradients for rotorcraft other than helicopters is related to a proposed new § 27.1587(b)(3) that is contained in Airworthiness Review Program, Notice No. 2: Miscellaneous Proposals (Notice 75–10; 40 FR 10802; March 7, 1975). The proposed amendment to § 27.1587 contained in Notice 75–10 is being deferred; see Proposal 2–140. Therefore, the proposed amendment to § 27.65 contained in Notice 75–10 is also deferred until final rulemaking action is taken with respect to the related proposal for § 27.1587. Comments submitted for Proposal 2–100 will be considered at that time.

Proposal 2–101. No unfavorable comments were received on the proposal to amend § 27.141. Accordingly, the proposal is adopted without substantive change.

Proposal 2–102. No unfavorable comments were received on the proposal to amend § 27.173(a). Accordingly, the proposal is adopted without substantive change.

Proposal 2–103. No unfavorable comments were received on the proposal to amend § 27.175(d)(2)(iv). Accordingly, the proposal is adopted without substantive change.

Proposal 2–104. No unfavorable comments were received on the proposal to amend § 27.321(a). Accordingly, the proposal is adopted without substantive change.

Proposal 2–105. No unfavorable comments were received on the proposal to amend § 27.339. Accordingly, the proposal is adopted without substantive change.

Proposal 2–106. Two commentators suggested that the limit pilot torque for rotorcraft twist controls in proposed §§ 27.397(b)(2) and 29.397(b)(2) should be 80 times the radius (R) in inches instead of 133 inch-pounds, as proposed. The FAA agrees that the pilot torque load requirements should be a function of the radius (R). Also the FAA does not expect the radius (R) of any twist control installed on any rotorcraft type certificated in the future to be greater than 133/80 inches. Therefore, the proposals

as adopted revise the limit pilot torque load to 80R inch-pounds.

Proposal 2–107. No unfavorable comments were received on the proposal to add a new § 27.563. Accordingly, the proposal is adopted without substantive change.

Proposal 2–108. No unfavorable comments were received on the proposal to amend § 27.603. Accordingly, the proposal is adopted without substantive change.

Proposal 2–109. One commentator disagreed with proposed §§ 27.685(a) and 29.685(a) that would require the consideration of the effects of the freezing of moisture on control systems since §§ 27.685(a) and 29.635(a) currently require that control systems be designed to prevent jamming. While the explanation for this proposal indicated that the freezing of moisture was a common cause of control jamming, the proposal is also directed at preventing chafing and interference caused by the freezing of moisture. Accordingly, the proposals are adopted without substantive change.

Proposal 2–110. No unfavorable comments were received on the proposal to add a new § 27.733(c). Accordingly, the proposal is adopted without substantive change.

Proposal 2–111. Based on a comment received, the proposed change to § 27.787 has been revised to avoid any implication that lamps will be required in cargo compartments.

Proposal 2–112. No unfavorable comments were received on the proposal to add a new § 27.801. Accordingly, the proposal is adopted without substantive change.

Proposal 2–113. Several commentators stated that the ditching emergency exit standards proposed for §§ 27.807(d) and 29.807 should not be applicable to all rotorcraft. The commentators noted that the new standards would unnecessarily penalize rotorcraft that would never be involved in a ditching situation. The FAA agrees that certain rotorcraft may not operate in areas where ditching is a concern. Compliance with the ditching emergency exit standards should not be required for all rotorcraft during type certification. Therefore, the proposals as adopted have been revised to make it applicable only to rotorcraft for which ditching certification is requested. The overhead hatch requirements proposed in new §§ 27.807(d)(2) and 29.807(d)(3) are withdrawn because of the possible hazards associated with a turning main rotor. In addition, the reference in proposed § 27.807(d) to § 27.807(a) has been deleted as unnecessary, and the reference in proposed § 29.807(d) to § 29.807(c) has been deleted as inappropriate.

Proposal 2–114. For comments related to the proposed amendment of § 27.853, see Proposal 2–18.

Proposal 2–115. Upon further FAA review proposed §§ 27.865(a) and 29.865(a) concerning external load attaching means have been revised to preclude the necessity of considering the application of an external load at angles that will not be obtained in service. One commentator objected to the requirement for a manual mechanical control for the quick-release device. The commentator stated that this requirement was too restrictive due to the other standby electrical systems available. The FAA does not agree. Contrary to the commentator's contention the reliability of controls other than manual mechanical controls have not been sufficiently substantiated to permit their use in place of a manual mechanical control.

Proposal 2–116. One commentator objected to the proposals to add new standards concerning turbine engine installations to §§ 27.903 and 29.903 that would be substantively identical to proposed § 23.903(b). The commentator requested that the proposals be withdrawn since helicopter service experience does not indicate that such a standard is necessary and due consideration has not been given to the differences between helicopter and airplane engine control systems. The FAA disagrees. While there are differences between helicopter and airplane engine installations, the FAA believes that the proposals would provide general design requirements relating to engine operating limitations and engine installation requirements and that these engine installation requirements should be paralleled in Parts 23, 27, and 29. Also see Proposal 2–19.

Proposal 2–117. For comments concerning proposed § 27.917(d), see Proposal 2–163.

Proposal 2–118. The proposed change to § 27.927 concerning the torque transmission test is related to a proposed amendment to § 27.927 that is contained in Airworthiness Review Program, Notice No. 3: Powerplant Proposals (Notice 75–19; 40 FR 21866; May 19, 1975). The proposed amendment to § 27.927 contained in Notice No. 2 is therefore deferred until final rulemaking action is taken with respect to the related proposal in Notice 75–19. Comments submitted for Proposal 2–118 will be considered at that time.

Proposal 2–119. No unfavorable comments were received on the proposal to add a new § 27.939(c). Accordingly, the proposal is adopted without substantive change.

Proposal 2–120. No unfavorable comments were received on the proposal to amend § 27.977. Accordingly, the proposal is adopted without substantive change.

Proposal 2–121. Two commentators objected to the proposals to amend §§ 27.999(b) and 29.999(b) to require the installation of quick actuation type drain valves that are readily accessible, which can be easily opened and closed, and is either located or protected so that it will not be damaged in the event of a landing with landing gear retracted. The commentators stated that the requirement to include crash landing consideration is not considered appropriate since there are a great number of other areas which must be covered in crash landing conditions.

The proposals, however, would require that the fuel system drain valves be either located or protected so that it will not be damaged in the event of a landing with landing gear retracted. There are no requirements in the proposal for consideration of crash landing conditions.

In consideration of comments discussed under Proposals 2–26, and 2–70, §§ 27.999(b)(3)(ii) and 29.999(b)(3)(ii), as adopted, have been clarified to more specifically provide a design consideration.

See Proposals 2–26 and 2–70.

Proposal 2–122. No unfavorable comments were received on the proposal to amend § 27.1043(c). Accordingly, the proposal is adopted without substantive change.

Proposal 2–123. No unfavorable comments were received on the proposal to add a new § 27.1093(c). The proposal as adopted has been editorially changed to agree with the format of the current section.

Proposal 2–124. No unfavorable comments were received on the proposal to add a new § 27.1123. Accordingly, the proposal is adopted without substantive change.

Proposal 2–125. No unfavorable comments were received on the proposal to add a new § 27.1143(d), and the proposal is adopted without substantive change. However, the heading of § 27.1143 has been amended to reflect the contents of the section after the adoption of a new paragraph (d).

Proposal 2–126. No unfavorable comments were received on the proposal to amend § 27.1185. Accordingly, the proposal is adopted without substantive change.

Proposal 2–127. For comments related to proposed amendment of § 27.1322, see Proposals 2–34 and 2–82.

Proposal 2–128. The proposed change to § 27.1325 concerning the static pressure sources is related to a proposed amendment to § 27.1325 that is contained in Airworthiness Review Program, Notice No. 5: Equipment and Systems Proposals (Notice 75–23; 40 FR 23048; May 27, 1975). The proposed amendment to § 27.1325 contained in Notice No. 2 is therefore being deferred until final rulemaking action is taken with respect to the related proposal in Notice 75–23. Comments submitted for Proposal 2–128 will be considered at that time.

Proposal 2–129. The proposal for a new § 27.1329 concerning the standards for automatic pilot systems is related to a proposed new § 27.1311 that is contained in Airworthiness Review Program, Notice No. 5: Equipment and Systems Proposals (Notice 75–23; 40 FR 23048; May 27, 1975). The proposal for § 27.1329 contained in Notice No. 2 is therefore being deferred until final rulemaking is taken with respect to the related proposal in Notice 75–23. Comments for Proposal 2–129 will be considered at that time.

Proposal 2–130. No unfavorable comments were received on the proposal to amend § 27.1351. Accordingly, the proposal is adopted without substantive change.

Proposal 2–131. Proposed § 27.1353(f) concerning nickel-cadmium batteries is related to a proposed amendment to

§ 27.1581 that is contained in Airworthiness Review Program, Notice No. 6: Flight Proposals (Notice 75–25; 40 FR 24664; June 9, 1975). The proposed amendment to § 27.1353(f) contained in Notice No. 2 is therefore being deferred until final rulemaking action is taken with respect to the related proposal in Notice 75–25. Comments submitted for Proposal 2–131 will be considered at that time.

Proposal 2–132. For comments related to the proposed amendment of § 27.1385 and the withdrawal of the proposal, see Proposal 2–89.

Proposal 2–133. No unfavorable comments were received on the proposal to amend § 27.1411. Accordingly, the proposal is adopted without substantive change.

Proposal 2–134. No unfavorable comments were received on the proposal to amend § 27.1415(b). Accordingly, the proposal is adopted without substantive change.

Proposal 2–135. The proposed change to § 27.1545 concerning the V_{ne} requirements is related to a proposed amendment to § 27.1505 that is contained in Airworthiness Review Program, Notice No. 6: Flight Proposals (Notice 75–25; 40 FR 24664; June 9, 1975). The proposed amendment to § 27.1545 contained in Notice No. 2 is therefore being deferred until final rulemaking action is taken with respect to the related proposal in Notice 75–25. Comments submitted for Proposal 2–135 will be considered at that time.

Proposal 2–136. For comments related to the proposed amendment of § 27.1549, see Proposal 2–42.

Proposal 2–137. No unfavorable comments were received on the proposal to amend § 27.1555(c). Accordingly, the proposal is adopted without substantive change.

Proposal 2–138. No unfavorable comments were received on the proposal to amend § 27.1557(c). Accordingly, the proposal is adopted without substantive change.

Proposal 2–139. The proposed change to § 27.1581 concerning the Airplane Flight Manual is related to a proposed amendment to § 27.1581 that is contained in Airworthiness Review Program, Notice No. 6: Flight Proposals (Notice 75–25; 40 FR 24664; June 9, 1975). The proposed amendment to § 27.1581 contained in Notice No. 2 is therefore being deferred until final rulemaking action is taken with respect to the related proposal in Notice 75–25. Comments submitted for Proposal 2–139 will be considered at that time.

Proposal 2–140. The proposed change to § 27.1587 is related to a proposed amendment to § 27.1581 that is contained in Airworthiness Review Program, Notice No. 6: Flight Proposals (Notice 75–25; 40 FR 24664; June 9, 1975). The proposed amendment to § 27.1587 contained in Notice No. 2 is therefore being deferred until final rulemaking action is taken with respect to the related proposal in Notice 75–25. Comments submitted for Proposal 2–140 will be considered at that time.

Proposal 2–141. One commentator suggested that the proposed new § 29.25(c) provisions be limited to category B rotorcraft. However no reason for the suggestion was stated. The FAA knows of no reason why the proposed provisions should be limited to category B rotorcraft. One commentator questioned the applicability of proposed new § 29.25(c) and noted that a clarification of the applicable flight requirements was needed. For discussion of this and other comments related to the proposed new § 29.25(c), see Proposal 2–99.

Proposal 2–142. No unfavorable comments were received on the proposal to amend § 29.63. Accordingly, the proposal is adopted without substantive change.

Proposal 2–143. Several commentators recommended that § 29.67(a)(1) be revised by adding the term "at V_{TOSS}" following the words "feet per minute", and by deleting the phrase "without ground effect". Although paragraph (a)(1)(iv) of § 29.67 as proposed defines the speed to be used in meeting the climb requirements of § 29.67(a)(1) as the takeoff safety speed, the FAA does not believe that the term "V_{TOSS}" is appropriate. Also the FAA does not agree that the phrase "without ground effect" should be deleted from § 29.67(a)(1). The FAA requires that all climb performance be conducted outside the influence of ground effect. Accordingly, the proposal is adopted without substantive change.

Proposal 2–144. No unfavorable comments were received on the proposal to amend § 29.71. Accordingly, the proposal is adopted without substantive change.

Proposal 2–145. No unfavorable comments were received on the proposal to amend § 29.75(b)(2). Accordingly, the proposal is adopted without substantive change.

Proposal 2–146. No unfavorable comments were received on the proposal to amend § 29.141. Accordingly, the proposal is adopted without substantive change.

Proposal 2–147. No unfavorable comments were received on the proposal to amend § 29.173(a). Accordingly, the proposal is adopted without substantive change.

Proposal 2–148. No unfavorable comments were received on the proposal to amend § 29.175(d)(2)(iv). Accordingly, the proposal is adopted without substantive change.

Proposal 2–149. For comments related to the proposed amendment of § 29.397, see Proposal 2–106.

Proposal 2–150. No unfavorable comments were received on the proposal to add a new § 29.563. Accordingly, the proposal is adopted without substantive change.

Proposal 2–151. No unfavorable comments were received on the proposal to amend § 29.603. Accordingly, the proposal is adopted without substantive change.

Proposal 2–152. For comments related to the proposed amendment of § 29.685(a), see Proposal 2–109.

Proposal 2–153. No unfavorable comments were received on the proposal to add a new § 29.733(c). Accordingly, the proposal is adopted without substantive change.

Proposal 2–154. The proposed change to § 29.783 concerning the requirements applicable to "airstair doors" in transport category rotorcraft is related to proposed amendments to § 25.783 that are contained in Airworthiness Review Program, Notice No. 2: Miscellaneous Proposals (Notice 75–10; 40 FR 10802; March 7, 1975) and in Airworthiness Review Program, Notice No. 8: Aircraft, Engine, and Propeller Airworthiness, and Procedural Proposals (Notice 75–31; 40 FR 29410; July 11, 1975). The proposed amendment to § 25.783 contained in Notice 75–10 is being deferred until final rulemaking action is taken with respect to the related proposal in Notice 75–31. The proposed amendment to § 29.783 contained in Notice 75–10 is therefore being deferred until final rulemaking action is taken with respect to the related proposal for § 25.783. Comments submitted for Proposal 2–154 will be considered at that time.

Proposal 2–155. No unfavorable comments were received on the proposed new § 29.787(d). However, based on a comment received on Proposal 2–111, this proposal has been revised to avoid any implication that lamps will be required in cargo compartments.

Proposal 2–156. No unfavorable comments were received on the proposal to add a new § 29.801. Accordingly, the proposal is adopted without substantive change.

Proposal 2–157. For comments related to the proposed amendment of § 29.807, see Proposal 2–113.

Proposal 2–158. No unfavorable comments were received on the proposal to add a new § 29.813(c). Accordingly, the proposal is adopted without substantive change.

Proposal 2–159. One commentator objected to the proposed change to § 29.815 for the same reasons as presented for the proposed change to § 25.815. The discussion of § 25.815 in Proposal 2–62 deals with this comment.

Proposal 2–160. For comments related to the proposed amendment of § 29.853, see Proposal 2–18.

Proposal 2–161. For comments related to the proposed new § 29.865, see Proposal 2–115.

Proposal 2–162. No unfavorable comments were received on the proposal to amend § 29.903(c)(1). Accordingly, the proposal is adopted without substantive change. For comments related to the proposal to add new standards concerning turbine engine installation, see Proposals 2–19 and 2–116.

Proposal 2–163. The only public comment received in response to proposed §§ 27.917(d) and 29.917(a) recommended that the present language in § 29.917(a) be used but gave no reason for the recommendation. The FAA believes that there should be a positive description of the cooling fans that must be considered as part of the rotor drive system. Accordingly, the proposals are adopted without substantive change.

Proposal 2–164. The proposed change to § 29.927 concerning the torque transmission test time is related to a proposed amendment to § 29.927 that is contained in Airworthiness Review Program, Notice No. 8: Aircraft, Engine, and Propeller Airworthiness, and Procedural Proposals (Notice 75–31; 40 FR 29410, July 11, 1975). The proposed amendment to § 29.927 contained in Notice No. 2 is therefore deferred until final rulemaking action is taken with respect to the related proposal in Notice 75–31. Comments submitted for Proposal 2–164 will be considered at that time.

Proposal 2–165. No unfavorable comments were received on the proposal to amend § 29.931. Accordingly, the proposal is adopted without substantive change.

Proposal 2–166. No unfavorable comments were received on the proposal to add a new § 29.939(c). Accordingly, the proposal is adopted without substantive change.

Proposal 2–167. No unfavorable comment was received on the proposal to amend § 29.951(a). Accordingly, the proposal is adopted without substantive change. Also see proposal 2–68.

Proposal 2–168. No unfavorable comments were received on the proposal to amend § 29.977. Accordingly, the proposal is adopted without substantive change.

Proposal 2–169. Based on comments concerning proposed changes to § 25.979, proposed new paragraphs (d) and (e) of § 29.979 have also been revised. See Proposal 2–69 for a discussion of the amendment to § 25.979.

Proposal 2–170. One commentator objected to the proposal to § 29.999 on the basis that the helicopter accident records do not show "any great number due to operators not draining fuel sumps." The FAA believes that this low accident rate due to water contamination in the fuel exists because most helicopters already use quick actuation drain valves.

One commentator questioned the need for proposed § 29.999(b) noting that current § 29.971(d) appears to have the same requirement. The FAA agrees that current § 29.971(d) would be redundant for fuel tank sump drains and has therefore deleted the standards for the fuel tank sump drain in § 29.971(d).

The fuel drain standards in § 29.999 (b) as proposed are applicable to each drain required by § 29.999(a) including the drains prescribed in § 29.971, but to avoid misinterpretation the section as adopted is clarified to specifically note the fuel tank sump drains prescribed in § 29.971.

Also see Proposals 2–26, 2–70, and 2–121.

Proposal 2–171. One commentator stated that proposed § 29.1041(a) should be revised to except "ground use only" auxiliary power units (APU's). The FAA disagrees. APU's that are permitted to operate only on the ground have inadvertently continued to operate in flight. Safe operation of APU's requires consideration of ground, water, and flight operating conditions. The proposal is therefore, adopted without substantive change.

Proposal 2–172. No unfavorable comments were received on the proposal to amend § 29.1043(c). Accordingly, the proposal is adopted without substantive change.

Proposal 2–173. No unfavorable comments were received on the proposal to add a new § 29.1093(c). The proposal as adopted has been editorially changed to agree with the format of the current section.

Proposal 2–174. For comments related to the proposed amendment of § 29.1125, see Proposals 2–29 and 2–75.

Proposal 2–175. No unfavorable comment was received on the proposal to amend § 29.1143 and the proposal is adopted without substantive change. However, the heading of § 29.1143 has been amended to reflect the contents of the section after the addition of a new paragraph (e).

Proposal 2–176. No unfavorable comments were received on the proposal to amend § 29.1165(f). Accordingly, the proposal is adopted without substantive change.

Proposal 2–177. Two commentators objected to the selective use of Part 33 requirements in the proposal for a new § 29.1167 that would provide substantiation requirements for accessory gearboxes that are not certificated as part of an engine. The FAA proposed to amend Part 29 like Part 25 for consistency. The FAA now believes that the proposed new § 29.1167 is inappropriate in view of the requirements to substantiate the rotor drive system including gear boxes under the rotor drive system endurance test requirements. Therefore, proposed new § 29.1167 is withdrawn.

Proposal 2–178. No unfavorable comments were received on the proposal to amend § 29.1189(a). Accordingly, the proposal is adopted without substantive change.

Proposal 2–179. No unfavorable comments were received on the proposal to amend § 29.1197(a). Accordingly, the proposal is adopted without substantive change.

Proposal 2–180. For comments related to the proposed amendment of § 29.1303 (d), see Proposal 2–79.

Proposal 2–181. No unfavorable comments were received on the proposal to amend § 29.1307. Accordingly, the proposal is adopted without substantive change.

Proposal 2–182. For comments related to proposed amendment of § 29.1322, see Proposals 2–34 and 2–82.

Proposal 2–183. For comments related to the deferral of proposed § 29.1325, see Proposal 2–35.

Proposal 2–184. The proposed change to § 29.1329 concerning automatic pilot systems is related to a proposed new § 29.1311 that is contained in Airworthiness Review Program, Notice No. 5: Equipment and Systems Proposals (Notice 75–23; 40 FR 23048; May 27, 1975). The proposal for § 29.1329 contained in Notice No. 2 is therefore being deferred until final rulemaking action is taken with respect to the related proposal in Notice 75–23. Comments submitted for Proposal 2–184 will be considered at that time.

Proposal 2–185. The proposed change to § 29.1337 concerning the auxiliary power unit instrument lines is related to a proposed amendment to § 29.1337 that is contained in Airworthiness Review Program, Notice No. 3: Powerplant Proposals (Notice 75–19; 40 FR 21866, May 19, 1975). The proposed amendments to § 29.1337 contained in Notice No. 2 is therefore deferred until final rulemaking action is taken with respect to the related proposal in Notice 75–19. Comments submitted for Proposal 2–185 will be considered at that time.

Proposal 2–186. Proposed § 29.1353(c)(5) concerning nickel-cadmium batteries is related to a proposed amendment to § 29.1585 that is contained in Airworthiness Review Program, Notice No. 6: Flight Proposals (Notice 75–25; 40 FR 24664; June 9, 1975). The proposed amendment to § 29.1353(c)(5) contained in Notice No. 2 is therefore being deferred until final rulemaking action is taken with respect to the related proposal in Notice 75–25. Comments submitted for Proposal 2–186 will be considered at that time.

Proposal 2–187. For comments related to the proposed amendment of § 29.1385 and the withdrawal of the proposal, see Proposal 2–89.

Proposal 2–188. The proposal for § 29.1545 concerning the V_{no} requirements is related to a proposed amendment to § 29.1505 that is contained in Airworthiness Review Program, Notice No. 6: Flight Proposals (Notice 75–25; 40 FR 24664; June 9, 1975). The proposed amendment to § 29.1545 contained in Notice No. 2 is therefore being deferred until final rulemaking action is taken with respect to the related proposal in Notice 75–25. Comments submitted for Proposal 2–188 will be considered at that time.

Proposal 2–189. For comments related to the proposed amendment of § 29.1549, see Proposal 2–42.

Proposal 2–190. No unfavorable comments were received on the proposal to amend § 29.1555(c). Accordingly, the proposal is adopted without substantive change.

Proposal 2–191. No unfavorable comments were received on the proposal to amend § 29.1557(c). Accordingly, the proposal is adopted without substantive change.

Proposal 2–192. The proposed change to § 29.1581 concerning the Airplane Flight Manual is related to a proposed amendment to § 29.1581 that is contained in Airworthiness Review Program, Notice No. 6: Flight Proposals (Notice 75–25; 40 FR 24664; June 9, 1975). The proposed amendment to § 29.1581 contained in Notice No. 2 is therefore being deferred until final rulemaking action is taken with respect to the related proposal in Notice 75–25. Comments submitted for Proposal 2–192 will be considered at that time.

Proposal 2–193. No unfavorable comments were received on the proposal to amend § 31.1. Accordingly, the proposal is adopted without substantive change.

Proposal 2–194. No unfavorable comments were received on the proposal to amend §§ 31.11 and 31.20. Accordingly, the proposal is adopted without substantive change.

Proposal 2–195. No unfavorable comment was received on the proposal to add a new § 31.14 concerning weight limits of manned free balloons. Therefore, the section is adopted without substantive change.

Proposal 2–196. No unfavorable comments were received on the proposal to amend § 31.45. Accordingly, the proposal is adopted without substantive change.

Proposal 2–197. No unfavorable comments were received on the proposal to add a new § 31.46. Accordingly, the proposal is adopted without substantive change.

Proposal 2–198. No unfavorable comments were received on the proposal to amend § 31.63. Accordingly, the proposal is adopted without substantive change.

Proposal 2–199. No unfavorable comments were received on the proposal to amend § 31.85. Accordingly, the proposal is adopted without substantive change.

Proposal 2–200. No unfavorable comments were received on the proposal to amend § 33.1. Accordingly, the proposal is adopted without substantive change.

Proposal 2–201. No unfavorable comments were received on the proposal to amend § 35.1. Accordingly, the proposal is adopted without substantive change.

Proposal 2–202. No unfavorable comments were received on the proposal to amend § 35.39. Accordingly, the proposal is adopted without substantive change.

Proposal 2–203. No unfavorable comments were received on the proposal to amend § 35.41(e). Accordingly, the proposal is adopted without substantive change.

Proposal 2–204. No unfavorable comments were received on the proposal to amend § 35.45(a). Accordingly, the proposal is adopted without substantive change.

Proposal 2–205. No unfavorable comments were received on the proposal to amend § 91.14. Accordingly, the proposal is adopted without substantive change.

Proposal 2–206. No unfavorable comments were received on the proposal to amend § 91.21(a). Accordingly, the proposal is adopted without substantive change.

Proposal 2–207. One commentator suggested that the proposed change to § 91.33(d)(6) concerning clock requirements should use the language of § 121.-305. The FAA believes that a standard should be specified in § 91.33(d)(6) for digital clocks and the proposal as adopted provides a specific standard. See Proposal 2–79.

Proposal 2–208. The intent of the proposed new § 91.193(g) is to require protective breathing equipment that would meet the standards proposed for § 25.-1439(b) on certain airplanes operated under Part 91 Subpart D. Based on the current testing being conducted on this type of equipment, the FAA is developing new standards for a later rulemaking action. The proposal for § 25.1439(b)(2)(ii) is being withdrawn (See Proposal 2–91). Therefore, the FAA believes that the proposal for § 91.193 is premature, and the proposal is withdrawn.

Proposal 2–209. Although no unfavorable comment was received on the proposed revision of § 91.209, the FAA believes that revision of similar ice protection provision in § 135.85 may be necessary. Amendments to §§ 91.209 and 135.85 should be considered together. Therefore, the proposed change to § 91.209 is withdrawn.

Proposal 2–210. No unfavorable comments were received on the proposal to amend § 121.171(b). Accordingly, the proposal is adopted without substantive change.

Proposal 2–211. No unfavorable comments were received on the proposal to amend § 121.199. Accordingly, the proposal is adopted without substantive change.

Proposal 2–212. No unfavorable comments were received on the proposal to amend §§ 121.331(b) and 121.333(b). Accordingly, the proposal is adopted without substantive change.

Proposal 2–213. The intent of proposed § 121.337(d) is to require protective breathing equipment that would meet the proposed requirements of § 25.1439(b) installed in certain airplanes operated under Part 121. However, proposed § 25.1439(b)(2)(ii) is withdrawn in this notice. Based on the current testing being conducted on this type of equipment, the FAA is developing new standards for a later rulemaking action. The FAA therefore believes that the proposed change to § 121.337 is premature and the proposal is withdrawn. Also see Proposal 2–91.

Proposal 2–214. No unfavorable comments were received on the proposal to amend § 127.105. Accordingly, the proposal is adopted without substantive change.

Proposal 2–215. No unfavorable comments were received on the proposal to add a new § 127.106. Accordingly, the proposal is adopted without substantive change.

Proposal 2–216. One commentator objected to the proposed amendment to § 133.1. The commentator stated that the proposal specifically eliminates the reference to airworthiness certification rules when, in fact, Subpart D is retained intact except for the standards for external-load attaching means and quick-release devices. The FAA agrees that reference to airworthiness requirements should not be deleted without other changes to Part 133, and the proposal is withdrawn.

Proposal 2–217. One commentator objected to the proposed amendment to § 133.41(c)(6). However no reason for the objection was stated. The proposal is therefore adopted herein without substantive change.

Proposal 2–218. One commentator requested that proposed § 133.43(a) be revised to provide for the use of external-load attaching means previously approved under Part 133. The FAA agrees and proposed § 133.43 is revised accordingly.

Proposal 2–219. No unfavorable comments were received on the proposal to amend § 133.45(c). Accordingly, the proposal is adopted without substantive change.

Proposal 2–220. No unfavorable comments were received on the proposal to amend § 135.71(a)(5). Accordingly, the proposal is adopted without substantive change.

Proposal 2–221. Based upon further review by the FAA proposed § 135.165(b)(2) is being withdrawn because, contrary to the explanation for the proposal in Notice 75–10, the proposal would result in unjustifiably different standards for transport category airplanes operated under Part 135 and those operated under Part 121.

(Secs. 313(a), 601, 603, 604, and 605 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421, 1423, 1424, and 1425); sec. 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c))

In consideration of the foregoing, and for the reasons stated in Notice 75–10, Parts 21, 23, 25, 27, 29, 31, 33, 35, 91, 121, 127, 133, and 135 of the Federal Aviation Regulations are amended as follows, effective February 1, 1977.

PART 21—CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS

1. By revising § 21.33(a) to read as follows:

§ 21.33 Inspection and tests.

(a) Each applicant must allow the Administrator to make any inspection and any flight and ground test necessary to determine compliance with the applicable requirements of the Federal Aviation Regulations. However, unless otherwise authorized by the Administrator—

(1) No aircraft, aircraft engine, propeller, or part thereof may be presented to the Administrator for test unless compliance with paragraphs (b)(2) through (b)(4) of this section has been shown for that aircraft, aircraft engine, propeller, or part thereof; and

(2) No change may be made to an aircraft, aircraft engine, propeller, or part thereof between the time that compliance with paragraphs (b)(2) through (b)(4) of this section is shown for that aircraft, aircraft engine, propeller, or part thereof and the time that it is presented to the Administrator for test.

* * * * *

PART 23—AIRWORTHINESS STANDARDS: NORMAL, UTILITY, AND ACROBATIC CATEGORY AIRPLANES

2. By revising the first sentence of § 23.23 to read as follows:

§ 23.23 Load distribution limits.

Ranges of weight and centers of gravity within which the airplane may be safely operated must be established and must include the range for lateral cen-

ters of gravity if possible loading conditions can result in significant variation of their positions. * * *

3. By revising § 23.141 to read as follows:

§ 23.141 General.

The airplane must meet the requirements of §§ 23.143 through 23.253 at the normally expected operating altitudes without exceptional piloting skill, alertness, or strength.

4. By revising § 23.143(b) to read as follows:

§ 23.143 General.

* * * * *

(b) It must be possible to make a smooth transition from one flight condition to another (including turns and slips) without danger of exceeding the limit load factor, under any probable operating condition (including, for multiengine airplanes, those conditions normally encountered in the sudden failure of any engine).

* * * * *

5. By amending § 23.145(c) by striking the words "without exceptional piloting skill", and the commas preceding and following those words; and by revising § 23.145(e) to read as follows:

§ 23.145 Longitudinal control.

* * * * *

(e) By using normal flight and power controls, except as otherwise noted in paragraphs (e)(1) and (e)(2), it must be possible in the following airplanes to establish a zero rate of descent at an attitude suitable for a controlled landing without exceeding the operational and structural limitations of the airplane:

(1) For single engine and multiengine airplanes, without the use of the primary longitudinal control system.

(2) For multiengine airplanes—

(i) Without the use of the primary directional control; and

(ii) If a single failure of any one connecting or transmitting link would affect both the longitudinal and directional primary control system, without the primary longitudinal and directional control system.

6. By revising § 23.175(c)(3) to read as follows:

§ 23.175 Demonstration of static longitudinal stability.

* * * * *

(c) * * *

(3) 75 percent of maximum continuous power for reciprocating engines, or for turbine engines, the maximum cruising power or thrust selected by the applicant as an operating limitation, except that the power need not exceed that required for level flight at V_{LE}; and

* * * * *

7. By amending the heading of § 23.397, revising the lead-in, table and footnotes 2 and 4 of § 23.397(b), and adding footnote 5 to § 23.397(b) to read as follows:

§ 23.397 Limit control forces and torques.

* * * * *

(b) The limit pilot forces and torques are as follows:

Control	Maximum forces or torques for design weight, weight equal to or less than 5,000 pounds [1]	Minimum forces or torques [2]
Aileron:		
Stick	67 lbs.	40 lbs.
Wheel [3]	50 D in.-lbs.[4]	40 D in.-lbs.[4]
Elevator:		
Stick	167 lbs.	100 lbs.
Wheel (symmetrical).	200 lbs.	100 lbs.
Wheel (unsymmetrical). [5]		100 lbs.
Rudder	200 lbs.	130 lbs.

[1] * * *

[2] If the design of any individual set of control systems or surfaces makes these specified minimum forces or torques inapplicable, values corresponding to the present hinge moments obtained under sec. 23.415, but not less than 0.6 of the specified minimum forces or torques, may be used.

[3] * * *

[4] D=wheel diameter (inches).

[5] The unsymmetrical force must be applied at one of the normal handgrip points on the control wheel.

8. By adding a new § 23.479(d) to read as follows:

§ 23.479 Level landing conditions.

* * * * *

(d) For airplanes with tip tanks or large overhung masses (such as turbopropeller or jet engines) supported by the wing, the tip tanks and the structure supporting the tanks or overhung masses must be designed for the effects of dynamic responses under the level landing conditions of either paragraph (a)(1) or (a)(2)(ii) of this section. In evaluating the effects of dynamic response, an airplane lift equal to the weight of the airplane may be assumed.

9. By revising the lead-in of § 23.603(a) to read as follows:

§ 23.603 Materials and workmanship.

(a) The suitability and durability of materials used for parts, the failure of which could adversely affect safety, must be—

* * * * *

10. By revising § 23.607 to read as follows:

§ 23.607 Self-locking nuts.

No self-locking nut may be used on any bolt subject to rotation in operation unless a nonfriction locking device is used in addition to the self-locking device.

11. By revising § 23.675 to read as follows:

§ 23.675 Stops.

(a) Each control system must have stops that positively limit the range of motion of each movable aerodynamic surface controlled by the system.

(b) Each stop must be located so that wear, slackness, or takeup adjustments will not adversely affect the control characteristics of the airplane because of a change in the range of surface travel.

(c) Each stop must be able to withstand any loads corresponding to the design conditions for the control system.

§ 23.685 [Amended]

12. By amending § 23.685(a) by striking the word "or" after "passengers", by striking the period after the word "objects" and inserting a comma in its place, followed by the words "or the freezing of moisture."

13. By adding a new § 23.733(c) to read as follows:

§ 23.733 Tires.

* * * * *

(c) Each tire installed on a retractable landing gear system must, at the maximum size of the tire type expected in service, have a clearance to surrounding structure and systems that is adequate to prevent contact between the tire and any part of the structure or systems.

14. By adding a new § 23.787(f) to read as follows:

§ 23.787 Cargo compartments.

* * * * *

(f) If cargo compartment lamps are installed, each lamp must be installed so as to prevent contact between lamp bulb and cargo.

15. By amending the first sentence of § 23.841(b)(1) and revising (b)(5) and (b)(6) to read as follows:

§ 23.841 Pressurized cabins.

* * * * *

(b) * * *

(1) Two pressure relief valves to automatically limit the positive pressure differential to a predetermined value at the maximum rate of flow delivered by the pressure source. * * *

* * * * *

(5) Instruments to indicate to the pilot the pressure differential, the cabin pressure altitude, and the rate of change of cabin pressure altitude.

(6) Warning indication at the pilot station to indicate when the safe or preset pressure differential is exceeded and when a cabin pressure altitude of 10,000 feet is exceeded.

* * * * *

16. By adding a new § 23.903(b) to read as follows:

§ 23.903 Engines.

* * * * *

(b) *Turbine engine installation.* For turbine engine installations, the powerplant systems associated with engine control devices, systems, and instrumentation must be designed to give reasonable assurance that those engine operating limitations that adversely affect turbine rotor structural integrity will not be exceeded in service.

* * * * *

§ 23.933 [Amended]

17. By adding at the end of the first sentence of § 23.933(b) the phrase, "including ground operation".

18. By redesignating the lead-in of § 23.971 and §§ 23.971(a) and 23.971(b) as § 23.971(a) and §§ 23.971(a)(1), and 23.971(a)(2), respectively, and by adding a new § 23.971(b) to read as follows:

§ 23.971 Fuel tank sump.

* * * * *

(b) Each sump, sediment bowl, and sediment chamber drain required by paragraph (a) of this section must comply with the drain provisions of § 23.999 (b) (1), (2), and (3).

19. By revising § 23.977 to read as follows:

§ 23.977 Fuel tank outlet.

(a) There must be a fuel strainer for the fuel tank outlet or for the booster pump. This strainer must—

(1) For reciprocating engine powered airplanes, have 8 to 16 meshes per inch; and

(2) For turbine engine powered airplanes, prevent the passage of any object that could restrict fuel flow or damage any fuel system component.

(b) The clear area of each fuel tank outlet strainer must be at least five times the area of the outlet line.

(c) The diameter of each strainer must be at least that of the fuel tank outlet.

(d) Each finger strainer must be accessible for inspection and cleaning.

20. By revising § 23.995(d) to read as follows:

§ 23.995 Fuel valves and controls.

* * * * *

(d) Each valve and fuel system control must be installed so that gravity and vibration will not affect the selected position.

* * * * *

21. By revising § 23.999(b) to read as follows:

§ 23.999 Fuel system drains.

* * * * *

(b) Each drain required by paragraph (a) of this section and § 23.971 must—

(1) Discharge clear of all parts of the airplane;

(2) Have manual or automatic means for positive locking in the closed position; and

(3) Have a drain valve—

(i) That is readily accessible and which can be easily opened and closed; and

(ii) That is either located or protected to prevent fuel spillage in the event of a landing with landing gear retracted.

22. By adding a new § 23.1093(c) to read as follows:

§ 23.1093 Induction system icing protection.

* * * * *

(c) For airplanes with reciprocating engines having superchargers to pressurize the air before it enters the carburetor, the heat rise in the air caused by that supercharging at any altitude may be utilized in determining compliance with paragraph (a) of this section if the heat rise utilized is that which will be available, automatically, for the applicable altitudes and operating condition because of supercharging.

23. By revising § 23.1111(c) to read as follows:

§ 23.1111 Turbine engine bleed air systems.

* * * * *

(c) Hazardous contamination of cabin air systems may not result from failures of the engine lubricating system.

24. By adding a new lead-in to § 23.1125 and by revising § 23.1125(a)(3) to read as follows:

§ 23.1125 Exhaust heat exchangers.

For reciprocating engine powered airplanes the following apply:

(a) * * *

(3) Each exchanger must have cooling provisions wherever it is subject to contact with exhaust gases.

* * * * *

25. By revising the heading of § 23.1143 and by adding a new § 23.1143(e) to read as follows:

§ 23.1143 Engine controls.

* * * * *

(e) If a power or thrust control incorporates a fuel shutoff feature, the control must have a means to prevent the inadvertent movement of the control into the shutoff position. The means must—

(1) Have a positive lock or stop at the idle position; and

(2) Require a separate and distinct operation to place the control in the shutoff position.

26. By adding a new § 23.1165(e) to read as follows:

§ 23.1165 Engine ignition systems.

* * * * *

(e) Each turbine engine ignition system must be independent of any electrical circuit that is not used for assisting, controlling, or analyzing the operation of that system.

27. By adding new § 23.1303 (d) and (e) to read as follows:

§ 23.1303 Flight and navigation instruments.

* * * * *

(d) For turbine engine powered airplanes, a free air temperature indicator or an air-temperature indicator which provides indications that are convertible to free-air.

(e) A speed warning device for—

(1) Turbine engine powered airplanes; and

(2) Other airplanes for which V_{MO}/M_{MO} and V_D/M_D are established under §§ 23.335(b)(4) and 23.1505(c) if V_{MO}/M_{MO} is greater than 0.8 V_D/M_D.

The speed warning device must give effective aural warning (differing distinctively from aural warnings used for other purposes) to the pilots whenever the speed exceeds V_{MO} plus 6 knots or $M_{MO}+0.01$. The upper limit of the production tolerance for the warning device may not exceed the prescribed warning speed.

§ 23.1309 [Amended]

28. By inserting a comma between the words "Equipment" and "systems," and between the words "systems" and "and", in the heading of § 23.1309.

29. By adding a new § 23.1322 to read as follows:

§ 23.1322 Warning, caution, and advisory lights.

If warning, caution, or advisory lights are installed in the cockpit, they must, unless otherwise approved by the Administrator, be—

(a) Red, for warning lights (lights indicating a hazard which may require immediate corrective action);

(b) Amber, for caution lights (lights indicating the possible need for future corrective action);

(c) Green, for safe operation lights; and

(d) Any other color, including white, for lights not described in paragraphs (a) through (c) of this section, provided the color differs sufficiently from the colors prescribed in paragraphs (a) through (c) of this section to avoid possible confusion.

30. By deleting the word "and" following the semicolon in § 23.1351(c)(3); by adding a semicolon and the word "and" at the end of § 23.1351(c)(4); and by adding a new § 23.1351(c)(5) to read as follows:

§ 23.1351 General.

* * * * *

(c) * * *

(5) Each generator must have an overvoltage control designed and installed to prevent damage to the electrical system, or to equipment supplied by the electrical system, that could result if that generator were to develop an overvoltage condition.

* * * * *

31. By revising § 23.1385(c) to read as follows:

§ 23.1385 Position light system installation.

* * * * *

(c) *Rear position light.* The rear position light must be a white light mounted as far aft as practicable on the tail or on each wing tip, and must be approved.

* * * * *

32. By revising § 23.1411 including the section heading to read as follows:

§ 23.1411 General.

(a) Required safety equipment to be used by the flight crew in an emergency, such as automatic liferaft releases, must be readily accessible.

(b) *Stowage provisions for required safety equipment* must be furnished and must—

(1) Be arranged so that the equipment is directly accessible and its location is obvious; and

(2) Protect the safety equipment from damage caused by being subjected to the inertia loads specified in § 23.561.

33. By revising § 23.1549 to read as follows:

§ 23.1549 Powerplant instruments.

For each required powerplant instrument, as appropriate to the type of instruments—

(a) Each maximum and, if applicable, minimum safe operating limit must be marked with a red radial or a red line;

(b) Each normal operating range must be marked with a green arc or green line, not extending beyond the maximum and minimum safe limits;

(c) Each takeoff and precautionary range must be marked with a yellow arc or a yellow line; and

(d) Each engine or propeller range that is restricted because of excessive vibration stresses must be marked with arcs or red lines.

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

§§ 25.45–25.75 [Deleted]

34. By striking the center heading, "PERFORMANCE: RECIPROCATING ENGINE POWERED AIRPLANES," following § 25.33, by deleting § 25.45 through and including § 25.75, and by striking the center heading, "PERFORMANCE: TURBINE ENGINE POWERED AIRPLANES," following § 25.75 and inserting in its place the center heading, "PERFORMANCE."

35. By revising § 25.101 (a) and (b) to read as follows:

§ 25.101 General.

(a) Unless otherwise prescribed, airplanes must meet the applicable performance requirements of this subpart for ambient atmospheric conditions and still air.

(b) The performance, as affected by engine power or thrust, must be based on the following relative humidities:

(1) For turbine engine powered airplanes, a relative humidity of—

(i) 80 percent, at and below standard temperatures; and

(ii) 34 percent, at and above standard temperatures plus 50 degrees F.

Between these two temperatures, the relative humidity must vary linearly.

(2) For reciprocating engine powered airplanes, a relative humidity of 80 percent in a standard atmosphere. Engine power corrections for vapor pressure must be made in accordance with the following table:

Altitude H (ft.)	Vapor pressure e (In. Hg.)	Specific humidity w (Lb. moisture per lb. dry air)	Density ratio $\sigma=\frac{\rho}{0.0023769}$
0	0.403	0.00849	0.99508
1,000	.354	.00773	.96672
2,000	.311	.00703	.93895
3,000	.272	.00638	.91178
4,000	.238	.00578	.88514
5,000	.207	.00523	.85910
6,000	.1805	.00472	.83361
7,000	.1566	.00425	.80870
8,000	.1356	.00382	.78434
9,000	.1172	.00343	.76053
10,000	.1010	.00307	.73722
15,000	.0463	.001710	.62868
20,000	.01978	.000896	.53263
25,000	.00778	.000436	.44806

* * * * *

§ 25.107 [Amended]

36. By amending § 25.107(b) (1) (i) and (b) (2) (i) by inserting the words "and reciprocating engine" between the words "turbopropeller" and "powered" in both subdivisions.

§ 25.161 [Amended]

37. By amending § 25.161(e) (1) by striking the reference "§ 25.69" and inserting in place thereof the reference "§ 25.123 (a)".

38. By amending the first sentence of § 25.201(c) (1) to read as follows:

§ 25.201 Stall demonstration.

* * * * *

(c) * * *

(1) With the airplane trimmed for straight flight at the speed prescribed in § 25.103(b) (1), reduce the speed with the elevator control until it is steady at slightly above stalling speed. * * *

* * * * *

39. By revising § 25.397(c) to read as follows:

§ 25.397 Control system loads.

* * * * *

(c) *Limit pilot forces and torques.* The limit pilot forces and torques are as follows:

Control	Maximum forces or torques	Minimum forces or torques
Aileron:		
Stick	100 lbs	40 lbs.
Wheel *	80 D in.-lbs.**	40 D in.-lbs.
Elevator:		
Stick	250 lbs	100 lbs.
Wheel (symmetrical)	300 lbs	100 lbs.
Wheel (unsymmetrical)[1]		100 lbs.
Rudder	300 lbs	130 lbs.

[1] The unsymmetrical forces must applied at one of the normal handgrip points on the periphery of the control wheel.

40. By revising the lead-in of § 25.603 to read as follows:

§ 25.603 Materials.

The suitability and durability of materials used for parts, the failure of which could adversely affect safety, must—

* * * * *

41. By revising § 25.675(a) to read as follows:

§ 25.675 Stops.

(a) Each control system must have stops that positively limit the range of motion of each movable aerodynamic surface controlled by the system.

* * * * *

§ 25.685 [Amended]

42. By amending § 25.685(a) by striking the word "or" after "passengers", and by striking the period after the word "objects" and inserting a comma in its place, followed by the words "or the freezing of moisture."

43. By adding a new § 25.733(c) to read as follows:

§ 25.733 Tires.

* * * * *

(c) Each tire installed on a retractable landing gear system must, at the maximum size of the tire type expected in service, have a clearance to surrounding structure and systems that is adequate to prevent contact between the tire and any part of the structure or systems.

44. By adding a new § 25.775(e) to read as follows:

§ 25.775 Windshields and windows.

* * * * *

(e) The windshield panels in front of the pilots must be arranged so that, assuming the loss of vision through any one panel, one or more panels remain available for use by a pilot seated at a pilot station to permit continued safe flight and landing.

45. By adding a new § 25.787(c) to read as follows:

§ 25.787 Stowage compartments.

* * * * *

(c) If cargo compartment lamps are installed, each lamp must be installed so as to prevent contact between lamp bulb and cargo.

§ 25.815 [Amended]

46. By amending the table in § 25.815 by placing an asterisk after the number "12" on the first line of the table, and adding a footnote to the table to read, "*A narrower width not less than 9 inches may be approved when substantiated by tests found necessary by the Administrator."

47. By amending § 25.841 by inserting the words "cabin pressure altitude" in place of the words "absolute pressure", "cabin absolute pressure", or "absolute pressure in the cabin" wherever those words appear in paragraphs (b) (5) and (b) (6); by inserting the word "exceeds" in place of the words, "is below that equivalent to", in paragraphs (b) (6); and by revising the first sentence of paragraph (b) (1) and by adding a new paragraph (b) (8) to read as follows:

§ 25.841 Pressurized cabins.

* * * * *

(b) * * *

(1) Two pressure relief valves to automatically limit the positive pressure differential to a predetermined value at the maximum rate of flow delivered by the pressure source. * * *

* * * * *

(8) The pressure sensors necessary to meet the requirements of paragraphs (b) (5) and (b) (6) of this section and § 25.1447(c), must be located and the sensing system designed so that, in the event of loss of cabin pressure in any passenger or crew compartment (including upper and lower lobe galleys), the warning and automatic presentation devices, required by those provisions, will be actuated without any delay that would significantly increase the hazards resulting from decompression.

§ 25.933 [Amended]

48. By adding at the end of the first sentence of § 25.933(b) the phrase, "including ground operation".

49. By adding a new § 25.941 following § 25.939 to read as follows:

§ 25.941 Inlet, engine, and exhaust compatibility.

For airplanes using variable inlet or exhaust system geometry, or both—

(a) The system comprised of the inlet, engine (including thrust augmentation systems, if incorporated), and exhaust must be shown to function properly under all operating conditions for which approval is sought, including all engine rotating speeds and power settings, and engine inlet and exhaust configurations;

(b) The dynamic effects of the operation of these (including consideration of probable malfunctions) upon the aerodynamic control of the airplane may not result in any condition that would require exceptional skill, alertness, or strength on the part of the pilot to avoid exceeding an operational or structural limitation of the airplane; and

(c) In showing compliance with paragraph (b) of this section, the pilot strength required may not exceed the limits set forth in § 25.143(c), subject to the conditions set forth in paragraphs (d) and (e) of § 25.143.

§ 25.951 [Amended]

50. By amending § 25.951(a) by inserting the phrase "and auxiliary power unit" between the words "engine" and "functioning" and by adding the phrase "and during which the engine or auxiliary power unit is permitted to be in operation" at the end of the paragraph.

51. By adding new §§ 25.979(d) and (e) to read as follows:

§ 25.979 Pressure fueling system.

* * * * *

(d) The airplane pressure fueling system (not including fuel tanks and fuel tank vents) must withstand an ultimate load that is 2.0 times the load arising from the maximum pressures, including surge, that is likely to occur during fueling. The maximum surge pressure must be established with any combination of tank valves being either intentionally or inadvertently closed.

(e) The airplane defueling system (not including fuel tanks and fuel tank vents) must withstand an ultimate load that is 2.0 times the load arising from the maximum permissible defueling pressure (positive or negative) at the airplane fueling connection.

52. By revising § 25.999(b) to read as follows:

§ 25.999 Fuel system drains.

* * * * *

(b) Each drain required by paragraph (a) of this section must—

(1) Discharge clear of all parts of the airplane;

(2) Have manual or automatic means for positive locking in the closed position; and

(3) Have a drain valve—

(i) That is readily accessible and which can be easily opened and closed; and

(ii) That is either located or protected to prevent fuel spillage in the event of a landing with landing gear retracted.

53. By adding a new § 25.1027(d) to read as follows:

§ 25.1027 Propeller feathering system.

* * * * *

(d) Provision must be made to prevent sludge or other foreign matter from affecting the safe operation of the propeller feathering system.

54. By revising § 25.1041 to read as follows:

§ 25.1041 General.

The powerplant and auxiliary power unit cooling provisions must be able to maintain the temperatures of powerplant components, engine fluids, and auxiliary power unit components and fluids within the temperature limits established for these components and fluids, under ground, water, and flight operating conditions, and after normal engine or auxiliary power unit shutdown, or both.

55. By revising § 25.1091(c)(2) to read as follows:

§ 25.1091 Air induction.

* * * * *

(c) * * *

(2) For reciprocating engines, there are means to prevent the emergence of backfire flames.

* * * * *

56. By adding a new § 25.1093(c) to read as follows:

§ 25.1093 Induction system deicing and anti-icing provisions.

* * * * *

(c) *Supercharged reciprocating engines.* For each engine having a supercharger to pressurize the air before it enters the carburetor, the heat rise in the air caused by that supercharging at any altitude may be utilized in determining compliance with paragraph (a) of this section if the heat rise utilized is that which will be available, automatically, for the applicable altitude and operating condition because of supercharging.

57. By adding a new lead-in sentence in § 25.1125 to read as follows:

§ 25.1125 Exhaust heat exchangers.

For reciprocating engine powered airplanes, the following apply:

* * * * *

58. By revising the heading of § 25.1143 and by revising § 25.1143(e) to read as follows:

§ 25.1143 Engine controls.

* * * * *

(e) If a power or thrust control incorporates a fuel shutoff feature, the control must have a means to prevent the inadvertent movement of the control into the shutoff position. The means must—

(1) Have a positive lock or stop at the idle position; and

(2) Require a separate and distinct operation to place the control in the shutoff position.

59. By adding a new § 25.1167 following § 25.1165 to read as follows:

§ 25.1167 Accessory gearboxes.

For airplanes equipped with an accessory gearbox that is not certificated as part of an engine—

(a) The engine with gearbox and connecting transmissions and shafts attached must be subjected to the tests specified in §§ 33.49 or 33.87 of this chapter, as applicable;

(b) The accessory gearbox must meet the requirements of §§ 33.25 and 33.53 or 33.91 of this chapter, as applicable; and

(c) Possible misalignments and torsional loadings of the gearbox, transmission, and shaft system, expected to result under normal operating conditions must be evaluated.

60. By revising § 25.1197(a) to read as follows:

§ 25.1197 Fire extinguishing agents.

(a) Fire extinguishing agents must—

(1) Be capable of extinguishing flames emanating from any burning of fluids or other combustible materials in the area protected by the fire extinguishing system; and

(2) Have thermal stability over the temperature range likely to be experienced in the compartment in which they are stored.

61. By revising § 25.1303(a)(2) to read as follows:

§ 25.1303 Flight and navigation instruments.

(a) * * *

(2) A clock displaying hours, minutes, and seconds with a sweep-second pointer or digital presentation.

62. By adding a new § 25.1305(f) to read as follows:

§ 25.1305 Powerplant instruments.

* * * * *

(f) For airplanes equipped with fluid systems (other than fuel) for thrust or power augmentation, an approved means must be provided to indicate the proper functioning of that system to the flight crew.

§ 25.1309 [Amended]

63. By inserting a comma between the words "Equipment" and "systems" and between the words "systems" and "and", in the heading of § 25.1309.

64. By adding a new § 25.1322 to read as follows:

§ 25.1322 Warning, caution, and advisory lights.

If warning, caution, or advisory lights are installed in the cockpit, they must, unless otherwise approved by the Administrator, be—

(a) Red, for warning lights (lights indicating a hazard which may require immediate corrective action);

(b) Amber, for caution lights (lights indicating the possible need for future corrective action);

(c) Green, for safe-operation lights; and

(d) Any other color, including white, for lights not described in paragraphs (a) through (c) of this section, provided the color differs sufficiently from the colors prescribed in paragraphs (a) through (c) of this section to avoid possible confusion.

65. By revising § 25.1355(c) to read as follows:

§ 25.1355 Distribution system.

* * * * *

(c) If two independent sources of electrical power for particular equipment or systems are required by this chapter, in the event of the failure of one power source for such equipment or system, another power source (including its separate feeder) must be automatically provided or be manually selectable to maintain equipment or system operation.

66. By deleting § 25.1385(e); and by revising § 25.1385(c) to read as follows:

§ 25.1385 Position light system installation.

* * * * *

(c) *Rear position light.* The rear position light must be a white light mounted as far aft as practicable on the tail or on each wing tip, and must be approved.

* * * * *

67. By adding a new § 25.1403 to read as follows:

§ 25.1403 Wing icing detection lights.

Unless operations at night in known or forecast icing conditions are prohibited by an operating limitation, a means must be provided for illuminating or otherwise determining the formation of ice on the parts of the wings that are critical from the standpoint of ice accumulation. Any illumination that is used must be of a type that will not cause glare or reflection that would handicap crewmembers in the performance of their duties.

68. By adding a sentence to the end of § 25.1439(a) to read as follows:

§ 25.1439 Protective breathing equipment.

(a) * * * In addition, protective breathing equipment must be installed in each isolated separate compartment in the airplane, including upper and lower lobe galleys, in which crewmember occupancy is permitted during flight for the maximum number of crewmembers expected to be in the area during any operation.

69. By revising § 25.1515(a) to read as follows:

§ 25.1515 Landing gear speeds.

(a) The established landing gear operating speed or speeds, V_{LO}, may not exceed the speed at which it is safe both to extend and to retract the landing gear, as determined under § 25.729 or by flight characteristics. If the extension speed is not the same as the retraction speed, the two speeds must be designated as $V_{LO(EXT)}$ and $V_{LO(RET)}$, respectively.

* * * * *

70. By amending the heading of § 25.1533, and revising the lead-in of paragraph (a) to read as follows:

§ 25.1533 Additional operating limitations.

(a) Additional operating limitations must be established as follows:

* * * * *

71. By revising § 25.1557(b) to read as follows:

§ 25.1557 Miscellaneous markings and placards.

* * * * *

(b) *Fuel and oil filler openings.* The following apply:

(1) Fuel filler openings must be marked at or near the filler cover with—

(i) The word "fuel";

(ii) For reciprocating engine powered airplanes, the minimum fuel grade;

(iii) For turbine engine powered airplanes, the permissible fuel designations; and

(iv) For pressure fueling systems, the maximum permissible fueling supply pressure and the maximum permissible defueling pressure.

(2) Oil filler openings must be marked at or near the filler cover with the word "oil".

* * * * *

72. By revising the lead-in of § 25.1583 (a) and §§ 25.1583 (a)(5) and (h) to read as follows:

§ 25.1583 Operating limitations.

(a) *Airspeed limitations.* The following airspeed limitations and any other airspeed limitations necessary for safe operation must be furnished:

* * * * *

(5) The landing gear operating speed or speeds, and a statement explaining the speeds as defined in § 25.1515(a).

* * * * *

(h) *Additional operating limitations.* The operating limitations established under § 25.1533 must be furnished.

PART 27—AIRWORTHINESS STANDARDS: NORMAL CATEGORY ROTORCRAFT

73. By adding a new § 27.25(c) to read as follows:

§ 27.25 Weight limits.

* * * * *

(c) *Total weight with jettisonable external load.* A total weight for the rotorcraft with jettisonable external load attached that is greater than the maximum weight established under paragraph (a) of this section may be established if structural component approval for external load operations under Part 133 of this chapter is requested and the following conditions are met:

(1) The portion of the total weight that is greater than the maximum weight established under paragraph (a) of this section is made up only of the weight of all or part of the jettisonable external load.

(2) Structural components of the rotorcraft are shown to comply with the applicable structural requirements of this part under the increased loads and stresses caused by the weight increase over that established under paragraph (a) of this section.

(3) Operation of the rotorcraft at a total weight greater than the maximum certificated weight established under paragraph (a) of this section is limited by appropriate operating limitations to rotorcraft external load operations under Part 133 of this chapter.

74. By revising the lead-in of § 27.141 (a) and §§ 27.141 (a)(3) and (a)(4), to read as follows:

§ 27.141 General.

* * * * *

(a) Except as specifically required in the applicable section, meet the requirements of this section and of §§ 27.143, 27.161, and 27.171 through 27.175—

* * * * *

(3) For power-on operations, under any condition of speed, power, and rotor r.p.m. for which certification is requested; and

(4) For power-off operations, under any condition of speed and rotor r.p.m. for which certification is requested that is attainable with the controls rigged in accordance with the approved rigging instructions and tolerances;

* * * * *

75. By revising § 27.173(a) to read as follows:

§ 27.173 Static longitudinal stability.

(a) The longitudinal cyclic control must be designed so that, with the throttle and collective pitch held constant, during the maneuvers specified in § 27.175 a rearward movement of the control is necessary to obtain a speed less than the trim speed, and a forward movement of the control is necessary to obtain a speed more than the trim speed—

(1) For power-on operations, over the full range of altitude and rotor r.p.m. for which certification is requested; and

(2) For power-off operations, over the range of altitude and rotor r.p.m. for which certification is requested that is attainable with the controls rigged in accordance with the approved rigging instructions and tolerances.

* * * * *

76. By revising § 27.175(d)(2)(iv) to read as follows:

§ 27.175 Demonstration of static longitudinal stability.

* * * * *

(d) * * *

(2) * * *

(iv) The landing gear extended; and

* * * * *

77. By revising § 27.321(a) to read as follows:

§ 27.321 General.

(a) The flight load factor must be assumed to act normal to the longitudinal

axis of the rotorcraft, and to be equal in magnitude and opposite in direction to the rotorcraft inertia load factor at the center of gravity.

* * * * *

§ 27.339 [Amended]

78. By inserting between the words "hub" and "and" in the first sentence of § 27.339, the phrase "and at each auxiliary lifting surface,".

79. By revising § 27.397, including its heading, to read as follows:

§ 27.397 Limit pilot forces and torques.

(a) Except as provided in paragraph (b) of this section, the limit pilot forces are as follows:

(1) For foot controls, 130 pounds.

(2) For stick controls, 100 pounds fore and aft, and 67 pounds laterally.

(b) For flap, tab, stabilizer, rotor brake, and landing gear operating controls, the follows apply (R=radius in inches):

(1) Crank, wheel, and lever controls, $[\frac{1+R}{3}] \times 50$ pounds, but not less than 50 pounds nor more than 100 pounds for hand operated controls or 130 pounds for foot operated controls, applied at any angle within 20 degrees of the plane of motion of the control.

(2) Twist controls, 80R pounds.

80. By adding a new § 27.563 to read as follows:

§ 27.563 Structural ditching provisions.

Structural strength considerations of ditching must be in accordance with § 27.801(e).

81. By revising the lead-in of § 27.603 to read as follows:

§ 27.603 Materials.

The suitability and durability of materials used for parts, the failure of which could adversely affect safety, must—

* * * * *

§ 27.685 [Amended]

82. By amending § 27.685(a) by striking the word "or" after "passengers", and by striking the period after the word "objects" and inserting a comma in its place, followed by the words "or the freezing of moisture."

83. By adding a new § 27.733(c) to read as follows:

§ 27.733 Tires.

* * * * *

(c) Each tire installed on a retractable landing gear system must, at the maximum size of the tire type expected in service, have a clearance to surrounding structure and systems that is adequate to prevent contact between the tire and any part of the structure or systems.

84. By adding a new § 27.787(d) to read as follows:

§ 27.787 Cargo compartments.

* * * * *

(d) If cargo compartment lamps are installed, each lamp must be installed so as to prevent contact between lamp bulb and cargo.

85. By adding a new § 27.801 to read as follows:

§ 27.801 Ditching.

(a) If certification with ditching provisions is requested, the rotorcraft must meet the requirements of this section and §§ 27.807(d), 27.1411 and 27.1415.

(b) Each practicable design measure, compatible with the general characteristics of the rotorcraft, must be taken to minimize the probability that in an emergency landing on water, the behavior of the rotorcraft would cause immediate injury to the occupants or would make it impossible for them to escape.

(c) The probable behavior of the rotorcraft in a water landing must be investigated by model tests or by comparison with rotorcraft of similar configuration for which the ditching characteristics are known. Scoops, flaps, projections, and any other factor likely to affect the hydrodynamic characteristics of the rotorcraft must be considered.

(d) It must be shown that, under reasonably probable water conditions, the flotation time and trim of the rotorcraft will allow the occupants to leave the rotorcraft and enter the life rafts required by § 27.1415. If compliance with this provision is shown by buoyancy and trim computations, appropriate allowances must be made for probable structural damage and leakage. If the rotorcraft has fuel tanks (with fuel jettisoning provisions) that can reasonably be expected to withstand a ditching without leakage, the jettisonable volume of fuel may be considered as buoyancy volume.

(e) Unless the effects of the collapse of external doors and windows are accounted for in the investigation of the probable behavior of the rotorcraft in a water landing (as prescribed in paragraphs (c) and (d) of this section), the external doors and windows must be designed to withstand the probable maximum local pressures.

86. By adding a new § 27.807(d) to read as follows:

§ 27.807 Emergency exits.

* * * * *

(d) *Ditching emergency exits for passengers.* If certification with ditching provisions is requested, one emergency exit on each side of the fuselage must—

(1) Be above the waterline; and

(2) Have at least the dimensions specified in paragraph (b) of this section.

87. By adding a new center heading and a new § 27.865 following § 27.861 to read as follows:

EXTERNAL LOAD ATTACHING MEANS

§ 27.865 External load attaching means.

(a) It must be shown by analysis or test, or both, that the rotorcraft external-load attaching means can withstand a limit static load equal to 2.5 times the maximum external load for which authorization is requested, applied in the vertical direction and in any direction making an angle of 30 degrees with the vertical, except for those directions having a forward component. However, the 30-degree angle may be reduced to a lesser angle if—

(1) An operating limitation is established limiting external load operations to such angles for which compliance with this paragraph has been shown; or

(2) It is shown that the lesser angle can not be exceeded in service.

(b) The external load attaching means for Class B and Class C rotorcraft-load combinations must include a device to enable the pilot to release the external load quickly during flight. This quick-release device, and the means by which it is controlled, must comply with the following:

(1) A control for the quick-release device must be installed on one of the pilot's primary controls and must be designed and located so that it may be operated by the pilot without hazardously limiting his ability to control the rotorcraft during an emergency situation.

(2) In addition a manual mechanical control for the quick-release device, readily accessible either to the pilot or to another crewmember, must be provided.

(3) The quick-release device must function properly with all external loads up to and including the maximum external load for which authorization is requested.

(c) A placard or marking must be installed next to the external-load attaching means stating the maximum authorized external load as demonstrated under § 27.25 and this section.

88. By adding a new § 27.903(c) to read as follows:

§ 27.903 Engines.

* * * * *

(c) *Turbine engine installation.* For turbine engine installations, the powerplant systems associated with engine control devices, systems, and instrumentation must be designed to give reasonable assurance that those engine operating limitations that adversely affect turbine rotor structural integrity will not be exceeded in service.

89. By adding a new § 27.917(d) to read as follows:

§ 27.917 Design.

* * * * *

(d) The rotor drive system includes any part necessary to transmit power from the engines to the rotor hubs. This includes gear boxes, shafting, universal joints, couplings, rotor brake assemblies, clutches, supporting bearings for shafting, any attendant accessory pads or drives, and any cooling fans that are a part of, attached to, or mounted on the rotor drive system.

90. By adding a new § 27.939(c) to read as follows:

§ 27.939 Turbine engine operating characteristics.

* * * * *

(c) For governor-controlled engines, it must be shown that there exists no hazardous torsional instability of the drive system associated with critical combinations of power, rotational speed, and control displacement.

91. By revising § 27.977 to read as follows:

§ 27.977 Fuel tank outlet.

(a) There must be a fuel strainer for the fuel tank outlet or for the booster pump. This strainer must—

(1) For reciprocating engine powered rotorcraft, have 8 to 16 meshes per inch; and

(2) For turbine engine powered rotorcraft, prevent the passage of any object that could restrict fuel flow or damage any fuel system component.

(b) The clear area of each fuel tank outlet strainer must be at least five times the area of the outlet line.

(c) The diameter of each strainer must be at least that of the fuel tank outlet.

(d) Each finger strainer must be accessible for inspection and cleaning.

92. By revising § 27.999(b) to read as follows:

§ 27.999 Fuel system drains.

* * * * *

(b) Each drain required by paragraph (a) of this section must—

(1) Discharge clear of all parts of the rotorcraft;

(2) Have manual or automatic means for positive locking in the closed position; and

(3) Have a drain valve—

(i) That is readily accessible and which can be easily opened and closed; and

(ii) That is either located or protected to prevent fuel spillage in the event of a landing with landing gear retracted.

93. By revising § 27.1043(c) to read as follows:

§ 27.1043 Cooling tests.

* * * * *

(c) *Correction factor (except cylinder barrels).* Unless a more rational correction applies, temperatures of engine fluids and power-plant components (except cylinder barrels) for which temperature limits are established, must be corrected by adding to them the difference between the maximum ambient atmospheric temperature and the temperature of the ambient air at the time of the first occurrence of the maximum component or fluid temperature recorded during the cooling test.

* * * * *

94. By adding a new § 27.1093(c) to read as follows:

§ 27.1093 Induction system icing protection.

* * * * *

(c) *Supercharged reciprocating engines.* For each engine having superchargers to pressurize the air before it enters the carburetor, the heat rise in the air caused by that supercharging at any altitude may be utilized in determining compliance with paragraph (a) of this section if the heat rise utilized is that which will be available, automatically, for the applicable altitude and operating condition because of supercharging.

95. By adding a new § 27.1123 following § 27.1121 and before the heading "Power Plant Controls and Accessories" to read as follows:

§ 27.1123 Exhaust piping.

(a) Exhaust piping must be heat and corrosion resistant, and must have provisions to prevent failure due to expansion by operating temperatures.

(b) Exhaust piping must be supported to withstand any vibration and inertia loads to which it would be subjected in operations.

(c) Exhaust piping connected to components between which relative motion could exist must have provisions for flexibility.

96. By revising the heading of § 27.1143 and by adding a new § 27.1143(d) to read as follows:

§ 27.1143 Engine controls.

* * * * *

(d) If a power or thrust control incorporates a fuel shutoff feature, the control must have a means to prevent the inadvertent movement of the control into the shutoff position. The means must—

(1) Have a positive lock or stop at the idle position; and

(2) Require a separate and distinct operation to place the control in the shutoff position.

97. By revising § 27.1185 (a) and (b) to read as follows:

§ 27.1185 Flammable fluids.

(a) Each fuel tank must be isolated from the engines by a firewall or shroud.

(b) Each tank or reservoir, other than a fuel tank, that is part of a system containing flammable fluids or gases must be isolated from the engine by a firewall or shroud, unless the design of the system, the materials used in the tank and its supports, the shutoff means, and the connections, lines and controls provide a degree of safety equal to that which would exist if the tank or reservoir were isolated from the engines.

* * * * *

98. By revising § 27.1322 to read as follows:

§ 27.1322 Warning, caution, and advisory lights.

If warning, caution or advisory lights are installed in the cockpit, they must, unless otherwise approved by the Administrator, be—

(a) Red, for warning lights (lights indicating a hazard which may require immediate corrective action);

(b) Amber, for caution lights (lights indicating the possible need for future corrective action);

(c) Green, for safe operation lights; and

(d) Any other color, including white, for lights not described in paragraphs (a) through (c) of this section, provided the color differs sufficiently from the colors prescribed in paragraphs (a) through (c) of this section to avoid possible confusion.

99. By deleting the word "and" following the semicolon in § 27.1351(c)(2); by adding a semicolon and the word "and" at the end of § 27.1351(c)(3); and by adding a new § 27.1351(c)(4) to read as follows:

§ 27.1351 General.

* * * * *

(c) * * *

(4) Each generator must have an overvoltage control designed and installed to prevent damage to the electrical system, or to equipment supplied by the electrical system, that could result if that generator were to develop an overvoltage condition.

100. By redesignating current § 27.1411 as § 27.1411(a) and adding a new § 27.1411(b) to read as follows:

§ 27.1411 General.

* * * * *

(b) Stowage provisions for required safety equipment must be furnished and must—

(1) Be arranged so that the equipment is directly accessible and its location is obvious; and

(2) Protect the safety equipment from damage caused by being subjected to the inertia loads specified in § 27.561.

101. By adding a sentence to the end of § 27.1415(b) to read as follows:

§ 27.1415 Ditching equipment.

* * * * *

(b) * * * The storage provisions for life preservers must accommodate one life preserver for each occupant for which certification for ditching is requested.

* * * * *

102. By revising § 27.1549 to read as follows:

§ 27.1549 Powerplant instruments.

For each required powerplant instrument, as appropriate to the type of instrument—

(a) Each maximum and, if applicable, minimum safe operating limit must be marked with a red radial or a red line;

(b) Each normal operating range must be marked with a green arc or green line, not extending beyond the maximum and minimum safe limits;

(c) Each takeoff and precautionary range must be marked with a yellow arc or yellow line; and

(d) Each engine or propeller range that is restricted because of excessive vibration stresses must be marked with red arcs or red lines.

103. By revising § 27.1555(c) to read as follows:

§ 27.1555 Control markings.

* * * * *

(c) Usable fuel capacity must be marked as follows:

(1) For fuel systems having no selector controls, the usable fuel capacity of the system must be indicated at the fuel quantity indicator.

(2) For fuel systems having selector controls, the usable fuel capacity available at each selector control position

must be indicated near the selector control.

* * * * *

104. By revising § 27.1557(c) to read as follows:

§ 27.1557 Miscellaneous markings and placards.

* * * * *

(c) *Fuel and oil filler openings.* The following apply:

(1) Fuel filler openings must be marked at or near the filler cover with—

(i) The word "fuel";

(ii) For reciprocating engine powered rotorcraft, the minimum fuel grade;

(iii) For turbine engine powered rotorcraft, the permissible fuel designations; and

(iv) For pressure fueling systems, the maximum permissible fueling supply pressure and the maximum permissible defueling pressure.

(2) Oil filler openings must be marked at or near the filler cover with the word "oil".

* * * * *

PART 29—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY ROTORCRAFT

105. By adding a new § 29.25(c) to read as follows:

§ 29.25 Weight limits.

* * * * *

(c) *Total weight with jettisonable external load.* A total weight for the rotorcraft with jettisonable external load attached that is greater than the maximum weight established under paragraph (a) of this section may be established if structural component approval for external load operations under Part 133 of this chapter is requested and the following conditions are met:

(1) The portion of the total weight that is greater than the maximum weight established under paragraph (a) of this section is made up only of the weight of all or part of the jettisonable external load.

(2) Structural components of the rotorcraft are shown to comply with the applicable structural requirements of this part under the increased loads and stresses caused by the weight increase over that established under paragraph (a) of this section.

(3) Operation of the rotorcraft at a total weight greater than the maximum certificated weight established under paragraph (a) of this section is limited by approriate operating limitations to rotorcraft external load operations under Part 133 of this chapter.

106. By revising the lead-in of § 29.63 to read as follows:

§ 29.63 Takeoff: category B.

The horizontal distance required to take off and climb over a 50-foot obstacle must be established with the most unfavorable center of gravity. The takeoff may be begun in any manner if—

* * * * *

107. By revising § 29.67(a)(1)(iv) and (a)(2)(iv) to read as follows:

§ 29.67 Climb: one engine inoperative.

(a) * * *

(1) * * *

(iv) The takeoff safety speed selected by the applicant; and

* * * * *

(2) * * *

(iv) A speed selected by the applicant; and

* * * * *

108. By revising § 29.71 to read as follows:

§ 29.71 Helicopter angle of glide: category B.

For each category B helicopter, except multiengine helicopters meeting the requirements of § 29.67(b) and the powerplant installation requirements of category A, the steady angle of glide must be determined in autorotation—

(a) At the forward speed for minimum rate of descent as selected by the applicant;

(b) At the forward speed for best glide angle;

(c) At maximum weight; and

(d) At the rotor speed or speeds selected by the applicant.

§ 29.75 [Amended]

109. By amending § 29.75(b)(2) by deleting the words "balked landing" and the commas preceding and following those words.

110. By revising the lead-in of § 29.141(a) and § 29.141(a)(3), and adding a new § 29.141(a)(4) to read as follows:

§ 29.141 General.

* * * * *

(a) Except as specifically required in the applicable section; meet the requirements of this section and of §§ 29.143, 29.161, and 29.171 through 29.175—

* * * * *

(3) For power-on operations, under any condition of speed, power, and rotor r.p.m., for which certification is requested; and

(4) For power-off operations, under any condition of speed and rotor r.p.m. for which certification is requested that is attainable with the controls rigged in accordance with the approved rigging instructions and tolerances;

* * * * *

111. By revising § 29.173(a) to read as follows:

§ 29.173 Static longitudinal stability.

(a) The longitudinal cyclic control must be designed so that, with the throttle and collective pitch held constant, during the maneuvers specified in § 29.175 a rearward movement of the control is necessary to obtain a speed less than the trim speed, and a forward movement of the control is necessary to obtain a speed more than the trim speed—

(1) For power-on operations, over the full range of altitude and rotor r.p.m. for which certification is requested; and

(2) For power-off operations, over the range of altitude and rotor r.p.m. for which certification is requested that is attainable with the controls rigged in accordance with the approved rigging instructions and tolerances.

* * * * *

112. By revising § 29.175(d)(2)(iv) to read as follows:

§ 29.175 Demonstration of static longitudinal stability.

* * * * *

(d) * * *

(2) * * *

(iv) The landing gear extended; and

* * * * *

113. By revising § 29.397, including its heading, to read as follows:

§ 29.397 Limit pilot forces and torques.

(a) Except as provided in paragraph (b) of this section, the limit pilot forces are as follows:

(1) For foot controls, 130 pounds.

(2) For stick controls, 100 pounds fore and aft, and 67 pounds laterally.

(b) For flap, tab, stabilizer, rotor brake, and landing gear operating controls, the following apply (R=radius in inches):

(1) Crank, wheel, and lever controls, $\frac{[1+R]}{3} \times 50$ pounds, but not less than 50 pounds nor more than 100 pounds for hand operated controls or 130 pounds for foot operated controls, applied at any angle within 20 degrees of the plane of motion of the control.

(2) Twist controls, 80R pounds.

114. By adding a new § 29.563 to read as follows:

§ 29.563 Structural ditching provisions.

Structural strength considerations of ditching must be in accordance with § 29.801(e).

115. By revising the lead-in of § 29.603 to read as follows:

§ 29.603 Materials.

The suitability and durability of materials used for parts, the failure of which could adversely affect safety, must—

* * * * *

§ 29.685 [Amended]

116. By amending § 29.685(a) by striking the word "or" after "passengers", and by striking the period after the word "objects" and inserting a comma in its place, followed by the words "or the freezing of moisture."

117. By adding a new § 29.733(c) to read as follows:

§ 29.733 Tires.

* * * * *

(c) Each tire installed on a retractable landing gear system must, at the maximum size of the tire type expected in service, have a clearance to surrounding structure and systems that is adequate to prevent contact between the tire and any part of the structure or systems.

118. By adding a new § 29.787(d) to read as follows:

§ 29.787 Cargo compartments.

* * * * *

(d) If cargo compartment lamps are installed, each lamp must be installed so as to prevent contact between lamp bulb and cargo.

119. By adding a new § 29.801 to read as follows:

§ 29.801 Ditching.

(a) If certification with ditching provisions is requested, the rotorcraft must meet the requirements of this section and §§ 29.807(d), 29.1411 and 29.1415.

(b) Each practicable design measure, compatible with the general characteristics of the rotorcraft, must be taken to minimize the probability that in an emergency landing on water, the behavior of the rotorcraft would cause immediate injury to the occupants or would make it impossible for them to escape.

(c) The probable behavior of the rotorcraft in a water landing must be investigated by model tests or by comparison with rotorcraft of similar configuration for which the ditching characteristics are known. Scoops, flaps, projections, and any other factors likely to affect the hydrodynamic characteristics of the rotorcraft must be considered.

(d) It must be shown that, under reasonably probable water conditions, the flotation time and trim of the rotorcraft will allow the occupants to leave the rotorcraft and enter the liferafts required by § 29.1415. If compliance with this provision is shown by buoyancy and trim computations, appropriate allowances must be made for probable structural damage and leakage. If the rotorcraft has fuel tanks (with fuel jettisoning provisions) that can reasonably be expected to withstand a ditching without leakage, the jettisonable volume of fuel may be considered as buoyancy volume.

(e) Unless the effects of the collapse of external doors and windows are accounted for in the investigation of the probable behavior of the rotorcraft in a water landing (as prescribed in paragraphs (c) and (d) of this section), the external doors and windows must be designed to withstand the probable maximum local pressures.

120. By redesignating § 29.807 (d) and (e) as (e) and (f) respectively, and adding a new § 29.807(d) to read as follows:

§ 29.807 Passenger emergency exits.

* * * * *

(d) *Ditching emergency exits for passengers.* If certification with ditching provisions is requested, ditching emergency exits must be provided in accordance with the following requirements, unless the emergency exits required by paragraph (b) of this section already meet them:

(1) For rotorcraft that have a passenger seating configuration, excluding pilots seats, of nine seats or less, one exit above the waterline in each side of the rotorcraft, meeting at least the dimensions of a Type IV exit.

(2) For rotorcraft that have a passenger seating configuration, excluding pilots seats, of 10 seats or more, one exit above the waterline in a side of the rotorcraft meeting at least the dimensions of a Type III exit, for each unit (or part of a unit) of 35 passenger seats, but no less than two such exits in the passenger cabin, with one on each side of the rotorcraft. However, where it has been shown through analysis, ditching demonstrations, or any other tests found necessary by the Administrator, that the evacuation capability of the rotorcraft during ditching is improved by the use of larger exits, or by other means, the passenger seat to exit ratio may be increased.

121. By adding a new § 29.813(c) to read as follows:

§ 29.813 Emergency exit access.

* * * * *

(c) There must be access from each aisle to each Type III and Type IV exit, and

(1) For rotorcraft that have a passenger seating configuration, excluding pilot seats, of 20 or more, the projected opening of the exit provided must not be obstructed by seats, berths, or other protrusions (including seatbacks in any position) for a distance from that exit of not less than the width of the narrowest passenger seat installed on the rotorcraft;

(2) For rotorcraft that have a passenger seating configuration, excluding pilot seats, of 19 or less, there may be minor obstructions in the region described in subparagraph (1) of this paragraph, if there are compensating factors to maintain the effectiveness of the exit.

§ 29.815 [Amended]

122. By amending the table in § 29.815 by adding an asterisk after the number "12" in the first line of the table; by striking the number "18" (incorrectly specified as "81" in the Code of Federal Regulations) in the first line of the table and inserting the number "15" in its place; and by adding a footnote to the table to read, "* A narrower width not less than 9 inches may be approved when substantiated by tests found necessary by the Administrator."

123. By adding a new center heading a new § 29.865 following § 29.863 to read as follows:

EXTERNAL LOAD ATTACHING MEANS

§ 29.865 External load attaching means.

(a) It must be shown by analysis or test, or both, that the rotorcraft external-load attaching means can withstand a limit static load equal to 2.5 times the maximum external load for which authorization is requested, applied in the vertical direction and in any direction making an angle of 30 degrees with the vertical, except for those directions having a forward component. However, the 30-degree angle may be reduced to a lesser angle if—

(1) An operating limitation is established limiting external load operations to such angles for which compliance with this paragraph has been shown; or

(2) It is shown that the lesser angle can not be exceeded in service.

(b) The external load attaching means for Class B and Class C rotorcraft-load combinations must include a device to enable the pilot to release the external load quickly during flight. This quick-release device, and the means by which it is controlled, must comply with the following:

(1) A control for the quick-release device must be installed on one of the pilot's primary controls and must be designed and located so that it may be operated by the pilot without hazardously limiting his ability to control the rotorcraft during an emergency situation.

(2) In addition a manual mechanical control for the quick-release device, readily accessible either to the pilot or to another crew member, must be provided.

(3) The quick-release device must function properly with all external loads up to and including the maximum external load for which authorization is requested.

(c) A placard or marking must be installed next to the external-load attaching means stating the maximum authorized external load as demonstrated under § 29.25 and this section.

124. By revising § 29.903(c) (1) and (f) to read as follows:

§ 29.903 Engines.

* * * * *

(c) * * *

(1) Each component of the engine stopping system that is located on the engine side of the firewall, and that might be exposed to fire, must be at least fire resistant; or

* * * * *

(f) *Turbine engine installation.* For turbine engine installations, the powerplant systems associated with engine control devices, systems, and instrumentation must be designed to give reasonable assurance that those engine operating limitations that adversely affect turbine rotor structural integrity will not be exceeded in service.

125. By revising the second sentence of § 29.917(a) to read as follows:

§ 29.917 Design.

(a) * * * This includes gear boxes, shafting, universal joints, couplings, rotor brake assemblies, clutches, supporting bearings for shafting, any attendant accessory pads or drives, and any cooling fans that are a part of, attached to, or mounted on the rotor drive system.

* * * * *

126. By revising § 29.931 to read as follows:

§ 29.931 Shafting critical speed.

(a) The critical speeds of any shafting must be determined by demonstration except that analytical methods may be used if reliable methods of analysis are available for the particular design.

(b) If any critical speed lies within, or close to, the operating ranges for idling, power-on, and autorotative conditions, the stresses occurring at that speed must be within safe limits. This must be shown by tests.

(c) If analytical methods are used and show that no critical speed lies within

the permissible operating ranges, the margins between the calculated critical speeds and the limits of the allowable operating ranges must be adequate to allow for possible variations between the computed and actual values.

127. By adding a new § 29.939(c) to read as follows:

§ 29.939 Turbine engine operating characteristics.

* * * * *

(c) For governor-controlled engines, it must be shown that there exists no hazardous torsional instability of the drive system associated with critical combinations of power, rotational speed, and control displacement.

§ 29.951 [Amended]

128. By amending § 29.951(a) by inserting the phrase "and auxiliary power unit" between the words "engine" and "functioning" and by adding the phrase "and during which the engine or auxiliary power unit is permitted to be in operation" at the end of the paragraph.

129. By revising § 29.971(d) to read as follows:

§ 29.971 Fuel tank sump.

* * * * *

(d) Each fuel tank sump must have a drain that allows complete drainage of the sump on the ground.

130. By revising § 29.977 to read as follows:

§ 29.977 Fuel tank outlet.

(a) There must be a fuel strainer for the fuel tank outlet or for the booster pump. This strainer must—

(1) For reciprocating engine powered airplanes, have 8 to 16 meshes per inch; and

(2) For turbine engine powered airplanes, prevent the passage of any object that could restrict fuel flow or damage any fuel system component.

(b) The clear area of each fuel tank outlet strainer must be at least five times the area of the outlet line.

(c) The diameter of each strainer must be at least that of the fuel tank outlet.

(d) Each finger strainer must be accessible for inspection and cleaning.

131. By adding new §§ 29.979 (c) and (d) to read as follows:

§ 29.979 Pressure refueling and fueling provisions below fuel level.

* * * * *

(c) The rotorcraft pressure fueling system (not fuel tanks and fuel tank vents) must withstand an ultimate load that is 2.0 times the load arising from the maximum pressure, including surge, that is likely to occur during fueling. The maximum surge pressure must be established with any combination of tank valves being either intentionally or inadvertently closed.

(d) The rotorcraft defueling system (not including fuel tanks and fuel tank vents) must withstand an ultimate load that is 2.0 times the load arising from the maximum permissible defueling pressure (positive or negative) at the rotorcraft fueling connection.

132. By revising § 29.999(b) to read as follows:

§ 29.999 Fuel system drains.

* * * * *

(b) Each drain required by paragraph (a) of this section including the drains prescribed in § 29.971 must—

(1) Discharge clear of all parts of the rotorcraft;

(2) Have manual or automatic means for positive locking in the closed position; and

(3) Have a drain valve—

(i) That is readily accessible and which can be easily opened and closed; and

(ii) That is either located or protected to prevent fuel spillage in the event of a landing with landing gear retracted.

133. By revising § 29.1041(a) to read as follows:

§ 29.1041 General.

(a) The powerplant and auxiliary power unit cooling provisions must be able to maintain the temperatures of power plant components, engine fluids, and auxiliary power unit components and fluids within the temperature limits established for these components and fluids, under ground, water, and flight operating conditions, and after normal engine or auxiliary power unit shutdown, or both.

* * * * *

134. By revising § 29.1043(c) to read as follows:

§ 29.1043 Cooling tests.

* * * * *

(c) *Correction factor (except cylinder barrels).* Unless a more rational correction applies, temperatures of engine fluids and power-plant components (except cylinder barrels) for which temperature limits are established, must be corrected by adding to them the difference between the maximum ambient atmospheric temperature and the temperature of the ambient air at the time of the first occurrence of the maximum component or fluid temperature recorded during the cooling test.

* * * * *

135. By adding a new § 29.1093(c) to read as follows:

§ 29.1093 Induction system icing protection.

* * * * *

(c) *Supercharged reciprocating engines.* For each engine having a supercharger to pressurize the air before it enters the carburetor, the heat rise in the air caused by that supercharging at any altitude may be utilized in determining compliance with paragraph (a) of this section if the heat rise utilized is that which will be available, automatically, for the applicable altitude and operation condition because of supercharging.

136. By adding a new lead-in sentence to § 29.1125 to read as follows:

§ 29.1125 Exhaust heat exchangers.

For reciprocating engine powered rotorcraft the following apply:

* * * * *

137. By amending § 29.1143(d) by striking the words "antidetonant injection" in the first and second sentences and inserting in place thereof, in the first sentence, the words "fluid injection (other than fuel)" and, in the second sentence, the words "injection system"; and by revising the heading of § 29.1143 and by adding a new § 29.1143(e) to read as follows:

§ 29.1143 Engine controls.

* * * * *

(e) If a power or thrust control incorporates a fuel shutoff feature, the control must have a means to prevent the inadvertent movement of the control into the shutoff position. The means must—

(1) Have a positive lock or stop at the idle position; and

(2) Require a separate and distinct operation to place the control in the shutoff position.

138. By revising § 29.1165(f) to read as follows:

§ 29.1165 Engine ignition systems.

* * * * *

(f) Each ignition system must be independent of any electrical circuit that is not used for assisting, controlling, or analyzing the operation of that system.

* * * * *

139. By revising § 29.1189(a) to read as follows:

§ 29.1189 Shutoff means.

(a) There must be means to shut off or otherwise prevent hazardous quantities of fuel, oil, de-icing fluid, and other flammable fluids from flowing into, within, or through any designated fire zone, except that this means need not be provided—

(1) For lines and fittings forming an integral part of an engine;

(2) For oil systems for turbine engine installations in which all external components of the oil system, including oil tanks, are fireproof; or

(3) For engine oil systems in category B rotorcraft using reciprocating engines of less than 500 cubic inches displacement.

* * * * *

140. By revising § 29.1197(a) to read as follows:

§ 29.1197 Fire extinguishing agents.

(a) Fire extinguishing agents must—

(1) Be capable of extinguishing flames emanating from any burning of fluids or other combustible materials in the area protected by the fire extinguishing system; and

(2) Have thermal stability over the temperature range likely to be experienced in the compartment in which they are stored.

* * * * *

141. By revising § 29.1303(d) to read as follows:

§ 29.1303 Flight and navigation instruments.

* * * * *

(d) A clock displaying hours, minutes, and seconds with a sweep-second pointer or digital presentation.

* * * * *

142. By revising § 29.1307 to read as follows:

§ 29.1307 Miscellaneous equipment.

The following is required miscellaneous equipment:

(a) An approved seat for each occupant.

(b) A master switch arrangement for electrical circuits other than ignition.

(c) Hand fire extinguishers.

(d) A windshield wiper or equivalent device for each pilot station.

(e) A two-way radio communication system.

143. By revising § 29.1322 to read as follows:

§ 29.1322 Warning, caution, and advisory lights.

If warning, caution or advisory lights are installed in the cockpit they must, unless otherwise approved by the Administrator, be—

(a) Red, for warning lights (lights indicating a hazard which may require immediate corrective action);

(b) Amber, for caution lights (lights indicating the possible need for future corrective action);

(c) Green, for safe operation lights; and

(d) Any other color, including white, for lights not described in paragraphs (a) through (c) of this section, provided the color differs sufficiently from the colors prescribed in paragraphs (a) through (c) of this section to avoid possible confusion.

144. By revising § 29.1549 to read as follows:

§ 29.1549 Powerplant instruments.

For each required powerplant instrument, as appropriate to the type of instruments—

(a) Each maximum and, if applicable, minimum safe operating limit must be marked with a red radial or a red line;

(b) Each normal operating range must be marked with a green arc or green line, not extending beyond the maximum and minimum safe limits;

(c) Each takeoff and precautionary range must be marked with a yellow arc or yellow line; and

(d) Each engine or propeller range that is restricted because of excessive vibration stresses must be marked with red arcs or red lines.

145. By revising § 29.1555(c) to read as follows:

§ 29.1555 Control markings.

* * * * *

(c) Usable fuel capacity must be marked as follows:

(1) For fuel systems having no selector controls, the usable fuel capacity of the system must be indicated at the fuel quantity indicator.

(2) For fuel systems having selector controls, the usable fuel capacity available at each selector control position must be indicated near the selector control.

* * * * *

146. By revising § 29.1557(c) to read as follows:

§ 29.1557 Miscellaneous marking and placards.

* * * * *

(c) *Fuel and oil filler openings.* The following apply:

(1) Fuel filler openings must be marked at or near the filler cover with—

(i) The word "fuel";

(ii) For reciprocating engine powered rotorcraft, the minimum fuel grade;

(iii) For turbine engine powered rotorcraft, the permissible fuel designations; and

(iv) For pressure fueling systems, the maximum permissible fueling supply pressure and the maximum permissible defueling pressure.

(2) Oil filler openings must be marked at or near the filler cover with the word "oil".

* * * * *

PART 31—AIRWORTHINESS STANDARDS: MANNED FREE BALLOONS

147. By revising § 31.1(a), redesignating § 31.1(b) as § 31.1(c), and adding a new §31.1(b) to read as follows:

§ 31.1 Applicability.

(a) This part prescribes airworthiness standards for the issue of type certificates and changes to those certificates, for manned free balloons.

(b) Each person who applies under Part 21 for such a certificate or change must show compliance with the applicable requirements of this part.

* * * * *

§ 31.11 [Reserved]

148. By deleting § 31.11 and marking it "[Reserved]".

149. By adding a new § 31.14 to read as follows:

§ 31.14 Weight limits.

(a) The range of weights over which the balloon may be safely operated must be established.

(b) *Maximum weight.* The maximum weight is the highest weight at which compliance with each applicable requirement of this part is shown. The maximum weight must be established so that it is not more than—

(i) The highest weight selected by the applicant;

(ii) The design maximum weight which is the highest weight at which compliance with each applicable structural loading condition of this part is shown; or

(iii) The highest weight at which compliance with each applicable flight requirement of this part is shown.

(c) The information established under paragraphs (a) and (b) of this section must be made available to the pilot in accordance with § 31.81.

150. By adding a new § 31.20 in Subpart B to read as follows:

§ 31.20 Controllability.

The applicant must show that the balloon is safely controllable and maneuverable during takeoff, ascent, descent, and landing without requiring exceptional piloting skill.

151. By revising § 31.45 to read as follows:

§ 31.45 Fuel cells.

If fuel cells are used, the fuel cells, their attachments, and related supporting structure must be shown by tests to be capable of withstanding, without detrimental distortion or failure, any inertia loads to which the installation may be subjected, including the drop tests prescribed in § 31.27(c). In the tests, the fuel cells must be loaded to the weight and pressure equivalent to the full fuel quantity condition.

152. By adding a new § 31.46 to read as follows:

§ 31.46 Pressurized fuel systems.

For pressurized fuel systems, each element and its connecting fittings and lines must be tested to an ultimate pressure of at least twice the maximum pressure to which the system will be subjected in normal operation. No part of the system may fail or malfunction during the test. The test configuration must be representative of the normal fuel system installation and balloon configuration.

153. By redesignating the current § 31.63 as § 31.63(a) and by adding a new § 31.63(b) to read as follows:

§ 31.63 Safety belts.

* * * * *

(b) This section does not apply to balloons that incorporate a basket or gondola.

154. By deleting § 31.85(a)(1) and marking it "[Reserved]" and by adding a new § 31.85(c) to read as follows:

§ 31.85 Required basic equipment.

* * * * *

(c) For captive gas balloons, a compass.

PART 33—AIRWORTHINESS STANDARDS: AIRCRAFT ENGINES

155. By revising § 33.1 to read as follows:

§ 33.1 Applicability.

(a) This part prescribes airworthiness standards for the issue of type certificates and changes to those certificates, for aircraft engines.

(b) Each person who applies under Part 21 for such a certificate or change must show compliance with the applicable requirements of this part.

PART 35—AIRWORTHINESS STANDARDS: PROPELLERS

156. By revising § 35.1 to read as follows:

§ 35.1 Applicability.

(a) This part prescribes airworthiness standards for the issue of type certificates and changes to those certificates, for propellers.

(b) Each person who applies under Part 21 for such a certificate or change must show compliance with the applicable requirements of this part.

157. By revising the first sentence of § 35.39(c) (1) to read as follows:

§ 35.39 Endurance test.

* * * * *

(c) * * *

(1) A 100-hour test on a representative engine with the same or higher power and rotational speed and the same or more severe vibration characteristics as the engine with which the propeller is to be used. * * *

* * * * *

158. By revising § 35.41(e) to read as follows:

§ 35.41 Functional tests.

* * * * *

(e) *Reversible-pitch propellers.* Two hundred complete cycles of control must be made from lowest normal pitch to maximum reverse pitch, and, while in maximum reverse pitch, during each cycle, the propeller must be run for 30 seconds at the maximum power and rotational speed selected by the applicant for maximum reverse pitch.

159. By revising § 35.45(a) to read as follows:

§ 35.45 Teardown inspection.

(a) After completion of the tests prescribed in this subpart, the propeller must be completely disassembled and a detailed inspection must be made of the propeller parts for cracks, wear, distortion, and any other unusual conditions.

* * * * *

PART 91—GENERAL OPERATING AND FLIGHT RULES

§ 91.14 [Amended]

160. By amending the parenthetical expressions contained in §§ 91.14(a) (1) and (a) (2) to read "(except free balloons that incorporate baskets or gondolas and airships)."

§ 91.21 [Amended]

161. By inserting the parenthetical expression "(except a manned free balloon)" between the words "aircraft" and "that" in § 91.21(a).

162. By revising § 91.33(d) (6) to read as follows:

§ 91.33 Powered civil aircraft with standard category U.S. airworthiness certificates; instrument and equipment requirements.

* * * * *

(d) * * *

(6) A clock displaying hours, minutes, and seconds with a sweep-second pointer or digital presentation.

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

163. By revising § 121.171(b) to read as follows:

§ 121.171 Applicability.

* * * * *

(b) For purposes of this part, "effective length of the runway" for landing means the distance from the point at which the obstruction clearance plane associated with the approach end of the runway intersects the centerline of the runway to the far end thereof.

* * * * *

164. By striking the word "and" at the end of § 121.199(b) (3); by inserting a semicolon and the word "and" at the end of § 121.199(b) (4); and by adding a new § 121.199(b) (5) to read as follows:

§ 121.199 Nontransport category airplanes: takeoff limitations.

* * * * *

(b) * * *

(5) The "effective length of the runway" for takeoff means the distance from the end of the runway at which the takeoff is started to a point at which the obstruction clearance plane associated with the other end of the runway intersects the runway centerline.

§ 121.331 [Amended]

165. By inserting between the first and second sentences of § 121.331(b), a sentence that reads—"The required two hours supply is that quantity of oxygen necessary for a constant rate of descent from the airplane's maximum certificated operating altitude to 10,000 feet in ten minutes and followed by 110 minutes at 10,000 feet."

§ 121.333 [Amended]

166. By inserting between the first and second sentences of § 121.333(b), a sentence that reads—"The required two hours supply is that quantity of oxygen necessary for a constant rate of descent from the airplane's maximum certificated operating altitude to 10,000 feet in ten minutes and followed by 110 minutes at 10,000 feet.

PART 127—CERTIFICATION AND OPERATIONS OF SCHEDULED AIR CARRIERS WITH HELICOPTERS

167. By amending the heading and lead-in of § 127.105 to read as follows:

§ 127.105 Engine instruments and equipment—reciprocating engine powered helicopters.

No person may operate a reciprocating engine powered helicopter unless it is equipped with the following engine instruments and equipment:

* * * * *

168. By adding a new § 127.106 to read as follows:

§ 127.106 Engine instruments and equipment—turbine engine powered helicopters.

No person may operate a turbine engine powered helicopter unless it is equipped with the following engine instruments and equipment:

(a) A fuel pressure indicator and warning light for each engine.

(b) A means of indicating fuel quantity in each fuel tank to be used, and for helicopters with more than one fuel tank, a warning device indicating when the fuel in any independent fuel tank is low.

(c) An oil pressure indicator and warning light for each engine.

(d) An oil temperature indicator for each engine.

(e) An oil temperature indicator and warning light for each main rotor drive gearbox including those gearboxes essential to rotor phasing, having an oil system independent of the engine oil system.

(f) An oil temperature indicator and warning light for each transmission using a separate oil pump.

(g) A gas temperature indicator for each engine.

(h) An output torque indicator for each engine.

(i) A tachometer (to indicate the speed of the engine rotors with established limiting speeds) for each engine.

(j) A tachometer for the main rotor or for each main rotor the speed of which may vary appreciably with respect to another main rotor.

The tachometers required by paragraphs (i) and (j) of this section may be combined in a single instrument, but that instrument must indicate rotor RPM during autorotation.

PART 133—ROTORCRAFT EXTERNAL-LOAD OPERATIONS

169. By revising § 133.41(c) (6) to read as follows:

§ 133.41 Flight characteristics requirements.

* * * * *

(c) * * *

(6) Maneuvering of the external load into release position and its release, under probable flight operation conditions, by means of each of the quick-release controls installed on the rotorcraft.

* * * * *

170. By revising § 133.43 to read as follows:

§ 133.43 Structures and design.

(a) *External-load attaching means.* Each external-load attaching means must have been approved under—

(1) Part 8 of the Civil Air Regulations on or before January 17, 1964;

(2) Part 133, before February 1, 1977; or

(3) Part 27 or 29 of this chapter, as applicable, irrespective of the date of approval.

(b) *Quick release devices.* Each quick release device must have been approved under—

(1) Part 27 or 29 of this chapter, as applicable; or

(2) Part 133, before February 1, 1977.

(c) *Weight and center of gravity—*

(1) *Weight.* The total weight of the rotorcraft-load combination must not exceed the total weight approved for the rotorcraft during its type certification.

(2) *Center of gravity.* The location of the center of gravity must, for all loading conditions, be within the range established for the rotorcraft during its type certification. For Class C rotorcraft-load combinations, the magnitude and direction of the loading force must be established at those values for which the effective location of the center of gravity remains within its established range.

171. By revising § 133.45(c) to read as follows:

§ 133.45 Operating limitations.

* * * * *

(c) The rotorcraft-load combination may not be operated with an external load weight exceeding that used in showing compliance with §§ 133.41 and 133.43.

* * * * *

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS OF SMALL AIRCRAFT

172. By revising § 135.71(a)(5) to read as follows:

§ 135.71 Operating information required.

(a) * * *

(5) In the case of multiengine aircraft, one-engine-inoperative climb performance data, and if the aircraft is approved for use in IFR or over the top operations, that data must be sufficient to enable the pilot to determine compliance with § 135.145(a)(2).

* * * * *

The Federal Aviation Administration has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Issued in Washington, D.C. on December 13, 1976.

J. W. COCHRAN,
Acting Administrator.

[FR Doc.76-37215 Filed 12-17-76;8:45 am]

federal register

MONDAY, DECEMBER 20, 1976

PART IV:

DEPARTMENT OF TRANSPORTATION

Coast Guard

■

PERSONAL FLOTATION DEVICES

Information Pamphlet and Label Rewording

DEPARTMENT OF TRANSPORTATION

Coast Guard

[33 CFR Part 181]

[CGD 75-008a]

PERSONAL FLOTATION DEVICES

Proposed Information Pamphlet

The Coast Guard is considering an amendment to the regulations for boats and associated equipment in Part 181 of Title 33, the Code of Federal Regulations, that requires a manufacturer of personal flotation devices (PFD's) to provide an information pamphlet for recreational boat owners. Proposed amendments to the PFD marking requirements in Part 160 of Title 46, Code of Federal Regulations, appear on page 55480 of this issue of the FEDERAL REGISTER (CGD 75-008).

Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments to the Executive Secretary, Marine Safety Council, U.S. Coast Guard, Room 8117, 400 7th Street, SW., Washington, D.C. 20590. Each person submitting a comment should include his name and address, identify this notice (CGD 75-008a) and the specific section of the proposal to which his comment applies, and give the reasons for his comments. The proposal may be changed in light of the comments received.

The National Boating Safety Advisory Council has been consulted on this proposal at a meeting held on May 29, 1975, the minutes of which are available from the Commandant (G-BA), U.S. Coast Guard, Washington, D.C. 20590 or in room 4244, 2100 Second Street, SW., Washington, D.C.

All comments received before February 3, 1977, will be considered before final action is taken on the proposal. Copies of all written comments received will be available for examination by interested persons in Room 8117, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

No public hearing is planned, but one may be held at a time and place to be set in a later notice in the FEDERAL REGISTER if requested in writing by an interested person raising a genuine issue and desiring to comment orally at a public hearing.

Part 160 Title 46 Code of Federal Regulations contains construction specifications and approval requirements for personal flotation devices (PFD's). These specifications include requirements for the wording of the label, nameplate, and other markings of PFD's. The present marking requirements include instruction for use, care and performance of the PFD.

The Coast Guard has determined that at least 10 deaths may have involved improper selection, use, or care of PFD's or misinterpretation of the wording on the PFD. Much more information on selection, care, use, and performance of a PFD is necessary. Furthermore, the information must be available to the consumer at time of purchase because this is when the consumer must select what type PFD is best for the intended use.

Therefore, the Coast Guard proposes to add a new subpart to the boating safety regulations that requires each manufacturer of PFD's that are for use on recreational boats to provide, for the purchaser of each device, a pamphlet containing instructions and information on the selection, use, and care of the device. The proposed new subpart includes requirements for the contents of the pamphlet, including an illustrated description of each type of PFD that will help a prospective purchaser to select a suitable device for his use, information on why additional buoyancy is necessary, information on the performance characteristics of each device, information on hypothermia, and instructions for the care, maintenance, and proper use of the device. The wording would be mandatory and is the same for every PFD intended for use on recreational boats. The proposed pamphlet is not required for devices that are for use on commercial vessels. Care instructions of primary importance would be retained on the label.

Since the proposed pamphlet would include better information on selection, use, and care, there should be fewer instances of misuse, misinterpretation of performance characteristics, or use of a device which is no longer in good and serviceable condition. If the consumer does not understand the performance characteristics of a PFD, care for it properly, or use it properly, it may not provide the level of safety necessary for or expected by the consumer. Educational information on the importance of buoyancy and information on hypothermia have been included under recommendation 7 of the National Transportation Safety Board resulting from the investigation of the foundering of the Motor Vessel *Comet* on May 19, 1973.

Since the proposed changes would require revising the labels on all PFD's, if they are adoped, they would be made effective as follows:

Manufacturers of PFD's that have approval numbers issued before (effective date of final rule) may continue to mark the devices under the terms of that approval until (12 months after the effective date of the final rule). Those manufacturers that have approval numbers issued after (effective date of final rule) shall meet the requirements of this subpart.

This would minimize the cost to a manufacturer, allow enough time for printing pamphlets and changing labels, and thus not unduly burden the manufacturer.

This proposal has been reviewed for economic effects under Department of Transportation "Policies to Improve Analysis and Review of Regulations" (41 FR 16200). The proposed amendments should result in a cost to industry of approximately one hundred thousand dollars per year, or one cent per PFD. This cost should result in an increase of less than two-tenths of one percent for the least expensive PFD. The benefit of the proposed amendments is the prevention of casualties, including loss of life.

In consideration of the foregoing, it is proposed to amend Part 181 of Title 33 of the Code of Federal Regulations by reserving Subparts D, E, F, and adding a new Subpart G to read as follows:

Subparts D, E, and F—[Reserved]

Subpart G—Instruction Pamphlet for Personal Flotation Devices

Sec.

181.701 Applicability.
181.703 PFD information pamphlet; manufacturer requirements.
181.705 PFD information pamphlet; contents.

AUTHORITY: 46 U.S.C. 1454, 1488; 49 CFR 1.46(n)(1).

Subparts D, E and F—[Reserved]

Subpart G—Instruction Pamphlet for Personal Flotation Devices

§ 181.701 Applicability.

This subpart applies to all personal flotation devices that are sold or offered for sale for use on recreational boats.

§ 181.703 PFD information pamphlet; manufacturer requirements.

Each manufacturer of a Type I, II, III, IV, or V personal flotation device that is sold or offered for sale for use on a recreational boat shall furnish the information required by § 181.705 with each device by meeting one of the following:

(a) If the personal flotation device package is not transparent—

(1) The information in paragraph (a) of §181.705 must be printed on the outside of the package; and

(2) The information in paragraph (b) of § 181.705 must be printed in a pamphlet and the pamphlet must be enclosed in each package.

(b) If the personal flotation device package is transparent—

(1) The information in paragraph (a) of § 181.705 must be printed on the front page of a pamphlet and the pamphlet must be enclosed in each package so that the front page can be read through the package; and

(2) The information in paragraph (b) of § 181.705 must be printed on the remaining pages of the pamphlet.

(c) If the personal flotation device is not in a package, a pamphlet that meets paragraph (b) of this section must be attached to each personal flotation device so that a purchaser can remove it.

§ 181.705 PFD information pamphlet; contents.

Each manufacturer of a Type I, II, III, IV, or V personal flotation device shall furnish, under the requirements of § 181.703, the information in this section with each PFD that is sold or offered for sale for use on a recreational boat and may include additional information, instructions or illustrations:[1]

[1] The illustrations required by paragraph (a) of § 181.705 may be photographs or drawings. Each manufacturer should use illustrations of his own products. If this is not possible, illustrations of other Coast Guard approved PFD's may be used.

(A) PERSONAL FLOTATION DEVICES FOR RECREATIONAL BOATS; FEDERAL REGULATIONS REQUIRE [2]

(a) No person may use a recreational boat less than 16 feet in length or a canoe or kayak unless at least one personal flotation device of the following types is on board for each person:

(1) Type I PFD.
(2) Type II PFD.
(3) Type III PFD.
(4) Type IV PFD.

(b) No person may use a recreational boat 16 feet or more in length, except a canoe or kayak, unless at least one personal flotation device of the following types is on board for each person:

(1) Type I PFD.
(2) Type II PFD.
(3) Type III PFD.

(c) No person may use a recreational boat 16 feet or more in length, except a canoe or kayak, unless at least one Type IV PFD is on board in addition to the PFDs required in paragraph (b) of this section.

THERE ARE FIVE TYPES OF PERSONAL FLOTATION DEVICE

This is a Type (I, II, III, IV, or V) PFD

(Illustration of Type I PED)

Type I—A Type I PFD has the greatest buoyancy and is designed to turn an unconscious person in the water from a face down position to a vertical or slightly backward position and to maintain the person in the vertical or slightly backward position. The Type I PFD is recommended for all waters, especially for cruising on waters where there is a probability of delayed rescue, such as large bodies of water where it is not likely that a significant number of boats will be in close proximity. This type PFD is the most effective of all the types in rough water. The Type I PFD is available in two sizes—Adult (90 lbs. or more) and child (less than 90 lbs.).

(Illustration of Type II PFD)

Type II—A Type II PFD is designed to maintain the wearer in a vertical or slightly backward position in the water. The Type II PFD is usually more comfortable to wear than the Type I. The Type II is recommended for use where there is a probability of quick rescue, such as areas where boating, fishing, and other water activities are likely to occur. The Type II PFD is available in three sizes—Adult (more than 90 lbs.), Medium Child (50 lbs. to 90 lbs.), and Small Child (less than 50 lbs.).

(Illustration of Type III PFD)

Type III—The Type III PFD is designed so that the wearer can place him or herself in a vertical or slightly backward position, and can maintain that position with a minimum of effort. A Type III is the most comfortable, comes in several sizes, and is usually the best choice for water sports, such as skiing. The Type III is recommended for use where there is a probability of quick rescue, such as areas where boating, fishing and other water activities are likely to occur.

(Illustration of Type IV PFD)

Type IV—A Type IV PFD is designed to be thrown to a person who has fallen overboard and to be grasped and held by him until he is rescued.

(Illustration of Type V PFD)

Type V—A Type V PFD is a PFD approved for restricted uses. No Type V PFD is currently approved for use on recreational boats.

(b) YOUR PERSONAL FLOTATION DEVICE—

You are required by Federal Regulation to have at least one Coast Guard approved personal flotation device (PFD) for each person in your recreational boat. You may not use your recreational boat unless all your PFD's are in serviceable condition, are readily accessible, are legibly marked with the Coast Guard approval number, and are of an appropirate size for each person on board.

WHY DO YOU NEED A PFD?

Your PFD provides buoyancy to help keep your head above the water and to help you remain in a satisfactory position in the water. The average weight of an adult is only 10 to 12 pounds in the water and the buoyancy provided by the PFD is necessary to support that weight in water. Unfortunately, your body weight does not determine how much you will weigh in water. In fact, your weight in water changes slightly throughout the day. There is no simple method of determining your weight in water. You should try the device in the water to make sure it supports your mouth out of the water. Remember, all straps, zippers, and tie tapes must be used and of course the PFD must be the proper size (size limitations are on the label).

HYPOTHERMIA

Hypothermia, the loss of body heat to the water, is probably the greatest cause of deaths. Often the cause of death is listed as drowning; but, most often the primary cause is hypothermia and the secondary cause is drowning. After an individual has succumbed to hypothermia, he will lose consciousness and then drown. The following chart shows the effects of hypothermia:

Water temperature (degrees Fahrenheit)	Exhaustion or unconsciousness	Expected time of survival
32.5	Under 15 min.	Under 15 to 45 min.
32.5 to 40	15 to 30 min.	30 to 90 min.
40 to 50	30 to 60 min.	1 to 3 hr.
50 to 60	1 to 2 hr.	1 to 6 hr.
60 to 70	2 to 7 hr.	2 to 40 hr.
70 to 80	3 to 12 hr.	3 hr to indef.
Over 80	Indef.	Indef.

PFD's can increase survival time because of the insulation they provide. Naturally, the warmer the water, the less insulation one will require. When operating in cold waters (below 40 F) consideration should be given to using a coat or jacket style PFD as they cover more of the body than the vest style PFD's.

Some points to remember about hypothermia protection:

1. While afloat in the water, do not attempt to swim unless it is to reach a nearby craft, fellow survivor, or a floating object on which you can learn or climb. Unnecessary swimming increases the rate of body heat loss.

2. Keep a positive attitude about your survival and rescue. This will improve your chances of extending your survival time until rescue. Your will-to-live does make a difference!

3. If there is more than one person in the water, huddling is recommended while waiting to be rescued. This action tends to reduce the rate of heat loss and thus increase the survival time.

4. Always wear your PFD, it won't help you fight off the effects of hypothermia if you don't have it on when you go into the water.

EACH OF THESE DEVICES IS INTENDED TO HELP YOU SAVE YOUR OWN LIFE

For your PFD to function properly, follow these suggestions to insure that it fits, floats, and remains in good condition:

(1) Try your wearable PFD on and adjust it until it fits comfortably in and out of the water.

(2) Mark your PFD with your name if you are the only wearer.

(3) Try your PFD out in the water. This will show you how it works, and will give you confidence when you use it.

(4) Do not alter your PFD. If it doesn't fit properly, get one that does. An altered device is no longer Coast Guard approved.

(5) Use your PFD only for the purpose for which it is intended. Do not use it as a boat fender or kneeling pad.

(6) Inspect your PFD periodically to ensure that it is free of rips, tears, or holes, that the flotation pads have no leaks, and that all seams and joints are securely sewn.

(7) Keep your PFD away from sharp objects which may rip the fabric or puncture the flotation pads.

(8) If your PFD contains kapok, the kapok fibers may become waterlogged and lose their buoyancy after the vinyl inserts are split or punctured. When the kapok becomes hard or if the device is soaked with water, it is no longer serviceable. It may not work when you need it and must be replaced.

(9) If your PFD is wet, allow it to dry thoroughly before storing it.

(10) Store your PFD in a well ventilated area.

PFD'S AND CHILDREN

A child is difficult to float in a safe position because of the distribution of body weight and because a child tends to panic when suddenly in an unfamiliar environment. The violent movement of the arms and legs in an attempt to "climb out" of the water tends to nullify the stability of the PFD. An approved device will keep a child afloat, but not always in a face-up position. A child should be taught how to put on the device and should be allowed to try it out in the water. It is important that the child feels comfortable and knows what the PFD is for and how it functions. Parents should note, however, that PFD's are not a substitute for adult supervision.

WEAR YOUR PFD

Your personal flotation device won't help you if you don't have it on. If you don't choose to wear it at all times, you should keep it handy and put it on when heavy weather threatens, or when danger is imminent. Don't wait until it is too late. Non-swimmers and children especially should wear their PFD's at all times when on or near the water.

REMEMBER—SAFE BOATING IS NO ACCIDENT

If you need more information about PFD's and safe recreational boating, contact your State boating authority, U.S. Coast Guard Auxiliary, U.S. Power Squadron, Red Cross, or your nearest unit of the U.S. Coast Guard. (46 U.S.C. 1454, 1488; 49 CFR 1.46(n)(1))

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

Dated: December 9, 1976.

D. F. LAUTH,
Rear Admiral, United States Coast Guard, Chief, Office of Boating Safety.

[FR Doc.76-37229 Filed 12-17-76;8:45 am]

[2] Coast Guard regulations and special exceptions of these regulations are in Part 175 of Title 33, Code of Federal Regulations.

[46 CFR Part 160]

[CGD 75-008]

PERSONAL FLOTATION DEVICES

Proposed Label Rewording

The Coast Guard is considering amendments to the regulations for life preservers, ring life buoys, buoyant vests, buoyant cushions, work vests, and marine buoyant devices in Part 160 of Title 46 of the Code of Federal Regulations that revise the wording of the labels or markings of these personal flotation devices.

Interested persons are invited to participate in this proposed rulemaking by submitting written views, data, or arguments to the Executive Secretary, Marine Safety Council (G-CMC/81), U.S. Coast Guard, Washington, D.C. 20590. Each person submitting a comment should include his name and address, identify this notice (CGD 75-008) and the specific section of the proposal to which his comment applies, and give the reasons for his comments. The proposal may be changed in light of the comments received.

All comments received before February 3, 1977, will be considered before final action is taken on the proposal. Copies of all written comments received will be available for examination by interested persons in Room 8117, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

No public hearing is planned, but one may be held at a time and place to be set in a later notice in the FEDERAL REGISTER if requested in writing by an interested person raising a genuine issue and desiring to comment orally at a public hearing.

Part 160 contains the construction specifications and approval requirements for personal floatation devices (PFD's), such as life preservers, ring life buoys, buoyant vests, buoyant cushions, work vests, and marine buoyant devices. This part includes requirements for the wording of the label, nameplate, and other markings of PFD's. Much more information on selection, use, care, and performance of the PFD is necessary for the recreational boating public at the time of purchase. On page 55478 of this issue of the FEDERAL REGISTER, the Coast Guard is proposing an amendment to Part 181 of Title 33, Code of Federal Regulations, that would require that a manufacturer of a PFD that is for use on recreational boats provide for each purchaser a pamphlet with information on selection, use, care, and performance.

The Coast Guard has determined that this information is unnecessary for commercial mariners because most of them are required to use the Type I PFD by Coast Guard regulations. For those few who have a choice, the Coast Guard's experience is that they are very knowledgeable about PFD selection, use, care, and performance because boating is their daily business.

Therefore, because the information presently on the label would be included in the pamphlet, the Coast Guard proposes a revision of the marking requirements for PFD's that deletes from each specification the description of the device, such as "life preserver", "buoyant vest", or "buoyant cushion" and performance characteristics, such as "Designed to turn an unconscious wearer face up in the water."

Wording would be added to describe the flotation material and minimum buoyant force provided by the device. For PFD's that use foam as the buoyant material, there would be a blank for insertion of the name of the type of foam used. This provides an accurate description of the buoyant material and helps consumers select the proper PFD, especially those persons engaging in special activities, such as white water canoeing and kayaking.

Furthermore, the words "Inspected and tested in accordance with U.S. Coast Guard Regulations" would be added so that the consumer would know that the device was manufactured under the inspection and testing program of the Coast Guard approval system.

The proposed amendments also include editorial changes in the requirements for PFD labels and markings. These changes are for consistency among the labeling and marking requirements and with other PFD requirements in Part 160. The level of safety of any device is not affected.

Since the proposed changes would require revising the labels on all PFD's, if they are adopted, they would be made effective as follows:

Manufacturers of PFD's that have approval numbers issued before (effective date of final rule) may continue to mark the devices under the terms of that approval until (12 months after the effective date of the final rule). Those manufacturers that have approval numbers issued after (effective date of final rule) shall meet the requirements of this subpart.

This would minimize the cost to a manufacturer, allow enough time to have the labels changed, and thus not unduly burden the manufacturer.

This proposal has been reviewed for economic effects under Department of Transportation "Policies to Improve Analysis and Review of Regulations" (41 FR 16200). Because of the 12-month grace period during which a manufacturer could exhaust his stock of labels, this proposal should result in little or no cost increases. With the proposal for a PFD information pamphlet, published on page 55478 of this issue of the FEDERAL REGISTER, the benefit of this proposal will be the prevention of casualties, including loss of life.

In consideration of the foregoing, it is proposed to amend Part 160 of Title 46 of the Code of Federal Regulations as follows:

1. By revising paragraph (b) of § 160.002-6 to read as follows:

§ 160.002-6 Marking.

* * * * *

(b) In letters that can be read at a distance of 2 feet:

Type I Personal Flotation Device.
Inspected and tested in accordance with U.S. Coast Guard regulations.
Kapok buoyant material provides a minimum buoyant force of (25 lb. or 16½ lb.)
Do not snag or puncture inner plastic cover.
Approved for use on all vessels by persons weighing (90 lb. or more, or less than 90
U.S. Coast Guard Approval No. 160.002/(assigned manufacturer's No.)/(Revision No.); (Model No.). (Name and address of manufacturer or distributor). (Lot No.).

2. By revising paragraph (b) of § 160.005-6 to read as follows:

§ 160.005-6 Marking.

* * * * *

(b) In letters that can be read at a distance of 2 feet:

Type I Personal Flotation Device.
Inspected and tested in accordance with U.S. Coast Guard regulations.
Fibrous glass buoyant material provides a minimum buoyant force of (25 lb. or 16½ lb.).
Approved for use on all vessels by persons weighing (90 lb. or more, or less than 90 lb.).
U.S. Coast Guard Approval No. 160.005/(assigned manufacturer's No.)/(Revision No.); (Model No.).
(Name and address of manufacturer or distributor.).
(Lot No.).

3. By revising paragraph (b) of § 160.009-6 to read as follows:

§ 160.009-6 Marking.

* * * * *

(b) On the cover:

Type IV Personal Flotation Device.
Inspected and tested in accordance with U.S. Coast Guard regulations.
(Cork or Balsa wood) buoyant material provides a minimum buoyant force of (32 lb. or 16½ lb.).
Approved for use on recreational boats less than 16 feet in length and only as a throwable device on all other vessels.
Approved, U.S. Coast Guard (inspection date) (Marine Inspection Office identification letters).
(Name and address of manufacturer or distributor).
(Coast Guard Approval No. 160.009/(assigned manufacturer's No.)/(Revision No.)).
(Size).
(Lot No.).

4. By revising paragraph (a) of § 160.047-6 to read as follows:

§ 160.047-6 Marking.

(a) Each buoyant vest must have the following information clearly marked in waterproof lettering:

Type II Personal Flotation Device.
Inspected and tested in accordance with U.S. Coast Guard regulations.
(Kapok or Fibrous glass) buoyant material provides a minimum buoyant force of (16 lb., 11 lb., or 7¼ lb.).
Dry out thoroughly when wet.
Do not snag or puncture inner plastic cover.
If pads become waterlogged, replace device.
Approved for all recreational boats and for use on uninspected commercial vessels less than 40 feet in length not carrying passengers for hire by persons weighing (over 90 lb., 50 to 90 lb., or less than 50 lb.).

U.S. Coast Guard Approval No. 160.047/(assigned manufacturer's No.)/(Revision No.); (Model No.).
(Name and address of manufacturer or distributor).
(Lot. No.).

* * * * *

5. By revising paragraph (a) of § 160.048–6 to read as follows:

§ 160.048–6 Marking.

(a) Each buoyant cushion must have the following information clearly marked in waterproof lettering:

Type IV Personal Flotation Device.
Inspected and tested in accordance with U.S. Coast Guard regulations.
Dry out thoroughly when wet.
(Kapok or Fibrous glass) buoyant material provides a minimum buoyant force of 20 lb.
Warning: Do not wear on back.
Do not snag or puncture inner plastic cover.
If pads become waterlogged, replace device.
Approved for use on recreational boats less than 16 feet in length and only as a throwable device on all other recreational boats.
U.S. Coast Guard Approval No. 160.048/(assigned manufacturer's No.)/(Revision No.); (Model No.).
(Name and address of manufacturer or distributor).
(Lot No.).
(Size; width, thickness, and length, including both top and bottom for trapezoidal cushions).

* * * * *

6. By revising paragraph (a) of § 160.049–6 to read as follows:

§ 160.049–6 Marking.

(a) Each buoyant cushion must have the following information clearly marked in waterproof lettering:

Type IV Personal Flotation Device.
Inspected and tested in accordance with U.S. Coast Guard regulations.
(Name of buoyant material) buoyant material provides a minimum buoyant force of 20 lb.
Warning: Do not wear on back.
Dry out thoroughly when wet.
Approved for use on recreational boats less than 16 feet in length and only as a throwable device on all other recreational boats.
U.S. Coast Guard Approval No. 160.049/(assigned manufacturer's No.)/(Revision No.); (Model No.).
(Name and address of manufacturer or distributor).
(Lot No.).
(Size; width, thickness, and length, including both top and bottom for trapezoidal cushions).

* * * * *

7. By revising paragraph (a) of § 160.050–6 to read as follows:

§ 160.050–6 Marking.

(a) Each ring buoy must have the following information in waterproof lettering:

Type IV Personal Flotation Device.
Inspected and tested in accordance with U.S. Coast Guard regulations.
(Name of buoyant material) buoyant material provides a minimum buoyant force of (32 lb. or 16½ lb.).
Approved for use on recreational boats less than 16 feet in length, and only as a throwable device on all other vessels.
U.S. Coast Guard Approval No. 160.050/(assigned manufacturer's No.)/(Revision No.); (Model No.).
(Name and address of manufacturer or distributor).
(Size).
USCG (Marine Inspection Office identification letters).
(Lot No.).

* * * * *

8. By revising the heading and paragraph (a) of § 160.052–8 to read as follows:

§ 160.052–8 Marking.

(a) Each buoyant vest must have the following information clearly marked in waterproof lettering:

Type II Personal Flotation Device.
Inspected and tested in accordance with U.S. Coast Guard regulations.
(Name of buoyant material) provides a minimum buoyant force of (15½ lb., 11 lb., or 7 lb.).
Dry out thoroughly when wet.
Approved for all recreational boats and for use on uninspected commercial vessels less than 40 feet in length not carrying passengers for hire by persons weighing (over 90 lb., 50 to 90 lb., or less than 50 lb.).
U.S. Coast Guard Approval No. 160.052/(assigned manufacturer's No.) (Revision No.); (Model No.).
(Name and address of manufacturer or distributor).
(Lot No.).

9. By revising paragraph (a) of § 160.053–5 to read as follows:

§ 160.053–5 Marking.

(a) Each work vest must have the following information clearly printed in waterproof ink on a cloth tag attached to the envelope by stitching along the edges of the tag:

Type V Personal Flotation Device.
Inspected and tested in accordance with U.S. Coast Guard regulations.
(Name of buoyant material) buoyant material provides a minimum buoyant force of 17½ lbs.
Approved for use on Merchant Vessels as a work vest.
U.S. Coast Guard Approval No. 160.053/(assigned manufacturer's No.)/(Revision No.); (Model No.).
(Name and address of manufacturer or distributor).
(Lot No.).
This vest is filled with (name of buoyant material), which will not be harmed by repeated wetting. Hang up and dry thoroughly when vest is wet.

* * * * *

10. By revising the heading and paragraph (b) of § 160.055–8 to read as follows:

§ 160.055–8 Marking.

* * * * *

(b) In letters that can be read at a distance of 2 feet:

Type I Personal Flotation Device.
Inspected and tested in accordance with U.S. Coast Guard regulations.
(Name of buoyant material) buoyant material provides a minimum buoyant force of (22 lb. or 11 lb.).
Approved for use on all vessels by persons weighing (90 lb. or more, or less than 90 lb.).
U.S. Coast Guard Approval No. 160.055/(assigned manufacturer's No.)/(Revision No.); (Model No.).
(Name and address of manufacturer or distributor).
(Not No.).

11. By revising the heading and paragraph (a) of § 160.060–8 to read as follows:

§ 160.060–8 Marking.

(a) Each buoyant vest must have the following information clearly marked in waterproof lettering:

Type II Personal Flotation Device.
Inspected and tested in accordance with U.S. Coast Guard regulations.
Polyethylene foam buoyant material provides a minimum buoyant force of (15½ lb., 11 lb., or 7 lb.).
Dry out thoroughly when wet.
Approved for all recreational boats, and for use on uninspected commercial vessels less than 40 feet in length not carrying passengers for hire by persons weighing (more than 90 lb., 50 to 90 lb., or less than 50 lb.).
U.S. Coast Guard Approval No. 160.060/(assigned manufacturer's No.)/(Revision No.); (Model No.).
(Name and address of manufacturer or distributor).
(Lot No.).

12. By revising paragraph (a)(1) of § 160.064–4 to read as follows:

§ 160.064–4 Marking.

(a) * * *

(1) For devices to be worn:

(Type II or Type III) Personal Flotation Device.
Inspected and tested in accordance with U.S. Coast Guard regulations.
(Name of buoyant material) buoyant material provides a minimum buoyant force of (15½ lb., 11 lb., or 7 lb.).
(Special purpose intended.).
Approved for all recreational boats and for use on uninspected commercial vessels less than 40 feet in length not carrying passengers for hire by persons weighing (more than 90 lb., 50 to 90 lb., or less than 50 lb.).
U.S. Coast Guard Approval No. 160.064/(assigned manufacturer's No.)/(Revision No.); (Model No.).
(Name and address of manufacturer or distributor).
(Lot No.).

(2) For devices to be thrown:

Type IV Personal Flotation Device.
Inspected and tested in accordance with U.S. Coast Guard test procedures.
(Name of buoyant material) buoyant material provides a minimum buoyant force of (16½ lb., 18 lb., or 20 lb.).
(Special purpose intended).
Approved for use on all recreational boats less than 16 feet in length and only as a throwable device on all other recreational boats.
U.S. Coast Guard Approval No. 160.064/(assigned manufacturer's No.)/(Revision No.); (Model No.).
(Name and address of manufacturer or distributor).
(Lot No.).

* * * * *

13. By adding the following footnote to §§ 160.002–5, 160.005–5, 160.009–5, 160.-

047–5, 160.047–5, 160.048–5, 160.050–5, 160.052–7 160.055–7, 160.060–7, and 160.-064–13:

[1] The manufacturer of a personal flotation device must meet 33 CFR 175.41 through 33 CFR 175.45 which require an instruction pamphlet for each device that is sold or offered for sale for use on recreational boats.

(46 U.S.C. 375, 416, 5260, 1454, 1488; 49 U.S.C. 1655(b)(1); 49 CFR 1.46(b), (n)(1).)

NOTE: The Coast Guard has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A–107.

Dated: December 9, 1976.

W. M. BENKERT,
Rear Admiral U.S. Coast Guard,
Chief, Office of Merchant Marine Safety.

[FR Doc.76–37228 Filed 12–17–76;8:45 am]

federal register

MONDAY, DECEMBER 20, 1976

PART V:

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

■

MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

Proposed Rulemaking

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

[24 CFR Part 235]

[Docket No. R-76-358]

MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

Proposed Rulemaking

Notice is hereby given that the Department proposes to amend Chapter II of Title 24 of the Code of Federal Regulations by amending §§ 235.5, 235.10, 235.350 and 235.375, previously published at 41 FR 1168, Jan. 6, 1976, and by adding a new § 235.361.

The amendment to § 235.5 would change the definition of income to exclude the earnings of each minor in the family. Currently, the regulations exclude the income of each minor. The Department believes that this revision is more in conformity with the statutory intent.

The proposed changes to §§ 235.10 and 235.350 would clarify the language used in determining when recertification is required.

The new provision at § 235.361, regarding the recovery of assistance payments, would change current Department policy. Currently, when assistance payments are made to a mortgagee on the account of a mortgagor under Section 235 of the National Housing Act and it is subsequently determined that the mortgagor was unentitled to such payments or that overpayments were made, collection action is taken against the mortgagee. The mortgagee, with whom the Government has contracted, in turn proceeds against the mortgagor and, if necessary, can declare a default under the mortgage when appropriate reimbursement is not made within a reasonable time.

When attempts are made to collect such sums from the mortgagee after the mortgagor has transferred the mortgaged property to an assumptor or the mortgage has been paid in full, and the mortgagee was without knowledge or control over the circumstances which led to the payments, it is unfair to the mortgagee to proceed against the mortgagee who may not be able to collect from the former mortgagor. If the mortgagee does pay and elects to declare a default in the mortgage in an effort to recover the sum of money involved, the innocent assumptor is improperly hurt.

It is proposed that a rule be established which regularizes the current practice of proceeding against the mortgagee. However, if the mortgagor has transferred the property to an assumptor or the mortgage has been paid in full and HUD finds the mortgagee was without knowledge of or control over the circumstances which led to the payments which must be recovered, the proposed rule would require HUD to proceed against the mortgagor on whose behalf the payments were made and not against the mortgagee. The new rule would only be applied prospectively. The proposed rule would also allow the mortgagee to retain the handling charges except in the case of fraud, misrepresentation or error on the part of the mortgagee. The amendment to § 235.375 is necessitated by the current conflict between § 235.375 and 24 CFR 420.7. The Department believes that the provisions regarding suspension, termination and reinstatement of mortgage assistance payments currently contained in Section 420.7 are the better rules. This amendment, therefore, would eliminate the inconsistency by adopting the language of § 420.7.

Interested persons are invited to submit written comments, suggestions, or data regarding the proposed regulations to the Rules Docket Clerk, Room 10141, Office of the Secretary, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410. Communications should have reference to the above docket number and title. All relevant material received on or before January 19, 1977, will be considered before adoption of the final rule. A copy of each communication submitted will be available for public inspection during business hours at the above address.

The Department has determined that an Environmental Impact Statement is not required with respect to this rule. A copy of the Finding of Inapplicability is available for inspection at the above address.

It is hereby certified that the economic and inflationary impacts of this proposed regulation have been carefully evaluated in accordance with OMB Circular A-107.

Accordingly, the Department proposes to amend Chapter II of Title 24 CFR and add a new § 235.361 as follows:

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

1. Section 235.5 would be amended by revising paragraph (a) (3) as follows:

§ 235.5 Definitions used in this subpart.

* * * * *

(a) * * *

(3) The earnings of each minor in the family who is living with such family, plus the sum of $300 for each such minor.

* * * * *

2. Section 235.10 would be amended by revising paragraph (c) (2) (ii) as follows:

§ 235.10 Eligible mortgagors.

* * * * *

(c) * * *

(2) * * *

(ii) The family income (except income of minors increases at least $50 per month.

* * * * *

3. Section 235.350 would be amended by revising paragraphs (a) (2), (a) (2) (ii) and (b) to read as follows:

§ 235.350 Mortgagors required recertification.

(a) * * *

(2) No more than 30 days after the mortgagee is notified by the mortgagor or learns from any identifiable source:

* * * * *

(ii) That the family income (excluding income of minors) has increased at least $50 per month (except in the case of a mortgagor under a mortgage insured before January 5, 1976).

* * * * *

(b) With respect to mortgages insured under Part 235 on or after January 5, 1976, the mortgagee shall obtain from the applicant-homeowner at the time application is made for assistance and at the time of annual recertification required under paragraph (a) (1) of this section, on a form provided by the Secretary, a statement of the aggregate amounts of total income prior to adjustments reported for all family members (other than minors) by the applicant-homeowner in his most recent Federal income tax return. If separate returns are filed by separate members of the family, the total income prior to adjustments included in all such returns (except returns of minors) shall be reported. If the income so reported is more than 25 percent above the income reported on the recertification, the mortgagee shall obtain from the homeowner a new recertification or a written explanation of the difference in income reported on the two forms.

* * * * *

4. Section 235.361 would be added to read as follows:

§ 235.361 Recovery of assistance payments.

If it is determined that assistance payments have been paid on behalf of a mortgagor in excess of the amount of benefits to which the mortgagor was entitled, the mortgagee shall reduce its next billing to the Secretary in the amount of overpaid assistance payments. The mortgagee may increase the mortgagor's required monthly payments in an amount which will reimburse the mortgagee within a reasonable time without causing undue hardship to the mortgagor. If the mortgagee has filed a claim for mortgage insurance benefits, whether or not that claim has been paid, or if the mortgage has been paid in full or the mortgagor has sold the property to an assumptor before the determination is made, and the mortgagee did not contribute to the overpayment through fraud, misrepresentation or error (including failure to meet contractual obligations), the mortgagee will not be required to reduce its billings or increase the assumptor's monthly payments. In such cases, HUD will require payment by the mortgagor on whose behalf assistance has been overpaid. If fraud, misrepresentation or error on the part of the mortgagee resulted in assistance payments being made on behalf of a mortgagor when no assistance payment should have been made, the mortgagee

shall reduce the next billing to the Secretary in the amount of the handling charges for the period during which the assistance was not warranted.

5. Section 235.375 would be revised to read as follows:

§ 235.375 Termination, suspension, or reinstatement of the assistance payments contract.

(a) *Termination.* The assistance payments contract shall be terminated when any of the following events occur:

(1) The contract of mortgage insurance is terminated, except when the mortgage has been assigned to the Secretary.

(2) The property is purchased by a homeowner not qualified to receive assistance payments.

(3) The cooperative member transfers his membership and occupancy rights to a new cooperative member not qualified to receive assistance payments.

(4) With respect to mortgages approved for insurance on or after January 5, 1976, the homeowner sells the property or the cooperative member transfers his membership.

(5) When the assistance payments contract has been suspended for a period of three years without reinstatement.

(b) *Suspension.* The assistance payments contract shall be suspended when any one of the following events occur:

(1) The homeowner or cooperative member ceases to occupy the property, except in the following instances:

(i) The property is purchased by a homeowner who immediately assumes the mortgage obligation under a mortgage approved for insurance prior to January 5, 1976, with respect to which assistance payments have been made on behalf of the previous owner, and who meets the income and asset requirements prescribed by the Secretary.

(ii) The cooperative member transfers his membership and occupancy rights to a new member who assumes the mortgage obligation under a mortgage approved for insurance prior to January 5, 1976, and meets the income and asset requirements prescribed by the Secretary.

(2) The mortgagee determines that the mortgagor or cooperative member ceases to qualify for the benefits of assistance payments by reason of his income increasing to an amount enabling him to pay the full monthly mortgage payment by using 20 percent of the family income.

(3) Foreclosure is instituted.

(4) The mortgagee is unable to obtain from the homeowner (or from the cooperative association on behalf of the cooperative member) a required recertification of occupancy, employment, income, and family composition as prescribed in Section 235.350.

(5) At such other times as the Secretary may require.

(c) *Effect of termination or suspension.* Upon termination or suspension of the assistance payments contract, the payment due on the first day of the month in which the termination or suspension occurs shall be the last payment to which the mortgagee shall be entitled; except that, in the case of a suspended contract, payment may be resumed after the contract is reinstated pursuant to paragraph (e) of this section.

(d) *Noneffect on mortgage insurance contract.* The termination or suspension of the assistance payments contract, where the mortgage insurance contract is not simultaneously terminated, shall have no effect on the mortgage insurance contract.

(e) *Reinstatement.* Where the assistance payments contract is suspended, it may be reinstated by the Secretary at his discretion and on such conditions as he may prescribe.

(Sec. 7(d) of the Dept. of HUD Act, (42 U.S.C. 3535(d))

Issued at Washington, D.C., on December 13, 1976.

JAMES L. YOUNG,
Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc.76-37255 Filed 12-17-76;8:45 am]

federal register

MONDAY, DECEMBER 20, 1976

PART VI:

FEDERAL TRADE COMMISSION

■

MERGERS AND ACQUISITION

Proposed Rulemaking

FEDERAL TRADE COMMISSION

[16 CFR Part 801]

MERGERS AND ACQUISITIONS

Proposed Rulemaking

The Clayton Act, 15 U.S.C. Sec. 12 et seq., as amended by Sections 201 and 202 of the "Hart-Scott-Rodino Antitrust Improvements Act of 1976," Pub. L. 94-435, 15 U.S.C. Sec. 18A (hereafter the "Antitrust Improvements Act"), requires persons contemplating certain direct or indirect mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (hereafter the "Assistant Attorney General") advance notice and to wait certain designated periods before consummation of such plans. The transactions to which the advance notice requirement is applicable and the length of the waiting periods required are set out in the Antitrust Improvements Act, the complete text of which is set out below. The amendment to the Clayton Act does not change the standards to be used in determining the legality of mergers and acquisitions.

Subsection 7A(d)(1) of the amended Clayton Act, 15 U.S.C. Sec. 18A(d)(1), directs the Federal Trade Commission, with the concurrence of the Assistant Attorney General and by rule in accordance with 5 U.S.C. Sec. 553, to require that the notification be in such form and contain such information and documentary material as may be necessary and appropriate to determine whether the proposed transaction may, if consummated, violate the antitrust laws. Subsections 7A(d)(2)(A)-(C) of the amended Act, 15 U.S.C. 18A(d)(2)(A)-(C), grant the Federal Trade Commission, with the concurrence of the Assistant Attorney General and by rule in accordance with 5 U.S.C. 553, the authority (1) to define the terms used in the amendment; (2) to exempt additional persons from the Act's notice and waiting period requirements; and (3) to prescribe such other rules as may be necessary and appropriate to carry out the purposes of Section 7A.

Section 7A of the amended Clayton Act, 15 U.S.C. Section 18A, provides:

TITLE II—PREMERGER NOTIFICATION

NOTIFICATION AND WAITING PERIOD

Sec. 201. The Clayton Act (15 U.S.C. 12 et seq.) is amended by inserting immediately after section 7 of such Act the following new section:

"Sec. 7A. (a) Except as exempted pursuant to subsection (c), no person shall acquire, directly or indirectly, any voting securities or assets of any other person, unless both persons (or in the case of a tender offer, the acquiring person) file notification pursuant to rules under subsection (d)(1) and the waiting period described in subsection (b)(1) has expired, if—

"(1) the acquiring person, or the person whose voting securities or assets are being acquired, is engaged in commerce or in any activity affecting commerce;

"(2)(A) any voting securities or assets of a person engaged in manufacturing which has annual net sales or total assets of $10,000,000 or more are being acquired by any person which has total assets or annual net sales of $100,000,000 or more;

"(B) any voting securities or assets of a person not engaged in manufacturing which has total assets of $10,000,000 or more are being acquired by any person which has total assets or annual net sales of $100,000,000 or more; or

"(C) any voting securities or assets of a person with annual net sales or total assets of $100,000,000 or more are being acquired by any person with total assets or annual net sales of $10,000,000 or more; and

"(3) as a result of such acquisition, the acquiring person would hold—

"(A) 15 per centum or more of the voting securities or assets of the acquired person, or

"(B) an aggregate total amount of the voting securities and assets of the acquired person in excess of $15,000,000.

In the case of a tender offer, the person whose voting securities are sought to be acquired by a person required to file notification under this subsection shall file notification pursuant to rules under subsection (d).

"(b)(1) The waiting period required under subsection (a) shall—

"(A) begin on the date of the receipt by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice (hereinafter referred to in this section as the 'Assistant Attorney General') of—

"(i) the completed notification required under subsection (a), or

"(ii) if such notification is not completed, the notification to the extent completed and a statement of the reasons for such noncompliance,

from both persons, or, in the case of a tender offer, the acquiring person; and

"(B) end on the thirtieth day after the date of such receipt (or in the case of a cash tender offer, the fifteenth day), or on such later date as may be set under subsection (e)(2) or (g)(2).

"(2) The Federal Trade Commission and the Assistant Attorney General may, in individual cases, terminate the waiting period specified in paragraph (1) and allow any person to proceed with any acquisition subject to this section, and promptly shall cause to be published in the FEDERAL REGISTER a notice that neither intends to take any action within such period with respect to such acquisition.

"(3) As used in this section—

"(A) The term 'voting securities' means any securities which at present or upon conversion entitle the owner or holder thereof to vote for the election of directors of the issuer or, with respect to unincorporated issuers, persons exercising similar functions.

"(B) The amount or percentage of voting securities or assets of a person which are acquired or held by another person shall be determined by aggregating the amount or percentage of such voting securities or assets held or acquired by such other person and each affiliate thereof.

"(c) The following classes of transactions are exempt from the requirements of this section—

"(1) acquisitions of goods or realty transferred in the ordinary course of business;

"(2) acquisitions of bonds, mortgages, deeds of trust, or other obligations which are not voting securities;

"(3) acquisitions of voting securities of an issuer at least 50 per centum of the voting securities of which are owned by the acquiring person prior to such acquisitions;

"(4) transfers to or from a Federal agency or a State or political subdivision thereof;

"(5) transactions specifically exempted from the antitrust laws by Federal statute;

"(6) transactions specifically exempted from the antitrust laws by Federal statute if approved by a Federal agency, if copies of all information and documentary material filed with such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General;

"(7) transactions which require agency approval under section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828 (c)), or section 3 of the Bank Holding Company Act of 1956 (12 U.S.C. 1842);

"(8) transactions which require agency approval under section 4 of the Bank Holding Company Act of 1956 (12 U.S.C. 1843), section 403 and 408(e) of the National Housing Act 12 U.S.C. 1726 and 1730a), or section 5 of the Home Owners' Loan Act of 1933 (12 U.S.C. 1464), if copies of all information and documentary material filed with any such agency are contemporaneously filed with the Federal Trade Commission and the Assistant Attorney General at least 30 days prior to consummation of the proposed transaction;

"(9) acquisitions, solely for the purpose of investment, of voting securities, if, as a result of such acquisition, the securities acquired or held do not exceed 10 per centum of the outstanding voting securities of the issuer;

"(10) acquisitions of voting securities, if, as a result of such acquisition, the voting securities acquired do not increase, directly or indirectly, the acquiring person's per centum share of outstanding voting securities of the issuer;

"(11) acquisitions, solely for the purpose of investment, by any bank, banking association, trust company, investment company, or insurance company, of (A) voting securities pursuant to a plan of reorganization or dissolution; or (B) assets in the ordinary course of its business; and

"(12) such other acquisitions, transfers, or transactions, as may be exempted under subsection (d)(2)(B).

"(d) The Federal Trade Commission, with the concurrence of the Assistant Attorney General and by rule in accordance with section 553 of title 5, United States Code, consistent with the purposes of this section—

"(1) shall require that the notification required under subsection (a) be in such form and contain such documentary material and information relevant to a proposed acquisition as is necessary and appropriate to enable the Federal Trade Commission and the Assistant Attorney General to determine whether such acquisitions may, if consummated, violate the antitrust laws; and

"(2) may—

"(A) define the terms used in this section;

"(B) exempt, from the requirements of this section, classes of persons, acquisitions, transfers, or transactions which are not likely to violate the antitrust laws; and

"(C) prescribe such other rules as may be necessary and appropriate to carry out the purposes of this section.

"(e)(1) The Federal Trade Commission or the Assistant Attorney General may, prior to the expiration of the 30-day waiting period (or in the case of a cash tender offer, the 15-day waiting period) specified in subsection (b)(1) of this section, require the submission of additional information or documentary material relevant to the proposed acquisition, from a person required to file notification with respect to such acquisition under subsection (a) of this section prior to the expiration of the waiting period specified in subsection (b)(1) of this section, or from any officer, director, partner, agent, or employee of such person.

"(2) The Federal Trade Commission or the Assistant Attorney General, in its or his discretion, may extend the 30-day waiting period (or in the case of a cash tender offer, the 15-day waiting period)

specified in subsection (b) (1) of this section for an additional period of not more than 20 days (or in the case of a cash tender offer, 10 days) after the date on which the Federal Trade Commission or the Assistant Attorney General, as the case may be, receives from any person to whom a request is made under paragraph (1), or in the case of tender offers, the acquiring person, (A) all the information and documentary material required to be submitted pursuant to such a request, or (B) if such request is not fully complied with, the information and documentary material submitted and a statement of the reasons for such noncompliance. Such additional period may be further extended only by the United States district court, upon an application by the Federal Trade Commission or the Assistant Attorney General pursuant to subsection (g) (2).

"(f) If a proceeding is instituted or an action is filed by the Federal Trade Commission, alleging that a proposed acquisition violates section 7 of this Act or section 5 of the Federal Trade Commission Act, or an action is filed by the United States, alleging that a proposed acquisition violates such section 7 or section 1 or 2 of the Sherman Act, and the Federal Trade Commission or the Assistant Attorney General (1) files a motion for a preliminary injunction against consummation of such acquisition pendente lite, and (2) certifies to the United States district court for the judicial district within which the respondent resides or carries on business, or in which the action is brought, that it or he believes that the public interest requires relief pendente lite pursuant to this subsection—

"(A) upon the filing of such motion and certification, the chief judge of such district court shall immediately notify the chief judge of the United States court of appeals for the circuit in which such district court is located, who shall designate a United States district judge to whom such action shall be assigned for all purposes; and

"(B) the motion for a preliminary injunction shall be set down for hearing by the district judge so designated at the earliest practicable time, shall take precedence over all matters except older matters of the same character and trials pursuant to section 3161 of title 18, United States Code, and shall be in every way expedited.

"(g) (1) Any person, or any officer, director, or partner thereof, who fails to comply with any provision of this section shall be liable to the United States for a civil penalty of not more than $10,000 for each day during which such person is in violation of this section. Such penalty may be recovered in a civil action brought by the United States.

"(2) If any person, or any officer, director, partner, agent, or employee thereof, fails substantially to comply with the notification requirement under subsection (a) or any request for the submission of additional information or documentary material under subsection (e) (1) of this section within the waiting period specified in subsection (b) (1) and as may be extended under subsection (e) (2), the United States district court—

"(A) may order compliance;

"(B) shall extend the waiting period specified in subsection (b) (1) and as may have been extended under subsection (e) (2) until there has been substantial compliance, except that, in the case of a tender offer, the court may not extend such waiting period on the basis of a failure, by the person whose stock is sought to be acquired, to comply substantially with such notification requirement or any such request; and

"(C) may grant such other equitable relief as the court in its discretion determines necessary or appropriate,

upon application of the Federal Trade Commission or the Assistant Attorney General.

"(h) Any information or documentary material filed with the Assistant Attorney General or the Federal Trade Commission pursuant to this section shall be exempt from disclosure under section 552 of title 5, United States Code, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this section is intended to prevent disclosure to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

"(i) (1) Any action taken by the Federal Trade Commission or the Assistant Attorney General or any failure of the Federal Trade Commission or the Assistant Attorney General to take any action under this section shall not bar any proceeding or any action with respect to such acquisition at any time under any other section of this Act or any other provision of Law.

"(2) Nothing contained in this section shall limit the authority of the Assistant Attorney General or the Federal Trade Commission to secure at any time from any person documentary material, oral testimony, or other information under the Antitrust Civil Process Act, the Federal Trade Commission Act, or any other provision of law.

"(j) Beginning not later than January 1, 1978, the Federal Trade Commission, with the concurrence of the Assistant Attorney General, shall annually report to the Congress on the operation of this section. Such report shall include an assessment of the effects of this section, of the effects, purpose, and need for any rules promulgated pursuant thereto, and any recommendations for revisions of this section.".

EFFECTIVE DATES

Sec. 202. (a) The amendment made by section 201 of this Act shall take effect 150 days after the date of enactment of this Act, except that subsection (d) of section 7A of the Clayton Act (as added by section 201 of this Act) shall take effect on the date of enactment of this Act.

Pursuant to subsections 7A(d) (1) and 7A(d) (2) (A)–(C) the Commission hereby proposes and offers for comment the following notification requirement: The notification required by section 201 of the Antitrust Improvements Act shall consist of complete and correct answers to the items and instructions set forth in the following form, except as otherwise provided in the rules.

The notification form here proposed implements the Antitrust Improvements Act, which becomes effective on February 27, 1977. The current Federal Trade Commission pre-merger notification program[1] will be in effect until the effective date of the notification and relevant rules, the complete text of which follows:

STATEMENT OF TRANSITIONAL POLICY WITH RESPECT TO EFFECTIVE DATE OF PRE-MERGER NOTIFICATION PROGRAM

Section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976 becomes effective on February 27, 1977. The Act may be interpreted to require, absent specific termination of the statutory waiting period for particular transactions, the imposition of a moratorium of thirty days on all qualifying acquisitions and mergers, and of fifteen days on all qualifying cash tender offers, after that date. The Federal Trade Commission and the Assistant Attorney General do not believe it was the intention of Congress to impose such a moratorium. Accordingly, the Commission proposes the following Transitional Rule relating to mergers, acquisitions and cash tender offers scheduled to occur on or soon after February 27, 1977. The Transitional Rule also encompasses the possibility that the effective date of the notification form and rules (other than the Transitional Rule) may be later than February 27, 1977.

TRANSITIONAL RULE

(a) This rule is promulgated under the authority of subsection (d) (2) (C) of section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94-435, 15 U.S.C. Sec. 18A, hereinafter referred to as "this section." References to specific subsections refer to subsections thereof.

(b) An acquisition shall be exempt from all requirements of this section if made on or after February 27, 1977, and before the effective date of the Notification and Report Form and rules promulgated by the Federal Trade Commission under the authority of this section (hereinafter referred to as the "Form" and "rules" respectively). Such date shall be identified in the FEDERAL REGISTER at least thirty days in advance.

(c) (1) An acquisition made on or after the effective date of the Form and rules shall be exempt from the wating period required by subsection (b), except as provided by subparagraph (2) of this paragraph, if:

(A) All persons required by this section and the rules to file notification with respect to such acquisition, file notification with both the Federal Trade Commission and the Assistant Attorney General, in the manner prescribed by the rules, on the effective date of the Form and rules. Notification received by the Federal Trade Commission and Assistant Attorney General prior to the effective date of the rules shall be deemed to be filed on the effective date of the Form and rules;

(B) Neither the Federal Trade Commission nor the Assistant Attorney General requests additional information or documentary material, pursuant to subsection (e) and rule 3.30, from any person filing notification with respect to such acquisition, prior to the consummation of the acquisition; and

[1] Federal Trade Commission, Corporate Mergers or Acquisitions, Notification and Special Reports, published in the FEDERAL REGISTER, page 35717, Vol. 39, No. 193, October 3, 1974.

(C) The acquisition is consummated no later than thirty (or, in the case of cash tender offers, as defined in the rules, fifteen) calendar days after the effective date of the Form and rules.

(2) In the event of a request for additional information or documentary material, the waiting period normally deriving from such a request, pursuant to subsection (e) and rule 3.30, shall take effect at the time of such request, and shall expire or be terminated or extended thereafter in accordance with this section and the rules.

(d) All acquisitions otherwise subject to the requirements of this section, and not falling within paragraphs (b) or (c) of this rule, shall be subject to the requirements of this section and the rules.

STATEMENT WITH RESPECT TO CERTAIN FINANCIAL TRANSACTIONS AND INSTITUTIONS

The Federal Trade Commission and Assistant Attorney General are uncertain of the proper role to assign subsection (c)(11). Specifically, the agencies wish to learn with what frequency, and under what circumstances, do banks, banking associations, trust companies, investment companies, and insurance companies acquire voting securities pursuant to a plan of reorganization or dissolution, or assets (as distinguished from securities) in the normal course of business. Likewise, the agencies wish to know to what extent the reporting and waiting requirements of this section may impede normal business practices by such companies. During the period for public comment, statements to this end will be particularly welcome. In the interim, no rule has been proposed.

The Federal Trade Commission and the Assistant Attorney General also are uncertain as to whether the proposed Notification and Report Form is appropriate for the reporting of any mergers, acquisitions, or joint ventures, other than those undertaken in the ordinary course of business, involving financial institutions, which may not be exempt from the requirements of this section under subsection (c)(6), (c)(8), or any other relevant exemption. During the period for public comment, statements to this end, or suggestions as to an appropriate form, will also be particularly welcome.

The Commission proposes the following amendment to Title 16, Chapter I, by adding a new Subchapter H—Rules, Regulations, Statements and Interpretations under the Hart-Scott-Rodino Antitrust Improvements Act of 1976—and new Parts 801, 802, and 803 under that subchapter (Part 800 would be reserved).

SUBCHAPTER H—RULES, REGULATIONS, STATEMENTS AND INTERPRETATIONS UNDER THE HART-SCOTT-RODINO ANTITRUST IMPROVEMENTS ACT OF 1976

PART 800—[RESERVED]

PART 801—DEFINITIONS AND COVERAGE RULES

Sec.
801.05 Definitions.
801.10 Mergers and consolidations.
801.15 Activities in or affecting commerce.
801.20 Value of securities and assets.
801.25 Annual net sales and total assets.
801.30 Calculating percentage of securities or assets acquired.
801.35 Accumulation of assets.
801.40 Aggregate total amount of voting securities and assets.
801.45 Incremental acquisitions.
801.50 Acquisitions subsequent to exceeding threshold.
801.55 Joint ventures.
801.60 Target of tender offer must report.

§ 801.05 Definitions.

When used in this section and these rules—

(a) *Person.* The term "person" includes any individual, corporation, company, partnership, association, joint stock company, trust, foundation, fund, institution, society, union, club or other group of individuals organized for any purpose, whether incorporated or not, wherever located and of whatever citizenship; or any receiver, trustee in bankruptcy or similar official or any liquidating agent for any of the foregoing, in his capacity as such; together with any and all of the foregoing controlled by, controlling, or under common control with, such person. *Provided however,* That the term "person" shall not include any foreign state, government, or agency thereof (other than a corporation engaged in commerce or in any activity affecting commerce): *And provided further,* That the word "controlling" in this paragraph shall not act to include individuals in their capacities as directors or officers of corporations, or in the case of unincorporated persons, individuals exercising similar functions.

Example: In the case of corporations, this definition includes the entire corporate structure instead of, all parent corporations, subsidiaries and divisions (whether consolidated or unconsolidated, whether incorporated or unincorporated), and all sister corporations under common control with any of the foregoing. It includes controlling shareholders but excludes officers and directors who are not controlling shareholders.

(b) *Control.* The term "control" (as used in the terms "control," "controlling," "controlled by," and "under common control with") means either (1) the ownership of 50 percent or more of the outstanding voting securities of an issuer; or (2) the power, whether or not exercised, to formulate, determine, direct, cause or veto the direction of the management, policy or decisions of a person, whether through the ownership of a dominant minority of the total outstanding voting securities of an issuer or person controlling the issuer, proxy voting, contractual arrangements, agents, or other means: *Provided however,* That control shall not include any such power arising exclusively from contractual conditions in a contract relating to financing by a bank, banking association, trust company, investment company, or insurance company.

(c) *Hold.* The term "hold" (as used in the terms "hold," "holds," "holding" and "held") means the possession of either (1) ownership, whether effected directly or indirectly through agents, brokers, nominees, or other means; or (2) control.

(d) *Affiliate.* A person is an "affiliate" of another person if either (1) such person holds 5 per centum or more of the outstanding voting securities of the other person; (2) 5 per centum or more of the outstanding voting securities of such person are held by the other person; or (3) such person is an officer, director, or partner of the other person.

(e) *Security.* The term "security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or to purchase, any of the foregoing.

(f) *Tender Offer.* The term "tender offer" means an offer published, sent, or given to security holders of the issuer whose voting securities are sought to be acquired, requesting that all or a portion of a class of an issuer's voting securities be deposited during a fixed period of time so that the acquiring person may acquire such securities at a specified price (whether cash, securities, or a combination thereof), subject to specified conditions.

(g) *Cash Tender Offer.* The term "cash tender offer" means a tender offer in which cash is the only consideration offered to the holders of the securities sought to be acquired.

(h) *Engaged in manufacturing.* A person shall be deemed to be "engaged in manufacturing" if it produces and derives sales or revenues from any product within industries 2000–3999 as coded in Appendix B to the Standard Industrial Classification Manual (1972 edition) published by the Executive Office of the President, Office of Management and Budget.

(i) *United States.* The term "United States" shall include the United States, commonwealths and territories thereof, and the District of Columbia.

(j) *This Section.* References to "this section" refer to section 201 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, Pub. L. 94–435, 15 U.S.C. 18A. References to specific subsections refer to subsections thereof.

§ 801.10 Mergers and consolidations.

(a) A merger, consolidation, or other equivalent transaction combining the business of two or more persons wherein the several parties to the transaction may not be readily identifiable as an "acquiring person" or an "acquired person" shall be deemed to be an acquisition subject to this section.

(b) References in this section and these rules to the "aquiring person" or the "acquired person" shall be considered references to either or any party to such a transaction.

§ 801.15 Activities in or affecting commerce.

Subsection (a)(1) is satisfied if the acquiring person, as defined in § 801.05, or the person, as defined in § 801.05, whose voting securities or assets are being acquired, is engaged in commerce or in any activity affecting commerce, as commerce is defined in the Clayton Act, 15 U.S.C. 12, or the Federal Trade Commission Act, 15 U.S.C. 44

Example: A foreign subsidiary of a United States corporation seeks to acquire a foreign business. The acquiring person is the United States parent corporation. Because the United States corporation is engaged in commerce, the acquisition falls within the language of subsection (a)(1). Note, however, that § 802.35 may exempt certain transactions otherwise within subsection (a)(1).

§ 801.20 Value of securities and assets.

(a) *Securities.* For the purposes of this section, the value of securities shall be determined as follows:

(1) If market quotations are readily available, the value shall be the market quotation on any day within fifteen calendar days before the filing of the notification required by this section, or the acquisition price, whichever is greater.

(2) If market quotations are not readily available, the value shall be the fair market value on any day within fifteen calendar days before the filing of the notification required by this section, as determined in good faith by the board of directors of the acquiring person, or in the case of acquiring persons lacking directors, other officials exercising similar functions; or the acquisition price, whichever is greater.

(b) *Assets.* For purposes of this section, the value of assets which are to be acquired shall be the fair market value on any day within a fifteen calendar days before the filing of the notification required by this section, as determined in good faith by the board of directors, or in the case of acquiring persons lacking directors, other officials exercising similar functions; or the book value; or the acquisition price, whichever is greatest.

(c) *Securities as consideration.* When securities constitute all or part of the consideration for the acquisition, the securities shall be valued according to paragraph (a) of this section.

§ 801.25 Annual net sales and total assets.

For the purposes of subsections (a)(2) and (a)(3):

(a) The annual net sales and total assets of a person shall be as stated on the latest certified financial statement(s) of the person, prepared in accordance with Regulation S-X of the United States Securities and Exchange Commission, which shall be as of a date not more than one year prior to the date of notification under this section.

(b) If a material change has occurred in net sales or total assets of the person subsequent to the date of the last certified financial statement(s), which change could reasonably be expected to increase the amounts stated thereon to in excess of the criteria of subsection (a)(2), the person must either prepare a new statement(s) in accordance with Regulation S-X or must observe the requirements of this section as though such a new statement(s) had been prepared and the net sales or total assets shown thereon had exceeded such criteria.

(c) The annual net sales or total assets of a person include the annual net sales or non-duplicative total assets of any and all persons controlling, controlled by, or under common control with, such person, whether such sales or assets are foreign or domestic, except as provided in paragraph (d) of this section.

Example: A United States subsidiary of a foreign corporation seeks to acquire a United States business. The annual net sales and total assets of the acquiring person include the annual net sales and total assets of the parent foreign corporation as well as of the United States subsidiary.

(d) No assets of any natural person (other than assets of a partnership which is a person subject to the requirements of this section) shall be included in determining the total assets of a person.

§ 801.30 Calculating percentage of securities or assets acquired.

(a) *Voting securities.* Any issuer whose voting securities are being acquired shall be deemed an "acquired person" in calculating the percentage of voting securities acquired for purposes of subsection (a)(3)(A).

Example: Corporation A proposes to acquire 100 percent of the stock of corporation S, a wholly-owned subsidiary of the larger corporation B. A is considered to be acquiring 100 percent of the voting stock of S, and not merely some lesser percentage of the assets of the larger parent B, and the acquisition would exceed the 15 percent criterion in subsection (a)(3)(A).

(b) *Assets.* Any separately identifiable person, as defined in § 801.05(a), and excluding all persons controlled by, controlling, or under common control with such person, whose assets are being acquired, shall be deemed to be an "acquired person" in calculating the percentage of assets acquired for purposes of subsection (a)(3)(A).

Example: Corporation A proposes to acquire 100 percent of the assets of corporation S, a wholly-owned subsidiary of the larger corporation B. A is considered to be acquiring 100 percent of the assets of S, and not merely some lesser percentage of the assets of the larger parent B, and the acquisition would exceed the 15 percent criterion in subsection (a)(3)(A).

§ 801.35 Accumulation of assets.

(a) For purposes of subsection (a)(3)(B) but not for purposes of subsection (a)(3)(A), assets previously acquired by the acquiring person from the acquired person shall be deemed assets of the acquired person, if acquired by the acquiring person within 180 calendar days of the date of filing of the notification required by this section.

(b) The value of such assets shall be calculated in accordance with § 801.20(b), as of the time of their acquisition.

§ 801.40 Aggregate total amount of voting securities and assets.

For the purposes of subsection (a)(3)(B), the aggregate total amount of voting securities and assets shall be the sum of:

(a) The value, calculated in accordance with § 801.20(a), of all voting securities of the acquired person which the acquiring person would hold as a result of the acquisition; and

(b) the value of all assets of the acquired person, calculated in accordance with §§ 801.20(b) and 801.35, which the acquiring person would hold as a result of the acquisition.

Example: Corporation B possessed assets valued at $100-million in January. Corporation A, engaged in commerce and possessing assets of $200-million, acquired $7-million of B's assets in February, and intends to acquire voting securities of B valued at $9-million in March. The March acquisition would be subject to the requirements of this section since, as its result, A would hold an aggregate total amount of the voting securities and assets of B in excess of $15-million.

§ 801.45 Incremental acquisitions.

Only an acquisition "as a result of which" the acquiring person's holdings actually would meet or exceed the threshold levels of subsection (a)(3) shall be subject to the requirements of the section. Any particular acquisition, even though part of a sequence eventually attaining the threshold levels of subsection (a)(3), need not observe the requirements of the section if as a result of the acquisition the acquiring person's holdings fall short of the threshold levels of subsection (a)(3).

Example: If corporation A acquires 14.99 percent of the outstanding voting securities of corporation B at a cost of $12-million, and the requirements of subsections (a)(1) and (a)(2) are otherwise satisfied, the section is inapplicable. But if A's subsequent acquisition of one additional share of B, at a cost of $100, would increase A's holdings of B shares to 15.00 percent of the outstanding shares of B, then A may not acquire the one share without observing the requirements of the section.

§ 801.50 Acquisitions subsequent to exceeding threshold.

Since subsection (a)(3)(A) includes acquisitions as a result of which the acquiring person would hold 15 percent or more of the outstanding voting securities or assets of the acquired person, and since subsection (a)(3)(B) includes acquisitions as a result of which the acquiring person would hold voting securities or assets of the acquired person in excess of $15-million, acquisitions as a result of which the acquiring person's holdings meet these criteria, and which are not otherwise exempted by subsection (c) or these rules, are subject to the requirements of the section. This is true even though:

(a) Earlier acquisitions of identical assets or securities may have been subject to the requirements of the section;

(b) The acquiring person's holdings initially may have passed the threshold levels of subsection (a)(3) before the effective date of the section; or

(c) The acquiring person's holdings may have initially passed the threshold levels of subsection (a)(3) by increases in market values or other events other than acquisitions.

Acquisitions will not be subject to the requirements of the section, even though meeting the criteria of subsection (a)(3), if they qualify for one of the exemptions in subsection (c) or these rules.

Example: In the example of § 801.45 all purchases of B's shares by A subsequent to the purchase of the one share also would be subject to the requirements of the section, unless A had disposed of some of its holdings so that the criteria of subsection (a)(3) were not satisfied, or unless the subsequent transactions qualified for one of the exemptions in subsection (c) or these rules.

§ 801.55 Joint ventures.

Joint ventures which are transactions of acquisition are subject to the requirements of this section if the statutory criteria are met. Joint ventures shall be evaluated for the purposes of this section as follows:

(a) Persons contributing to the formation of a joint venture shall be deemed acquiring persons. All such persons meeting the statutory criteria are subject to the requirements of the section.

Example: Corporation A, engaged in commerce and possessing net assets over $100-million, contributes assets of $6-million for a one-half interest in a joint venture, firm V. Firm V is intended to have assets exceeding $10-million within one year. Corporation A may not acquire its 50% of the shares of V without filing notification and otherwise complying with this section, unless the joint venture is exempted from the requirements of this section under rule 802.30.

(b) The joint venture to be created shall be deemed the acquired person for purposes of subsection (a). Pursuant to subsection (d)(2)(B), such persons otherwise meeting the criteria of this section need not file the notification required by this section.

Example: Corporation A and other joint venturers intend to contribute to joint venture V total assets of $8-million within one year. The criteria of subsection (a) are not met, and the requirements of the section are not applicable.

(c) The joint venture shall be deemed to be engaged in commerce or an activity affecting commerce if it is the intention of the persons contributing to its formation that it shall be so engaged thereafter within one year following consummation of the proposed transaction.

(d) The assets of the joint venture shall include all assets intended to be contributed to the acquired person by the acquiring persons within one year following consummation of the proposed transaction.

§ 801.60 Target of tender offer must report.

In the case of tender offers, a person whose voting securities are sought to be acquired by a person subject to the requirements of this section must file the notification required by this section, in accordance with these rules, no later than 5 p.m. Eastern Time on the fifteenth (or, in the case of cash tender offers, the tenth) calendar day following the date of receipt by the Federal Trade Commission and Assistant Attorney General, as defined by § 803.15(a), of the notification filed by the acquiring person. Should the fifteenth (or, in the case of cash tender offers, the tenth) calendar day fall on a weekend day or holiday, the notification shall be filed no later than 10 a.m. Eastern Time on the next following business day.

PART 802—EXEMPTION RULES

Sec.

802.05 Clearance by FTC or Antitrust Division.
802.10 Brokers and dealers in securities.
802.15 Acquisitions in escrow.
802.20 Repurchase of own voting securities.
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§ 802.05 Clearance by FTC or Antitrust Division.

Pursuant to subsections (c)(12) and (d)(2)(B), an acquisition shall be exempt from the requirements of this section if:

(a) The voting securities or assets are to be acquired from a person ordered to divest such voting securities or assets by order of the Federal Trade Commission or of any federal court;

(b) The acquiring person is subject to an order of the Federal Trade Commission or of any federal court requiring prior approval by the Federal Trade Commission, the court, or the Department of Justice, of acquisitions, and such approval has been obtained;

(c) The acquiring person has obtained a favorable Advisory Opinion with respect to the acquisition from the Federal Trade Commission, 16 CFR 1.1; or

(d) The acquiring person has obtained a favorable opinion with respect to the acquisition under the Business Review Procedure of the Department of Justice's Antitrust Division, 28 CFR 50.6.

§ 802.10 Brokers and dealers in securities.

(a) *Acquisitions for own account.* Pursuant to subsections (c)(12) and (d)(2)(B), an acquisition of voting securities by a broker or dealer in securities for its own account, or in the process of underwriting, shall be exempt from the requirements of this section; *Provided however,* That no acquisition by such broker or dealer of voting securities of another broker or dealer in securities, for its own account, shall be exempt under this paragraph.

(b) *Acquisition not for own account.* An acquisition of voting securities by a broker or dealer in securities, to be held for the account or benefit of another person, shall be deemed an acquisition by such other person. Pursuant to subsections (c)(12) and (d)(2)(B), such broker or dealer shall be exempt from the requirements of this section as to such acquisition. Nothing in this paragraph shall exempt the person for whose benefit the acquisition is made from any requirement under this section, with respect to any acquisition attributed to such person by this section and this paragraph.

§ 802.15 Acquisitions in escrow.

Pursuant to subsections (c)(12) and (d)(2)(B):

(a) An acquisition in escrow shall be exempt from the requirements of this section. Except as provided in paragraph (b) of this section, nothing in this paragraph shall exempt any person who under the escrow agreement may acquire the voting securities or assets from the escrowee, from any requirement under this section, with respect to any such acquisition.

(b) If the same voting securities or assets revert from the escrowee to the original owner, such acquisition shall be exempt from the requirements of this section.

§ 802.20 Repurchase of own voting securities.

Pursuant to subsections (c)(12) and (d)(2)(B), an acquisition by a corporation of its own voting securities shall be exempt from the requirements of this section.

§ 802.25 Intra-enterprise transactions.

Pursuant to subsections (c)(12) and (d)(2)(B), an acquisition to which but one person is party shall be exempt from the requirements of this section.

Examples:

(1) Corporation A transfers some of its assets to its wholly-owned subsidiary corporation S, in return for additional voting securities of S. The acquisitions are exempt from the requirements of this section.

(2) Corporation A creates a new subsidiary, corporation S, and intends to transfer assets to S in return for 100 percent of the voting securities of S (less any directors' qualifying shares). Since corporation A controls the nascent corporation S, only one "person" as defined in § 801.05 will be party to the transaction. The acquisitions are exempt from the requirements of this section.

(3) Corporations S1 and S2, both wholly-owned subsidiaries of corporation A, merge. Since both S1 and S2 are controlled by the same person, only one "person" as defined in § 801.05 is party to the transaction, which is exempt from the requirements of this section.

§ 802.30 Joint ventures excluded.

Pursuant to subsections (c)(12) and (d)(2)(B), a joint venture shall be exempt from the requirements of this section unless:

(a) At least one acquiring person possesses net sales or total assets of $100-million or more; and

(b) At least one other acquiring person possesses net sales or total assets of $10-million or more.

§ 802.35 Insufficient involvement in United States Commerce.

Pursuant to subsections (c)(12) and (d)(2)(B), an acquisition of securities of an issuer, not substantially involved in the domestic, import or export commerce of the United States, or of assets to which no such substantial involvement of any person is attributable, shall be exempt from the requirements of this section. For purposes of this rule, such substantial involvement means sales in, imports to or exports from the United States in excess of an aggregate annual average of $10-million over the past three years, or the possession of assets (other than deposits in financial institutions, and instruments evidencing government obligations) in the United States the value of which exceeds $10-million.

Examples:

(1) A foreign subsidiary of a United States corporation seeks to acquire all of the stock of an issuer which is a subsidiary of a major foreign conglomerate. Unless the average annual aggregate sales in, imports to, or exports from the United States of the issuer whose stock is to be acquired exceeds $10-million, or unless the issuer holds assets in the United States of a value exceeding $10-million, the transaction is exempt from this section.

(2) A foreign subsidiary of a United States corporation decides to dispose of manufacturing plants located in a foreign country. Products produced at these plants are sold exclusively in the foreign country, and raw materials consumed by these plants which are exported from the United States do not exceed $10-million in value annually. Acquisition of these plants by any person is exempt from this section.

(3) A United States corporation possesses substantial productive capacity overseas and sells all its output overseas. Its assets in, average annual volume of imports to and exports from, the United States, do not exceed $10-million. The acquisition of this corporation by any (United States or foreign) corporation is exempt from this section.

§ 802.40 Minimum Dollar Value.

Pursuant to subsections (c)(12) and (d)(2)(B), an acquisition which would be subject to the requirements of this section because it satisfies subsection (a)(3)(A), and which does not satisfy subsection (a)(3)(B), shall be exempt from the requirements of this section if as a result of the acquisition the acquiring person would not hold:

(a) Assets of the acquired person valued at more than $10-million; or

(b) Voting securities of the issuer valued at more than $10-million, or any lesser amount which confers control of the issuer.

Example: Corporation A is acquiring a non-controlling 16 percent of the voting securities of corporation B for $7-million; the acquisition meets the criteria of subsection (a)(3)(A) but not of subsection (a)(3)(B). Despite the fact that after the acquisition A would hold 15 percent or more of B's voting securities or assets, the acquisition need not be reported since neither of the two criteria set out in this rule is exceeded. Note that this exemption is not applicable to acquisitions which also satisfy subsection (a)(3)(B). Assuming no other exemptions are applicable, if A acquires $9-million of B's voting securities and had within the preceding 180 calendar days acquired assets of B for $7-million, A would hold in excess of $15-million of B's aggregate voting securities and assets, and A must comply with the requirements of this section.

Example: Corporation A owns a non-controlling 16 per cent of the stock of corporation B on the effective date of the statute, and is otherwise subject to the requirements of this section. Before it acquires any more stock in corporation B, corporation A must observe the notification and waiting-period requirements of the section. After reporting, A may further acquire up to five per cent of the stock of B and need not observe the notification and waiting-period requirements of the section, so long as such further acquisitions would not give it control of B.

§ 802.45 Inconsequential incremental acquisitions.

(a) Pursuant to subsections (c)(12) and (d)(2)(B), an acquisition of voting securities, not falling within paragraph (b) of this rule, shall be exempt from the requirements of this section if:

(1) The acquiring person previously acquired voting securities of the same class of the same issuer;

(2) The acquiring person filed the Notification and Report Form required by this section and § 803.05 with respect to the earlier acquisition; and

(3) As a result of the acquisition, the holdings of the acquiring person would not increase by more than five percent of the total outstanding voting securities of the issuer the holdings of the acquiring person as a result of the acquisition which was the subject of the earlier notification.

(b) Notwithstanding paragraph (a) of this section, no acquisition otherwise subject to the requirements of this section shall be exempt from the requirements of this section if the acquisition would confer control upon the acquiring person.

§ 802.50 Short report after prior report.

(a) The Notification and Report Form required by this section and § 803.05 need not be completed by the acquiring person or the acquired person if:

(1) The acquiring person previously acquired assets or voting securities of the acquired person;

(2) In connection with such previous acquisition, both the acquiring person and the acquired person filed the Notification and Report Form required by this section and § 803.05;

(3) Both persons file statements, certified by their submission together with the completed certification page from the Notification and Report required by this section and § 803.05, and otherwise filed in accordance with these rules, describing the proposed transaction and providing a response to every item on the Notification and Report Form to which the response materially differs from the earlier response;

(4) Such statements are filed within one year of the date of filing of the earlier Notification and Report Form; and

(5) The acquisition is consummated within 180 calendar days of the date of receipt of such statements, as defined in § 803.10.

(b) Nothing in this rule shall exempt any person from any requirement under this section. Sufficient statements filed in accordance with paragraph (a) of this section shall constitute notification under this section.

§ 802.75 Federal Agency approval.

For the purposes of subsections (c)(6) and (c)(8), the term "information and documentary material" includes all documents, application forms, and all written submissions of any type whatsoever. In lieu of providing all such information and documentary material, or any portion thereof, an index describing such information and documentary material may be provided, together with a certification that any such information or documentary material not provided will be provided upon request by the Federal Trade Commission or Assistant Attorney General, or a delegated official thereof.

§ 802.85 Acquisitions for investment purposes.

(a) Acquiring persons making an acquisition which is exempt from the requirements of this section only under subsection (c)(9), other than persons excepted by paragraph (b) of this rule, must submit to the Federal Trade Commission and Assistant Attorney General, contemporaneously with the transaction, a statement containing the following information:

(1) The identity of the acquiring person;

(2) The identity of the issuer whose voting securities are to be acquired;

(3) The percentage of the outstanding voting securities of the issuer held by the acquiring person before and after the acquisition;

(4) A declaration that the voting securities are to be held solely for investment purposes.

The statement is to be certified by its submission together with the completed certification page from the Notification and Report Form required by this section and § 803.05.

(b) The statement required by paragraph (a) of this section need not be filed by any bank, banking association, trust company, investment company, or insurance company.

(c) No acquisition of voting securities shall be exempt under subsection (c)(9) as "solely for investment purposes" if, as a result of the acquisition, the acquiring person would control the issuer.

§ 802.90 Stock splits and dividends.

The acquisition of voting securities, pursuant to a stock split or pro rata stock dividend, shall be exempt from the requirements of this section under subsection (c)(10).

§ 802.95 Certain bank, investment or insurance company acquisitions. [Reserved]

PART 803—TRANSMITTAL RULES

Sec.
803.05 Notification and report form.
803.10 Running of time.
803.15 Affidavits required.
803.20 Certification.
803.25 Incomplete responses.
803.30 Requests for additional information.
803.35 Termination of waiting period.

§ 803.05 Notification and report form.

Except as otherwise provided under § 802.50 of this chapter, the notification required by this section shall be the Notification and Report Form promulgated by the Federal Trade Commission, as amended from time to time. All persons required to file notification by this section and these rules shall do so by completing and filing the Notification and Report Form, or a photostatic or other equivalent reproduction thereof, in accordance with the instructions thereon and these rules, except as otherwise provided under § 802.50. Copies of the Notification and Report Form may be obtained from the Public Reference Branch, Room 130, Federal Trade Commission, Sixth Street and Pennsylvania Avenue, NW., Washington, D.C., or by writing to the Premerger Notification Office, Room 301, Federal Trade Commission, Washington, D.C. 20580.

§ 803.10 Running of time.

(a) *Beginning of waiting period.* (1) The waiting period required by this section shall begin on the date of receipt by both designated offices (Premerger Notification Office, Room 301, Federal Trade Commission, Washington, D.C. 20580, and Director of Operations, Antitrust Division, Department of Justice, Washington, D.C. 20530) of the notification required by this section, as provided in these rules, from:

(i) In the case of tender offers, the acquiring person;

(ii) In the case of acquisitions other than tender offers, from all persons required by this section and these rules to file notification.

If the notifications are not delivered to the two offices on the same date, the date of receipt shall be the latest of the dates of delivery. Delivery should be effected directly to the designated offices, either by hand or by certified or registered mail.

(2) Any additional waiting period, pursuant to subsection (e) and § 803.30 (b) (2), shall begin on the date of receipt by the Federal Trade Commission or Assistant Attorney General, whichever requested additional information or documentary material, at the office designated in subparagraph (1) of this paragraph, of the additional information or documentary material requested.

(b) *Expiration of waiting period.* (1) Pursuant to subsection (b) (1) (B), the waiting period shall expire at 5:00 p.m. Eastern Time on the thirtieth (or, in the case of a cash tender offer, the fifteenth) calendar day after the date of receipt as defined in this rule, unless extended pursuant to subsection (e) and § 803.30, or subsection (g) (2), or terminated pursuant to subsection (b) (2) and § 803.35.

(2) Any additional waiting period, pursuant to subsection (e) (2) and § 803.30, shall expire at 5:00 p.m. Eastern Time on the twentieth (or, in the case of a cash tender offer, the tenth) calendar day after the date of receipt of the additional information or documentary material, unless extended pursuant to subsection (g) (2), or terminated pursuant to subsection (e) and § 803.35.

§ 803.15 Affidavits required.

(a) *Tender offers.* The notification required by this section must contain an affidavit, attached to the front of the notification, attesting that:

(1) The tender offer has been published, sent, or given to security holders of the issuer whose voting securities are sought to be acquired; and

(2) The issuer whose voting securities are sought to be acquired has been informed, or is being contemporaneously informed, at its principal executive offices, of the filing and the date of receipt, as defined in § 803.10, of the Notification and Report Form by the Federal Trade Commission and Assistant Attorney General.

(b) *Acquisitions, mergers, and joint ventures other than tender offers.* The notification required by this section must contain an affidavit, attached to the front of the notification, attesting that a contract, or an agreement in principle, to merge or acquire has been executed.

§ 803.20 Certification.

The notification required by this section must be certified by an officer of the person filing notification, or, in the case of a person lacking officers, an individual exercising similar functions. In either case, the certifying individual must possess actual authority to make the certification on behalf of the person filing notification.

§ 803.25 Incomplete responses.

(a) *Omission of redundant responses.* For acquisitions other than tender offers, a person filing the Notification and Report Form need not respond to any item on the Form which would call for a response identical to a response provided by another person required to file and filing the Form with respect to the same acquisition. For each such omitted response, the person must indicate which such Form, and which response, provides the requested information.

(b) *Statement of reasons for noncompliance.* In each instance, other than pursuant to paragraph (a) of this section, in which less than a complete response has been supplied on the Notification and Report Form, or other notification under § 802.50 of this chapter, the person filing notification must indicate the following:

(1) Why a complete response has not been given;

(2) What information would have been required for a complete response;

(3) Who, if anyone, has the required information;

(4) What additional work would be required to furnish a complete response;

(5) Whether a complete response is being prepared, and if so, when it will be supplied.

§ 803.30 Requests for additional information or documentary material.

(a) *When request effective.* A request for additional information or documentary material, pursuant to subsection (e) (1), shall be made by a delegated official of the Federal Trade Commission or Assistant Attorney General, and shall be effective:

(1) Upon receipt of a written request by the person to which the request is directed within the thirty-day (or, in the case of cash tender offers, fifteen day) waiting period; or

(2) When communicated by telephone or in person, and a written request is mailed, within the thirty-day (or, in the case of cash tender offers, fifteen-day) waiting period. The person filing notification shall be obliged to keep a suitably delegated individual reasonably available throughout the waiting period through the telephone number supplied on the certification page of the Notification and Report Form. A request for additional information or documentary material, or for clarification, need only be communicated by telephone to that individual.

The additional information or documentary material requested should be supplied to either the Federal Trade Commission or Assistant Attorney General, whichever requested the information, and to both.

(b) *Waiting period extended.* (1) During the time period when a request for additional information or documentary materail remains outstanding, the waiting period shall remain in effect, even though the original thirty days (or, in the case of cash tender offers, fifteen days) have elapsed from the date of receipt of the original notification.

(2) A request for additional information or documentary material shall in every instance act to extend the waiting period for an additional period of twenty (or, in the case of cash tender offers, ten) days from the date of receipt of the response to such a request, pursuant to subsection (e) (2), except that such waiting period may be terminated by either the Federal Trade Commission and Assistant Attorney General, whichever requested the information, or a delegated official thereof, at its discretion, in the manner prescribed by § 803.35.

(c) *Request for clarification.* No request for clarification or amplification of any response to any item on the Notification and Report Form, whether communication in writing, in person, or by telephone, shall be considered a request for additional information or documentary material with the meaning of subsection (e), unless specifically so identified and transmitted in accordance with paragraph (a) of this section.

§ 803.35 Termination of waiting period.

(a) The waiting period required by this section, and any extension thereof pursuant to subsection (e) and rule 803.30, shall not be terminated before its expiration date pursuant to subsection (b)(2), unless at least one person required to file notification under this section submits the following documents to both designated offices listed in § 803.10(a), or, in the case of an extension of the waiting period pursuant to subsection (e) and § 803.30, only to the designated office of the Federal Trade Commission or Assistant Attorney General, which ever requested additional information or documentary material:

(1) A written request for termination of the waiting period, signed by an individual suitably authorized to do so by the requesting person; and

(2) An affidavit, attesting that copies of the request have been or are being contemporaneously served upon all other persons required to file notification under this section, including, in the case of tender offers, the issuer whose voting securities are sought to be acquired, and in addition, in the case of joint ventures, all other acquiring persons, whether or not filing notification. The request shall be served upon such persons at their principal executive offices, and the affidavit shall list all such persons and the address at which each was served.

A request for termination of the waiting period and its accompanying affidavit may be filed with the notification or at any time during the waiting period.

(b) In any case in which the Federal Trade Commission and Assistant Attorney General terminate the waiting period before its expiration date, the Federal Trade Commission and Assistant Attorney General, or a delegated official thereof, in addition to publishing a notice in the FEDERAL REGISTER in accordance with subsection (B)(2), shall notify in writing each person listed in the affidavit required by paragraph (a)(2) of this section, at the address listed in the affidavit, of the termination of the waiting period.

ANTITRUST IMPROVEMENTS ACT NOTIFICATION AND REPORT FORM
RELATING TO MERGERS OR ACQUISITIONS

THIS REPORT IS REQUIRED BY LAW and must be filed separately by the acquiring and acquired companies. It is mandatory under the authority of Section 201 of P.L. 94-435, 15 U.S.C. §18A. The statute and relevant rules and definitions are set forth in the Federal Register at page _____. Complete and return two notarized copies (with one set of attachments) of this Notification and Report Form to Pre-merger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C 20580, and three notarized copies (with one set of attachments) to Director of Operations, Antitrust Division, Department of Justice, Washington, D.C. 20530. The central office for information and assistance with respect to matters in connection with this Notification and Report Form is Room 301, Federal Trade Commission, Washington, D.C. 20580, phone (202) _____.

Failure to file this Notification and Report Form in accordance with the applicable provisions of P.L. 94-435 and the relevant rules subjects the company and those individuals responsible for non-compliance to liability for a penalty of not more than $10,000 for each day during which such company is in violation of Sec. 201, P.L. 94-435, 15 U.S.C. §18A.

DEFINITIONS

"Company," as used herein, means the pre-transaction "person" as defined in the relevant rules.

"Dollar Revenues," as used herein, means value of shipments for manufacturing companies and sales, receipts, revenues or other appropriate dollar value measure for non-manufacturing companies, f.o.b. the plant or establishment less returns, after discounts and allowances and excluding freight charges and excise taxes. Dollar revenues including delivery may be reported if delivery is an integral part of the sales price as in such products as milk and bakery products. Dollar revenues include interplant transfers. Finance companies (2-Digit SIC Codes 61, 62 and 67) and Real Estate Companies (2-Digit SIC Code 65) in response to item 5(a) are to identify or explain the dollar revenues reported.

Additional definitions are set forth as part of the relevant rules.

CASH TENDER OFFERS

If this transaction is a cash tender offer, check: ☐

SPECIAL INSTRUCTION FOR CERTAIN PARTIAL ACQUISITIONS

For certain partial acquisitions, more limited reporting requirements may be appropriate. Although the "persons" subject to this section and required to furnish this report are broadly defined by the relevant rules, it is the intention of the Federal Trade Commission and the Assistant Attorney General to require the reporting of only such information as may be relevant to assessment of the competitive consequences of the reported transaction. Thus, in responding to items 1(b), 2(b), 3 through 8, and the Appendix herein, the Notification and Report Forms must provide information on the total operations of the acquiring person but may be limited, when the acquisition is for cash or consideration other than securities, to information relevant to those assets actually being transferred, or to the operation of the issuer whose voting securities are actually being transferred. In those instances in which a partial acquisition of assets is to be made but it is necessary to report information relevant to all of the assets of the acquired company, information must be provided separately in response to items 5 and 6 as to both the particular assets to be acquired and the entire acquired company.

Examples for Special Instruction

For example: (1) A subsidiary of company A acquires, for cash, assets of Company B. Company A is the acquiring person, and any required notification must provide information on A's entire operation. Company B is the acquired person, but any required notification may be limited to information relevant to those assets of B actually being transferred.

(2) Company A acquires, for cash, all of the voting securities of Company S, a wholly-owned subsidiary of Company B. Company A is the acquiring company, and any required notification must provide information on A's entire operation. Company B is the acquired person, but any required notification may be limited to information relevant to Company S and S's subsidiaries. (Note also that Company S is an "acquired person" for purposes of calculating the percentage of voting securities acquired. See rule 801.30.)

(3) Company A acquires assets of Company B, which receives in return voting securities of Company A. Any required notification must provide information on the entire operation of both Company A and Company B. The notification must contain separate information in response to items 5 and 6 as to both the particular assets to be acquired and the entire companies involved.

INSTRUCTIONS

Each answer should identify the item to which it is addressed. Attach additional sheets as necessary in answering the item. Additional sheets should identify the item to which they are addressed. If you are unable to answer any item fully, give such information as is available to you and explain why your answer is incomplete, as provided by rule 803.25(b). If books and records which provide accurate answers are not available, enter your best estimates and indicate the sources or bases of your estimates. Estimated data should be followed by the notation "est."

Except where stated otherwise, all inquiries refer to the operations conducted within the United States (including the District of Columbia, commonwealths and territories) by the company. All references to "year" refer to calendar year. If the data is not available on a calendar year basis, supply the requested data for the company's fiscal year reporting period which most nearly corresponds to the calendar year specified. In addition specify the months of the fiscal year of the company: _____(month) to _____(month).

Companies engaged in insurance activities need not supply information with respect to item 5, but must provide the information described in the Appendix to this Notification and Report Form.

This Notification and Report Form requests information essentially at two levels--at the 4-digit (SIC code) industry level, and at the 7-digit (SIC-based code) product level.

In reporting by "4-digit (SIC code) industry," you should refer to the 1972 Edition of the Standard Industrial Classification Manual (Appendix B) as published by the Executive Office of the President - Office of Management and Budget.

In reporting information by "7-digit (SIC -based code) product", you should refer to one or more of the following reference publications published by the U.S. Bureau of the Census: (a) Numerical List of Manufactured Products, 1972 Census of Manufactures (MC72-1.2) (New 1972 SIC Basis), (b) Volume II, "Industry Statistics," 1972 Census of Manufactures, (c) Applicable "Product Reference Lists" appearing in the Instruction Manual of the various Current Industrial Reports surveys (monthly, quarterly, or annual) conducted by the U.S. Bureau of Census.

Do not use the 6-digit SIC codes that appear on the MA-100 census form.

All financial information should be rounded to the nearest thousand dollars.

Items denoted with an asterisk (*) need not be answered by a company if it certifies, in response to the item, that the required information has been or will be supplied by another company required to file notification with respect to the transaction. This instruction shall not apply to the acquiring company in a tender offer situation. See rule 803.25 of the relevant rules.

If the transaction being reported is a merger, consolidation, or other similar combination, references to "acquiring company" and "acquired company" in this Form shall be considered references to the several parties to the transactions.

1. (a) Reporting Company

(1) Check if:

acquiring company ☐

acquired company ☐

Name: _____

Mailing Address: _____
(Headquarters Office)

(2) Nature of reporting company:

Check if: Corporation ☐ Partnership ☐ Other ☐ Specify _____

(3) If Corporation:

State of incorporation _____

Date of incorporation _____

(4) If partnership or other: Jurisdiction under which formed: _____

Date of formation: _____

(b) Active entities included within the reporting company (See the Special Instruction for Certain Partial Acquisitions.)

	Name	Mailing Address	Date and State of Incorporation (if applicable)
(1)			
(2)			
(3)			
(4)			
(5)			
(6)			

2. Information on the transaction:

(a) List the name(s) and mailing address(es) of the other company (or companies) involved in the transaction.

Name _____

Mailing Address _____
Headquarters Office

_____

Identify with an asterisk each company that is required to file a Notification and Report Form.

2. (b)* State the scheduled consummation date of the transaction.

(c)* Describe the manner in which the transaction is to be carried out, including each necessary step and its scheduled date.

(d)* Describe all securities or assets to be transferred in the transaction and the consideration, with approximate dollar value thereof, to be received by each party.

2.(e)* To the extent that the transaction involves the transfer of assets other than securities, furnish the following information:

(1) DESCRIPTION OF ASSETS TO BE TRANSFERRED	(2) VALUE OF THE ASSETS	(3) METHOD OF VALUATION	(4) DATE OF VALUATION	(5) DOLLAR SALES OR REVENUES ATTRIBUTABLE TO THE ASSETS IN THE MOST RECENT YEAR	(6) TIME PERIOD COVERED FOR SALES OR REVENUES

2.(f)* To the extent that the transaction involves the transfer of securities, furnish the following information:

(1) CLASS OF SECURITIES TO BE TRANSFERRED	(2) TOTAL NUMBER OF SHARES OF CLASS OUTSTANDING	(3) MARK "X" IF CLASS IS VOTING SECURITY	(4) NUMBER OF SHARES OF CLASS TO BE ACQUIRED	(5) TOTAL NUMBER OF SHARES OF CLASS TO BE HELD BY ACQUIRING COMPANY AFTER CONSUMMATION OF TRANSACTION	(6) RATIO OF COLUMN (4) TO COLUMN (2), EXPRESSED AS PERCENTAGE	(7) RATIO OF COLUMN (5) TO COLUMN (2), EXPRESSED AS PERCENTAGE

2.(g)* Furnish copies of all contracts, options and agreements relating to the proposed transaction.

(h) Furnish copies of studies, surveys, analyses, and/or reports prepared by or for the company in the three years prior to the filing of this report, which discuss the reasons for or analyze the proposed transaction, or contain information regarding market shares, competition, competitors, markets, potential for sales growth or the expansion into geographic and/or product areas in relation to any product or service currently manufactured or sold by the other reporting company. (See the Special Instruction for Certain Partial Acquisitions.)

3.(a) (i) State the percentage of all voting securities of the acquired company to be held by the acquiring company as a result of the transaction:

(ii) State the percentage of all assets of the acquired company to be held by the acquiring company as a result of the transaction:

(b) State the value of the aggregate total amount of the voting securities and assets of the acquired company to be held by the acquiring company as a result of the transaction:

4.(a) Furnish copies of the most recent annual report, proxy statement, 10K report, and registration statement filed with the S.E.C. or any other security offering statement and stock listing statement issued by the company. If the company issued no annual reports, provide the latest annual balance sheets and profit and loss statements.

(b) Furnish copies of all such documents issued during the three years prior to the filing of this report which contain information directly pertaining to the reported transaction.

5.(a) For 1972 and for the most recent year for each 4-digit (SIC code) industry in which the company was engaged, provide the following information on the company's operations in the United States: (See the Special Instruction for Certain Partial Acquisitions.)

(1)		(2)	
4-DIGIT (SIC CODE) INDUSTRY		TOTAL DOLLAR REVENUES	
(1a)	(1b)	(2a)	(2b)
CODE	DESCRIPTION	1972	MOST RECENT YEAR (19)

5.(b) For 1972 and for the most recent year for each 7-digit (SIC-based code) product of the company, provide the following information on the company's operations in the United States: (See the Special Instruction for Certain Partial Acquisitions.)

(1)		(2)		(3)	
7-DIGIT (SIC-BASED CODE)		TOTAL DOLLAR REVENUES		PERCENT OF REVENUES DERIVED FROM EXPORTS	
(1a)	(1b)	(2a)	(2b)	(3a)	(3b)
PRODUCT	DESCRIPTION	1972	MOST RECENT YEAR (19)	1972	MOST RECENT YEAR (19)

5.(c) For 1972 and for the most recent year for each 7-digit (SIC-based code) product which is imported into the United States and resold as such by the company, provide the following information: (See the Special Instruction for Certain Partial Acquisitions.)

(1)		(2)	
EQUIVALENT 7-DIGIT (SIC-BASED CODE)		DOLLAR VALUE OF IMPORTS AT PORT OF ENTRY	
(1a)	(1b)	(2a)	(2b)
PRODUCT	DESCRIPTION	(1972)	MOST RECENT YEAR (19)

6.(a) Did two or more of the parties to the transaction derive sales or revenues from operations in, imports to or exports from the United States in the same 4-digit (SIC code) industry in the most recent year? yes___;no___.

6.(b) If the transaction is a joint venture, did two or more of the acquiring companies derive sales or revenues from operations in, imports to or exports from the United States in the same 4-digit (SIC Code) industry in the most recent year? yes ____; no ____.

If the answer to either 6(a) or 6(b) is "yes", items 6(c), 6(d), 6(e) and 7 must be answered. If the "yes" answer to 6(a) or 6(b) involves more than two companies, respond to items 6(c), 6(d), 6(e) and 7 with regard to each appropriate two-party combination. (See the Special Instruction for Certain Partial Acquisitions.)

6.(c)* Identify each 4-digit (SIC Code) industry in which both the acquiring company and the acquired company derived sales or revenues in the most recent year from operations in, imports to or exports from the United States (identify year: 19). For manufacturing industries, list all States to which shipments were made. For non-manufacturing industries, list all States where sales were made or revenues were derived. (See the Special Instruction for Certain Partial Acquisitions.)

(1)	(2)	(3)	
		STATES TO WHICH SHIPMENTS WERE MADE OR FROM WHICH REVENUES WERE DERIVED	
		(3a)	(3b)
4-DIGIT INDUSTRY	INDUSTRY DESCRIPTION	ACQUIRING COMPANY (LIST STATES)	ACQUIRED COMPANY (LIST STATES)
(1)			
(2)			
(3)			
(4)			

6.(d)* For products in the manufacturing industries (SIC 20-39), list the 7-digit (SIC-based code) products, if any, in which both the acquiring company and the acquired company derived sales or revenues in the most recent year from operations in, imports to or exports from the United States (identify year: 19). List all States to which shipments were made. (See the Special Instruction for Certain Partial Acquisitions.)

(1)	(2)	(3)	
		STATES TO WHICH SHIPMENTS WERE MADE	
		(3a)	(3b)
7-DIGIT PRODUCT	PRODUCT DESCRIPTION	ACQUIRING COMPANY (LIST STATES)	ACQUIRED COMPANY (LIST STATES)
(1)			
(2)			
(3)			
(4)			

6.(e) List the ten (10) industries or products (4-digit (SIC code) industries within SIC 10-14 and 7-digit (SIC-based code) products between SIC 2000 and SIC 3999) identified in items 6(c) and 6(d), in which the company had the largest sales or generated the largest revenues in the most recent year. For each such industry or product, name the five (5) most significant competitors of the company.

(1) TEN LARGEST OF THE 4-DIGIT (SIC CODE) INDUSTRIES WITHIN SIC 10-14 AND 7-DIGIT (SIC-BASED CODE) PRODUCT BETWEEN SIC 2000 AND SIC 3999	(2) FIVE MOST SIGNIFICANT COMPETITORS FOR EACH INDUSTRY OR PRODUCT IDENTIFIED In COLUMN(1)				
1.	1.	2.	3.	4.	5.
2.	1.	2.	3.	4.	5.
3.	1.	2.	3.	4.	5.
4.	1.	2.	3.	4.	5.
5.	1.	2.	3.	4.	5.
6.	1.	2.	3.	4.	5.
7.	1.	2.	3.	4.	5.
8.	1.	2.	3.	4.	5.
9.	1.	2.	3.	4.	5.
10.	1.	2.	3.	4.	5.

7. List the domestic and foreign mergers and acquisitions made by the company in the ten years prior to the filing of this report of companies engaged at the time of acquisition in any 4-digit (SIC code) industry in which both the acquired and acquiring companies in this transaction are currently engaged. Report only those mergers or acquisitions of more than 50 percent of the voting securities or assets of a company with sales or assets greater than $10-million. (See the Special Instruction for Certain Partial Acquisitions.)

(1) COMPANY NAME	(2) ADDRESS OF HEADQUARTERS PRIOR TO ACQUISITION	(3) INDICATE WHETHER SECURITIES OR ASSETS WERE ACQUIRED	(4) CONSUMMATION DATE	(5) TOTAL COMPANY SALES OR REVENUES FOR YEAR PRIOR TO ACQUISITION	(6) TOTAL ASSETS FOR YEAR PRIOR TO ACQUISITION	(7) 4-DIGIT INDUSTRIES IN WHICH COMPANY ENGAGED
(1)						
(2)						
(3)						
(4)						
(5)						

8.(a) Identify each product or service, by its 7-digit (SIC-based code) for manufacturing industries or 4-digit (SIC code) industry for non-manufacturing industries, and the product or industry description, which was manufactured or sold by the acquired company and which was used or consumed in manufacturing or resold in any form by the acquiring company, and which the acquiring company purchased in the amount of one million dollars or more in the most recent year. In the alternative, if determination of the threshold amount is unduly burdensome, each product or service may be reported. (See the Special Instruction for Certain Partial Acquisitions.)

	(1) 4-DIGIT OR 7-DIGIT CODE	(2) INDUSTRY OR PRODUCT DESCRIPTION	(3) DID THE ACQUIRING COMPANY PURCHASE THE PRODUCT OR SERVICE FROM THE ACQUIRED COMPANY DURING THE MOST RECENT YEAR? "YES" OR "NO"
(1)			
(2)			
(3)			
(4)			

8 (b) Identify each product or service, by its 7-digit (SIC-based code) for manufacturing industries or 4-digit (SIC code) industry for non-manufacturing industries, and the product or industry description, which was manufactured or sold by the acquiring company and which was used or consumed in manufacturing or resold in any form by the acquired company, and which the acquired company purchased in the amount of one million dollars or more in the most recent year. In the alternative, if determination of the threshold amount is unduly burdensome, each product or service may be reported. (See the Special Instruction for Certain Partial Acquisitions.)

	(1) 4-DIGIT OR 7-DIGIT CODE	(2) INDUSTRY OR PRODUCT DESCRIPTION	(3) DID THE ACQUIRED COMPANY PURCHASE THE PRODUCT OR SERVICE FROM THE ACQUIRING COMPANY DURING THE MOST RECENT YEAR? "YES" OR "NO"
(1)			
(2)			
(3)			

CERTIFICATION

This notification was prepared under my supervision in accordance with instructions issued by the Federal Trade Commission. Subject to the recognition that reasonable estimates have been made when company accounts do not provide the requested data, the information is, to the best of my knowledge, true, correct, and complete in accordance with the statute and rules.

_____
(TYPE OR PRINT NAME AND TITLE)

_____ _____
(Signature) (Date)

Subscribed and sworn to before me at the City of_____, State of_____

this_____day of_____, 19__, _____
(Notary Public)

My Commission Expires_____

Print or type the name, address, and telephone number of the person to contact regarding this notification.

_____
(Name)

_____
(Business Address)

_____
(Business Telephone Number)

APPENDIX TO NOTIFICATION AND REPORT FORM: INSURANCE, FINANCE, AND REAL ESTATE

1. Insurance Companies:
This category includes carriers of all types of insurance, insurance agents, and brokers (2-digit SIC codes 63 and 64).

Life Insurance

A. Provide for the most recent year the amount of premium receipts (calculated on an accrual basis) for each of the following lines:
   1. Life Insurance:
      a. Ordinary life insurance;
      b. Group life insurance (including Federal Employees' Group Life Insurance and Servicemen's Group Life Insurance, but excluding credit life insurance);
      c. Industrial life insurance;
      d. Credit life insurance;
   2. Annuity Considerations:
      a. Individual annuity considerations;
      b. Group annuity considerations;
   3. Health Insurance:
      a. Individual health insurance;
      b. Group health insurance.

B. Provide for the most recent year the amount of new life insurance business issued in the United States during the calendar year (exclusive of revivals, increases, dividend additions and reinsurance ceded) for each of the following lines:
   1. Ordinary life insurance;
   2. Group life insurance (including Federal Employees' Group Life Insurance and Servicemen's Group Life Insurance, but excluding credit life insurance);
   3. Industrial life insurance;
   4. Credit life insurance.

Property Liability Insurance

A. Provide for the most recent year the amount of direct premiums written during the calendar year in the United States each line of insurance specified in Part 2 of the Underwriting and Investment Exhibit of your company's annual convention statement.

B. Provide for the most recent year the amount of net premiums written during the calendar year in the United States for each line of insurance specified in Part 2 of the Underwriting and Investment Exhibit of your company's annual convention statement.

Title Insurance

A. Provide for the most recent year the amount of net direct title insurance premiums written in the United States during the calendar year.

B. Provide for the most recent year the amount of direct title insurance premiums earned in the United States during the calendar year.

See the Special Instruction for Certain Partial Acquisitions.

The Federal Trade Commission and the Assistant Attorney General invite and encourage the filing of written comments upon the proposed notification form and relevant proposed rules in order to assure that the final forms thereof will satisfy the law enforcement concerns of the two agencies while, at the same time, not be unduly cumbersome or burdensome. Written comments on the proposal by any interested person should carry the subject, "Title II—Premerger Notification." Written comments should be submitted to (1) the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, D.C. 20580, Room 172, and (2) Assistant Attorney General, Antitrust Division, Department of Justice, 10th Street and Constitution Avenue, NW., Washington, D.C. 20530, Room 3224. All written comments received on or before January 19, 1977, will be considered. Comments and other written materials with respect to the proposed notification form and proposed rules will be available for examination by interested persons in Room 130 of the Public Reference Branch, Federal Trade Commission, Washington, D.C., and will be considered by the Federal Trade Commission and the Assistant Attorney General in their determination to issue a final version of the proposed notification form and proposed rules. All interested persons are urged to express their approval or disapproval of the proposed notification form and proposed rules, or to recommend revisions, and to give a full statement of their views.

Issued: December 15, 1976.

By the direction of the Commission.

JAMES A. TOBIN,
Acting Secretary.

[FR Doc.76-37343 Filed 12-17-76;8:45 am]

federal register

MONDAY, DECEMBER 20, 1976

PART VII:

GENERAL SERVICES ADMINISTRATION

National Archives and Records Service

■

PRIVACY ACT OF 1974

Systems of Records

GENERAL SERVICES ADMINISTRATION/NATIONAL ARCHIVES AND RECORDS SERVICE

PRIVACY ACT OF 1974

Notice of Systems of Records

The following notices describing records accessioned into the National Archives of the United States on or after September 27, 1975, are published in accordance with 5 U.S.C. 552a(l)(3).

Dated: December 1, 1976.

James B. Rhoads
Archivist of the United States.

NN-376-56/1,2,3,4,5

System name: National Archives Record Group 65, Records of the Federal Bureau of Investigation, (1) General Investigative Records, (2) Investigative Records Transferred From the Dept. of Justice, (3) Investigative Records Relating to Mexican Neutrality Violations, (4) Investigative Records Relating to German Aliens.

System location: The National Archives Building (NN), 8th & Pennsylvania Avenue, N.W., Washington, D.C. 20408.

Categories of individuals covered by the system: Individuals suspected of violating a Federal law, persons believed to be operating against U.S. interests during the Mexican civil wars, indviduals considered as 'radicals' sympathetic to German causes.

Categories of records in the system: Investigative reports and related correspondence and memoranda. Dates of the files listed above are: (1) 1908-1921, (2) 1920-1921, (3) 1909-1921, (4) 1915-1920.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Reference by Government officials, scholars, students, and members of the general public. The National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a (l) (3). Further information about uses and restrictions may be found in 41 CFR 105-61.1 and in the General Notice published by the National Archives and Records Service in 40 FR 45786.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Microfilm.

Retrievability: Indexed alphabetically by surname of investigated person.

Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives. Building employs security guards.

Retention and disposal: Records are retained permanently.

System manager(s) and address: The system manager is the Assistant Archivist for the National Archives, National Archives Building, 8th and Pennsylvania Avenue, N.W., Washington, D.C. Mailing address: General Services Administration (NN), Washington, D.C. 20408.

Notification procedure: Individuals desiring information from or about these records should direct inquiries to the system location.

Record access procedures: Upon request, the National Archives will attempt to locate specific records about individuals and will make these records available to the individual subject to the restrictions set forth in 41 CFR 105-61.53. Individuals must provide information to permit the National Archives to locate the records in reasonable time. Records in the NationalArchives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the Guide to the National Archives of the United States' which is sold by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, and may be consulted at the NARS research facilities listed in 41 CFR 105-61.5101 and the GSA Business Service Center reading rooms listed in 41 CFR 105-60.303.

NN-375-108/1

System name: National Archives Record Group 19, Records of the Bureau of Ships (Department of the Navy), Preliminary Design Branch, Patent Infringement Case Files.

System location: The National Archives Building (NN), 8th & Pennsylvania Avenue, N.W., Washington, D.C. 20408.

Categories of individuals covered by the system: Plaintiffs in legal cases against the U.S. Government for infringement of patents in ship design features.

Categories of records in the system: Copies of letters, depositions, and transcripts from suits brought against the government, 1929-1938.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Reference by Government officials, scholars, students, and members of the general public. The National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a (l) (3). Further information about uses and restrictions may be found in 41 CFR 105-61.1 and in the General Notice published by the National Archives and Records Service in 40 FR 45786.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Paper records in boxes or drawers.

Retrievability: Arranged alphabetically by name of plaintiff.

Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives. Building employs security guards.

Retention and disposal: Records are retained permanently.

System manager(s) and address: The system manager is the Assistant Archivist for the National Archives, National Archives Building, 8th and Pennsylvania Avenue, N.W., Washington, D.C. Mailing address: General Services Administration (NN), Washington, D.C. 20408.

Notification procedure: Individuals desiring information from or about these records should direct inquiries to the system location.

Record access procedures: Upon request, the National Archives will attempt to locate specific records about individuals and will make these records available to the individual subject to the restrictions set forth in 41 CFR 105-61.53. Individuals must provide information to permit the National Archives to locate the records in reasonable time. Records in the NationalArchives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the Guide to the National Archives of the United States' which is sold by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, and may be consulted at the NARS research facilities listed in 41 CFR 105-61.5101 and the GSA Business Service Center reading rooms listed in 41 CFR 105-60.303.

NNG-376-5/1

System name: National Archives Record Group 153, Records of the Office of the Judge Advocate General (Department of the Army), Litigation Division, Records of Exclusion Cases.

System location: The National Archives Building (NN), 8th & Pennsylvania Avenue, N.W., Washington, D.C. 20408.

Categories of individuals covered by the system: Citizens and aliens who were ordered excluded from West Coast defense areas during World War II under Public Law No. 503 and Executive Order 9066 and who brought suit to have the exclusion orders overturned.

Categories of records in the system: Correspondence, investigative and intelligence reports, transcripts of court proceedings and exclusion hearings, and individual exclusion orders providing information regarding birth, marital, family, and occupational status.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Reference by Government officials, scholars, students, and members of the general public. The National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a (l) (3). Further information about uses and restrictions may be found in 41 CFR 105-61.1 and in the General Notice published by the National Archives and Records Service in 40 FR 45786.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Paper records in boxes or drawers.

Retrievability: Arranged alphabetically by surname of individual bringing suit.

Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives. Building employs security guards.

Retention and disposal: Records are retained permanently.

System manager(s) and address: The system manager is the Assistant Archivist for the National Archives, National Archives Building, 8th and Pennsylvania Avenue, N.W., Washington, D.C. Mailing address: General Services Administration (NN), Washington, D.C. 20408.

Notification procedure: Individuals desiring information from or about these records should direct inquiries to the system location.

Record access procedures: Upon request, the National Archives will attempt to locate specific records about individuals and will make these records available to the individual subject to the restrictions set forth in 41 CFR 105-61.53. Individuals must provide information to permit the National Archives to locate the records in reasonable time. Records in the NationalArchives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the Guide to the National Archives of the United States' which is sold by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, and may be consulted at the NARS research facilities listed in 41 CFR 105-61.5101 and the GSA Business Service Center reading rooms listed in 41 CFR 105-60.303.

NN-375-60/1

System name: National Archives Record Group 60, Records of the Department of Justice, Personnel Records, Appointment Files of Supreme Court Justices.

System location: The National Archives Building (NN), 8th & Pennsylvania Avenue, N.W., Washington, D.C. 20408.

Categories of individuals covered by the system: Supreme Court Justices.

Categories of records in the system: Correspondence, 1930-1971, relating to nominations and performances. No one may have access to these records or information from them except by permission of the Records Management Officer for the Offices, Boards, and Divisions of the Department of Justice. The Justice Department will grant access to a Justice's file for the purposes of legitimate research 25 years after his death.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Reference by Government officials, scholars, students, and members of the general public. The National Archives of the United States are exempt from the Privacy Act of 1974 except for the public notice required by 5 U.S.C. 552a (l) (3). Further information about uses and restrictions may be found in 41 CFR 105-61.1 and in the General Notice published by the National Archives and Records Service in 40 FR 45786.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Paper records in boxes or drawers.

Retrievability: Arranged alphabetically by name of Justice.

Safeguards: Records are kept in locked stack areas accessible only to authorized personnel of the National Archives. Building employs security guards.

Retention and disposal: Records are retained permanently.

System manager(s) and address: The system manager is the Assistant Archivist for the National Archives, National Archives Building, 8th and Pennsylvania Avenue, N.W., Washington, D.C. Mailing address: General Services Administration (NN), Washington, D.C. 20408.

Notification procedure: Individuals desiring information from or about these records should direct inquiries to the system location.

Record access procedures: Upon request, the National Archives will attempt to locate specific records about individuals and will make these records available to the individual subject to the restrictions set forth in 41 CFR 105-61.53. Individuals must provide information to permit the National Archives to locate the records in reasonable time. Records in the NationalArchives may not be amended and requests for amendment will not be considered. More information regarding access procedures is available in the Guide to the National Archives of the United States' which is sold by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402, and may be consulted at the NARS research facilities listed in 41 CFR 105-61.5101 and the GSA Business Service Center reading rooms listed in 41 CFR 105-60.303.

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