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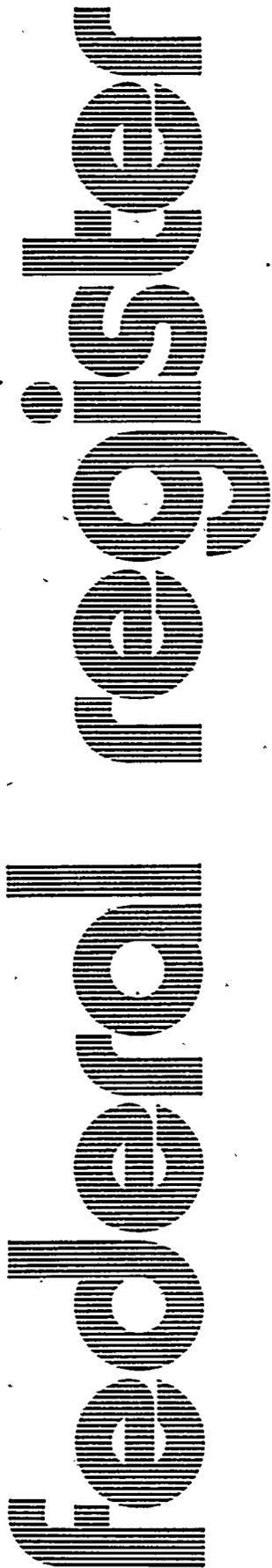
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Monday	Tuesday	Wednesday	Thursday	Friday
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CSA	CSC		CSA	CSC
	LABOR			LABOR
	HEW/FDA			HEW/FDA

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

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

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

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reminders

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

Rules Going Into Effect Today

NOTE: There were no items eligible for inclusion in the list of RULES GOING INTO EFFECT TODAY.

Next Week's Deadlines for Comments On Proposed Rules

CIVIL AERONAUTICS BOARD

Exemption for air carriers to provide free or reduced rate transportation; comments by 12-26-78 49992; 10-26-78
Route authority application proceedings; comments by 12-26-78 49993; 10-26-78—50696; 10-31-78

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration—
Pacific billfishes and sharks, preliminary fishery management plan; comments by 12-24-78 52034; 11-8-78
Preliminary fishery management plan for billfishes and sharks; comments by 12-24-78 49024; 10-20-78
Office of the Secretary—
Optional laboratory accreditation; Federal agency needs; comments by 12-26-78, 49812; 10-25-78
Optional laboratory accreditation procedures designed for voluntary standards bodies in the private sector; comments by 12-26-78 49994; 10-26-78

CONSUMER PRODUCT SAFETY COMMISSION

Unvented gas-fired space heaters, proposed withdrawal of proposed rule; comments by 12-29-78 55772; 11-29-78

ENVIRONMENTAL PROTECTION AGENCY

Approval and promulgation of implementation plans; various States:
Ohio; comments extended to 12-29-78, 56060; 11-30-78
[Originally published at 43 FR 43729, 9-27-78]
Water quality management program; interim rule for administrative actions; comments by 12-26-78 49792; 10-25-78

FEDERAL COMMUNICATIONS COMMISSION

Administration of telegraphy examinations to handicapped applicants for operator licenses; inquiry; reply comments by 12-29-78 37729; 8-24-78
AM stereophonic broadcasting; standards for service; comments by 12-29-78... 48659; 10-19-78
FM broadcast stations; table of assignments: Anadorko, Okla. and Memphis, Tenn.; comments by 12-26-78 47986; 10-18-78

Freeport, Tex.; reply comments by 12-26-78 47576; 10-16-78
Mayfield and Wickliffe, Ky., Blytheville, Ark., and Henderson, Tenn.; comments by 12-26-78 47985; 10-18-78
New Hampshire, Vermont, and Maine; comments by 12-27-78 51652; 11-6-78

Gouverneur and Ogdensburg, N.Y.; comments by 12-27-78 51655; 11-6-78
Pinconning, Mich.; reply comments by 12-26-78 47577; 10-16-78

Multiple ownership of AM, FM, and television stations and CATV systems; reply comments extended to 12-29-78 47222; 10-13-78

[Originally published at 43 FR 36978, Aug. 16, 1978]

FEDERAL MARITIME COMMISSION

Provisions for issuance of declaratory orders; comments by 12-29-78 56921; 12-5-78

FEDERAL RESERVE SYSTEM

Equal credit opportunity provisions; comments by 12-26-78 49987; 10-26-78
Official staff interpretation; suspension of effective date; comments by 12-29-78, 55746; 11-29-78

FEDERAL TRADE COMMISSION

Consent agreement with analysis to aid public comment, National Systems Corp., et al; comments by 12-26-78 50446; 10-30-78
Food advertising (Phase I), trade regulation rule; comments by 1-29-79 55771; 11-29-78

GENERAL SERVICES ADMINISTRATION

Improved use of Federal facilities and space; comments by 12-28-78 52502; 11-13-78

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Food and Drug Administration—
Allyl methacrylate; use as indirect food additive; comments by 12-26-78, 54927; 11-24-78
Chemicals used in flume water for washing sugar beets; modification of nomenclature; comments by 12-26-78 54926; 11-24-78—
Lubricants with incidental food contact; comments by 12-26-78 54927; 11-24-78
Sunscreen drug products for over-the-counter human use; establishment of a monogram; reply comments by 12-26-78 38206; 8-25-78—58097; 12-12-78
Health Care Financing Administration—
Coverage of dialysis supplies, equipment, and support services; comments by 12-26-78 49720; 10-24-78

Health Resources Administration—

Community health services to persons unable to pay; requirements for facilities assisted by HEW; comments by 12-26-78 49954; 10-25-78

INTERIOR DEPARTMENT

Fish and Wildlife Service—

American alligator, Louisiana; review of status, proposed reclassification, and special rules; comments by 12-26-78 (2 documents) 45512, 45513; 10-2-78

Critical habitat determination for the Coachella Valley Fringe-toed Lizard; comments by 12-28-78 44806; 9-28-78
Endangered status for the Bolson Tortoise; comments by 12-25-78 ... 43692; 9-26-78

Merit Island National Wildlife Refuge, Fla.; public entry and use; comments by 12-26-78 54963; 11-24-78

INTERSTATE COMMERCE COMMISSION

Cost standards for railroad rates; interpretation of statutory provisions; comments by 12-26-78 46877; 10-11-78
Cost standards for railroad rates; comments by 12-28-78 58206; 12-13-78

LABOR DEPARTMENT

Employment and Training Administration—
Services of the employment service system, basic services of the employment service and services in support of basic services; comments by 12-26-78, 49694; 10-24-78

NUCLEAR REGULATORY COMMISSION

Shallow land burial and alternative disposal methods for low-level wastes; comments by 12-26-78 49811; 10-25-78

TRANSPORTATION DEPARTMENT

Coast Guard—
Fire extinguishing equipment, wheeled semiportable fire extinguishers; comments by 12-26-78 52261; 11-9-78
Federal Aviation Administration—
Concorde, operation between Dallas and Europe; comments by 12-27-78, 57367; 12-7-78

TREASURY DEPARTMENT

Customs Service—
Entry of merchandise and liquidation of entries; comments by 12-29-78, 54774; 11-29-78

Next Week's Meetings

DEFENSE DEPARTMENT

Office of the Secretary—
Department of Defense Wage Committee, Washington, D.C. (closed), 12-26-78, 46563; 10-10-78

REMINDERS—Continued

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Education Office—

National Advisory Council on Adult Education, Washington, D.C. (open), 12-28-78 57195; 12-6-78

National Institutes of Health—

National Advisory Eye Council, Bethesda, Md. (partially open), 1-29 through 1-31-79 57978; 12-11-78

VETERANS ADMINISTRATION

Veterans Administration Wage Committee, Washington, D.C. (closed), 12-28-78, 40585; 9-12-78

Next Week's Public Hearings

NOTE.—There were no items eligible for inclusion in next week's list of public hearings.

List of Public Laws

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

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

Documents Relating to Federal Grants Programs

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

Rules Going Into Effect:

CSA—Financial management, grantee; non-Federal share waiver criteria; correction 58376; 12-14-78
[Originally published at 43 FR 52438, 11-9-78]

HUD/CPD—Community Development Block Grants for Indian tribes and Alaska natives; for effective date call 202-755-5890 58734; 12-15-78

Deadlines for Comments on Proposed Rules:

CSA—Funding; due process rights for applicants denied benefits under CSA-funded programs; comments by 1-15-79, 58393; 12-14-78

DOE—Energy measures and audits; grant programs for schools and hospitals and buildings owned by units of local government and public care institutions; comments by 1-12-79; hearings 1-8 through 1-10-79 58158; 12-12-78

HEW/OE—Proposed provisions for Federal assistance awards to local educational agencies in areas affected by Federal activity; comments by 1-25-79 58022; 12-11-78

USDA/FHA—Rural development area development assistance, additional criteria for selecting guidelines; comments by 1-12-79 58193; 12-13-78

Applications Deadlines:

HEW—Fund for the Improvement of Post-secondary Education; new awards for fiscal year 1979; apply by 2-14-79 58120; 12-12-78

OE—Indian education grants to local educational agencies; apply by 2-15-79, 57979; 12-11-78

Indian education grants to non-local educational agencies; apply by 1-26-79, 57980; 12-11-78

Indian education special programs and projects to improve educational opportunities for Indian students; apply by 1-26-79 57983; 12-11-78

Special programs relating to Indian adult education; apply by 1-29-79 57984; 12-11-78

State Student Incentive Grant Program and State Student Financial Assistance Program; apply by 1-15-79 for SSIG, 3-15-79 for SSFAT 57985; 12-11-78

Upward Bound program new veterans projects; deadline for transmittal of applications for FY 1979 extended to 1-8-79 57987; 12-11-78

HUD/CPD—Community Development Block Grant Program; small cities discretionary grants; January preapplication deadlines for various regions 58639; 12-15-78
USDA/SEA—Special grants program for FY 1979, solicitation of applications; pre-proposals by 1-26-79 58312; 12-13-78

Meetings:

HEW/NIH—Clinical Applications and Prevention Advisory Committee, Bethesda, Md. (partially open), 1-12-78 57977; 12-11-78

National Advisory Eye Council, Bethesda, Md. (partially open), 1-29 through 1-31-79 57978; 12-11-78

National Advisory Neurological and Communicative Disorders and Stroke Council, Planning Subcommittee, Bethesda, Md. (partially open), 1-11-79 57978; 12-11-78

National Advisory Neurological and Communicative Disorders and Stroke Council, Bethesda, Md. (partially open), 1-25 through 1-27-79 57978; 12-11-78

NFAH—Humanities Panel Advisory Committee, Washington, D.C. (closed), January meetings (2 documents) 58126; 12-12-78

Other Items of Interest:

ACTION—Continuation of national Vista grants 58027; 12-13-78

HEW/OE—Supplemental Educational Opportunity Grant, College Work-Study, and National Direct Student Loan Program grant applications; submit corrections by 12-1-78; submit appeals by 1-15-79; establish institutional eligibility by 1-15-79 57987; 12-11-78

Justice/LEAA—Insular areas, waiver of matching fund requirements for programs 58233; 12-13-78

USDA/FNS—Special supplemental food program for women, infants, and children (WIC); proposed administrative funding formula; comments by 2-12-79 58108; 12-12-78

rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

[3410-02-M]

Title 7—Agriculture

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

[Orange, Grapefruit, Tangerine and Tangelo Regulation 2, Amendment 8]

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

Amendment of Tangerine Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to final rule.

SUMMARY: This amendment lowers the minimum diameter (size) requirement for Dancy variety tangerines from $2\frac{1}{8}$ inches to $2\frac{1}{4}$ inches for the remainder of the 1978-79 season. This action allows increases in supplies of Dancy tangerines in recognition of market needs and the size composition of the available crop in the interest of growers and consumers.

EFFECTIVE DATE: December 11, 1978, through October 14, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, (202) 447-6393.

SUPPLEMENTARY INFORMATION: *Findings.* (1) Pursuant to the marketing agreement and Order No. 905, both as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the recommendations of the committee established under the marketing agreement and order, and upon other available information, it is found that the regulation of shipments of Florida tangerines, as hereinafter provided, will tend to effectuate the declared policy of the act.

This regulation has not been determined significant under the USDA cri-

teria for implementing Executive Order 12044.

(2) The minimum size requirements, herein specified, for domestic shipments reflect the Department's appraisal of the need for the amendment for the current regulation to permit handling of smaller size fresh Florida tangerines of the designated variety based on market needs for greater supplies of such variety. Relaxation of the minimum size requirements for Dancy tangerines will make greater supplies available to meet market needs and will tend to promote the orderly marketing of Florida tangerines.

The Citrus Administrative Committee, at an open meeting on December 12, 1978, reported that there is a strong market demand for larger quantities of smaller size Dancy tangerines and markets can absorb a larger supply of the smaller Florida fruit. The regulation currently permits shipment, during the period December 11-17, of a quantity of Dancy tangerines (210 size) smaller than $2\frac{1}{8}$ inches in diameter but not smaller than $2\frac{1}{4}$ inches in diameter equal to 100 percent of total Dancy tangerine shipments in a specified prior period. This would permit shipment of about 85 carloads of such size. The committee reports that markets can absorb greater quantities and recommended that the regulation be amended to allow unrestricted shipments of the 210 size, during this period and for the balance of the season.

The Department's Crop Reporting Board estimates the 1978-79 season's crop of Florida tangerines at 3.9 million boxes (approximately 7.8 million cartons), or about 22 percent larger than the 1977-78 crop.

It is concluded that the amendment of the size requirements, hereinafter set forth, is necessary to establish and maintain orderly marketing conditions and to provide acceptable size fruit in the interest of producers and consumers pursuant to the declared policy of the act.

(3) It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this amendment is based and the effective date necessary to effectuate the declared policy of the act. Growers, handlers and other interested persons were given an opportunity to submit information and views on the amendment at an open meeting, and the amendment relieves restrictions on the handling of Florida tangerines. It is necessary to effectuate the declared purposes of the act to make the regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

Accordingly, it is found that the provisions of § 905.302 (Orange, Grapefruit, Tangerine and Tangelo Regulation 2; 43 FR 43013; 52197; 53027; 54617; 57139), should be and are amended by revising in Table I paragraph (a), thereof, applicable to domestic shipments of Dancy variety tangerines to read as follows:

§ 905.302 Orange, Grapefruit, Tangerine, and Tangelo Regulation 2.

TABLE I

Variety	Regulation Period	Minimum Grade	Minimum Diameter (in.)
(1)	(2)	(3)	(4)
Tangerines:			
Dancy.....	Dec. 11, 1978 to Oct. 14, 1979.....	U.S. No. 1..	$2\frac{1}{4}$

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

Dated: December 15, 1978.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division,
Agricultural Marketing Service.

[FR Doc. 78-35294 Filed 12-19-78; 8:45 am]

[6720-01-M]

Title 12—Banks and Banking

CHAPTER V—FEDERAL HOME LOAN
BANK BOARDSUBCHAPTER C—FEDERAL SAVINGS AND
LOAN SYSTEM

[No. 78-708]

PART 545—OPERATIONS

PART 555—BOARD RULINGS

Alternative Mortgage Instruments

DECEMBER 14, 1978.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: These regulations authorize a number of new types of mortgage instruments for use by Federal savings and loan associations: the variable rate mortgage, graduated payment mortgage, and reverse-annuity mortgage. The variable rate mortgage will, where found to be needed, be authorized on a state-by-state basis; the graduated payment mortgage and reverse-annuity mortgage are hereby authorized nationwide. The Bank Board believes these instruments are necessary, in addition to the standard fixed-rate, fixed-payment mortgage, in order to meet the needs of homeowners during different phases of their financial life cycles.

EFFECTIVE DATE: January 1, 1979.

FOR FURTHER INFORMATION,
CONTACT:

Nancy L. Feldman, Assistant General Counsel, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552 (202-377-6443).

SUPPLEMENTARY INFORMATION: On July 24, 1978, the Bank Board adopted Bank Board Resolution No. 78-428 (43 F.R. 33254-7; July 31, 1978), which proposed a number of new mortgage instruments for use by Federal savings and loan associations. The public comment period ended October 1, with 124 responses received. The great majority of commenters favored authorization of the alternative mortgage instruments (AMIs), although most made suggestions for modifica-

tion of the proposed regulations; ten were opposed; and three recommended deferment or re-proposal. The comments were generally very constructive, thoughtful, and detailed. In light of commenters' suggestions and further study of this subject, the Bank Board has modified its proposal and hereby adopts final regulations authorizing such instruments, acting in its continued belief that there is a present and growing need for a choice of mortgage instruments as homeowners move through different phases of their financial life cycles.

The proposed regulations, covered four types of AMIs: the variable rate mortgage (VRM), graduated payment mortgage (GPM), rollover mortgage (ROM), and reverse annuity mortgage (RAM). These have all been authorized in the final regulations but, as a number of commenters pointed out, the ROM as proposed was really a multi-year version of the VRM; it has therefore been re-designated within the VRM provision and the term "ROM" eliminated. This is meant to avoid confusion with the true rollover mortgage, a five-year instrument popularized in Canada, which the Bank Board believes does not yet warrant authorization in view of its limited experience in the United States.

GENERAL RESTRICTIONS

The first paragraph of the proposed § 545.6-2 had set out general restrictions applicable to all AMIs. As most of these pertained only to one or two instruments, they have been placed within the appropriate provisions and certain ones, such as disclosure of material terms, expressed more specifically. An exception is the requirement to offer the choice of a standard (fixed interest rate, level payment, fully-amortized) instrument whenever an AMI is offered; this requirement is set forth in the general provision. This provision also contains a new requirement providing for borrower certification that appropriate disclosures were made before election of an AMI. It is noted that all disclosures to borrowers are required to be explained in reasonably simple terms, as suggested in comments from consumers.

GRADUATED PAYMENT MORTGAGES

The GPM provisions are substantially the same as those proposed. As was indicated in the preamble to the proposal with regard to the option of choosing a standard instrument rather than a GPM, associations would not have to offer a standard 95 percent loan, for example, to a borrower whose income level would not support the

monthly payments for such a loan but *would* qualify for a 95 percent graduated payment mortgage; such a borrower would receive a comparison of the GPM and a standard mortgage with comparable terms, to which s/he could choose to convert later in the loan term when s/he met the underwriting criteria, and the present alternative option would be a standard mortgage for which s/he currently qualifies. The prerequisite of borrower eligibility for a standard mortgage at conversion time has now been stated explicitly in the conversion-option provision.

The proposal provided for downpayment (loan-to-value ratio) requirements to be the same for GPMs and comparable standard mortgages, since these are not new types of loans but simply different, creative methods of payment for regular types of home loans. Because of a GPM's "negative amortization", where equity actually declines in the first years of the loan, the Bank Board invited comment on whether lower equity requirements and additional safeguards would be appropriate for such loans. Only one commenter favored lowering downpayment requirements, although several erroneously believed the proposal authorized this, and five opposed it or suggested that required downpayments be larger because of the greater lender risk. The final regulations therefore have retained the rule that loan-to-value limitations applicable to standard mortgage instruments apply to GPMs. It is noted, however, that a new regulation, set forth in § 545.6-1(a)(8) of this Resolution, allows use of certain pledged savings accounts in lieu of downpayments for loans in excess of 80 percent of the property's value; this was previously prohibited by Bank Board regulation.

Disclosures to borrowers considering GPM's include:

- (1) The proposed side-by-side comparison of differing interest rates and other terms as between these instruments and standard mortgage instruments;
- (2) Payment schedules for both types of instruments;
- (3) The total payment in dollars over the full term of each loan;
- (4) A description of the conversion option; and
- (5) A statement, prominently displayed, of the borrower's option to elect a standard instrument.

The last three of these required disclosures are new.

VARIABLE RATE MORTGAGES

While the Bank Board believes that VRMs are a necessary and important

component in the group of alternative mortgage instruments authorized under these regulations, it recognizes that they have been controversial and deems it of the greatest importance that a real choice be made available to borrowers offered this instrument. Therefore, the Bank Board, although confident that Federal associations will comply with the documented-choice requirements, at present has determined to use a multi-faceted approach to assure consumers that they will have such a choice. In this connection, the regulations include two restrictions contained in the proposal which were heavily criticized by industry commenters as unnecessary and burdensome. These are (1) an annual 50 percent origination and purchase limitation, and (2) a geographic limitation based on competitive imbalance.

The 50 percent restriction is unchanged from the proposal. With regard to the second restriction, the proposal would have authorized Federal associations to invest in VRMs only if necessary to compete with State-chartered savings and loans located in the Federal association's home State; the final regulation recognizes that competitive imbalance may be created by other lenders doing business in that State, and the restriction has been modified accordingly. The regulation also contains a new provision setting forth the factors that the Bank Board will consider in determining a need for competitive balance, including the number, size, and market share of institutions making VRM loans, and the dollar amounts and rate of growth of VRMs.

The VRM regulation contains an expiration date set at four years after implementation; this is intended to give the Bank Board sufficient time to assess the value and effect of VRMs in the mortgage market. During this period, the Bank Board will monitor associations offering VRMs to ascertain whether borrowers are being offered an effective choice. Particular attention will be paid to differing terms, if any, and whether both VRM and standard mortgage instruments are being continuously offered during different phases of mortgage-market cycles; disclosure materials will also be reviewed for accuracy and completeness. The Bank Board intends to prepare and make publicly available a three year report, and such interim reports as it may deem desirable, setting forth findings resulting from the monitoring program.

VRMs have fluctuating interest rates, which are determined by reference to an authorized index. The proposal would have allowed use of Bank Board-approved indices which were reliable, beyond an individual association's influence, capable of simple ex-

planation to borrowers, and free from manipulation; the preamble to the proposal gave as an example an index used by the Federal Home Loan Mortgage Corporation based on a combination of the average yield of short-term United States Treasury securities and seasoned corporate bonds. Many commenters suggested that this example was complex and confusing, and recommended use of a national or regional cost-of-funds index. While the Bank Board is not entirely satisfied that cost-of-funds is the best or most responsive index which could be employed, it has determined to adopt it at this time on the ground that it is easily understood, will reduce borrower confusion when comparison shopping among Federal associations and other lenders, and has the benefit of familiarity to consumers due to its use in a number of areas of the country. Nevertheless, the Bank Board will be watching carefully the performance of this index over the next several years, and will continue active research with a view towards authorizing alternative indices if it appears that such a step would be in the public interest.

The regulatory language pertaining to interest rate adjustments for VRMs has been rearranged and clarified, and several modifications and new provisions included. The proposal provided that adjustments could take place only on the "anniversary date" of the loan; this has been modified, in response to numerous comments, to indicate that such changes may not be made more than once a year, with the first adjustment occurring not less than one year after the first regular monthly payment. New requirements specify that the mortgage contract must disclose dates when rate review will take place, adjustment notification will be made, and monthly payment will be affected.

The regulations retain the proposed limits on minimum adjustments (0.10 percent) and maximum adjustments (0.50 percent up or down per year; maximum increase of 2.5 percent over the life of the loan; no maximum decrease; and accumulation of changes not taken). Two proposed provisions for accumulation of changes in the case of adjustment periods in excess of one year, which were confusing to a number of commenters, have been eliminated; these have been replaced by a single provision, subparagraph (c)(6), which authorizes and describes multi-year VRMs (including the former ROM, as explained above).

A new provision has been added pertaining to rate-adjustment notification requirements. Notification must be given one month before a new rate will take effect, and borrowers will have 60 days after notification to prepay without penalty if the new rate is higher

than the initial loan rate; under the proposal, there was a total of 45 days for notification and prepayment. Another proposed borrower option upon notification of a rate increase was to extend loan maturity to a maximum of 40 years; several commenters pointed out correctly that this appeared to be based on a 30-year loan term, and an extension to 40 years might be inappropriate in the case of a shorter original loan term, for example 15 years. The provision therefore has been modified to authorize an extension up to a maximum of one-third of the original maturity. The proposed language relating to reduction of a previously extended maturity in the event of a rate decrease was imprecise and could have resulted in increases in monthly payments; it has been clarified, and simplified by requiring automatic application of a rate decrease to reduction of extended maturity, rather than permitting such action at either party's option.

As under the proposal, VRM disclosure requires a side-by-side comparison of differing interest rates and other terms and examples of payment schedules and "worst case" payment differences relating to the specific VRM and standard instrument for which the borrower is eligible. Although association commenters called these individualized disclosure documents costly and burdensome, the Bank Board believes that such key shopping information is necessary in the case of these new instruments to help borrowers make an informed choice.

The regulations therefore require that the borrower receive materials describing the type of instruments offered, and setting forth:

- (1) A side-by-side comparison of differing terms;
- (2) Payment schedules, including the "worst case" schedule for VRMs, and total payments in dollars over the full term of each loan;
- (3) Information regarding the index;
- (4) A description of borrower's options in the event of an interest rate increase;
- (5) A statement that borrowers may elect a standard instrument; and
- (6) Information regarding personnel at the district Federal Home Loan Bank whom borrowers may contact with questions about the disclosures.

The last four of these required disclosures are new.

REVERSE ANNUITY MORTGAGES

RAMs, although named "reverse annuity" mortgages, do not require purchase of an insurance annuity, but rather refer generally to any type of instrument involving payments to homeowners based on accumulated equity. Since these plans may vary greatly and present a number of

unique questions, the Bank Board's proposal did not provide rules for their formulation, but rather would have required submission and approval on a case-by-case basis. However, in reconsidering this question in light of requests from a number of commenters for guidance, the Bank Board has set forth in its final regulations minimum RAM requirements and particularized disclosure provisions to ensure adequate consumer protection and industry guidance as to the types of plans which will be viewed favorably. In light of this further direction, the "approval" requirement of the proposal has been changed to a review procedure with a 60-day period provided for Bank Board objection; if none is taken, the association may proceed to offer RAMs pursuant to its submitted plan.

The new plan requirements include guaranteed refinancing at the end of any fixed term, and prepayment without penalty at any time during the loan term; associations are also required to provide a seven-day "cooling off" period after loan commitment.

Required disclosures are set out in detail, including:

- (1) Information pertaining to payments to and from the borrower;
- (2) A description of any contractual contingencies which could force sale of the home;
- (3) Information concerning any purchased annuity plan;
- (4) Fees, charges, and interest rates;
- (5) A description of prepayment and refinancing features; and
- (6) A statement advising applicants to consult with appropriate authorities regarding tax and estate-planning consequences of RAMs.

PLEGGED-ACCOUNT PLANS

As in the proposal, the regulations contain what is, in effect, another alternative mortgage plan, for low down-payment loans. A loan may be made in excess of maximum dollar and down-payment restrictions on 90 and 95 percent loans (up to the lesser of purchase price or value of the real estate security) if such excess is secured by a savings account owned by the borrower or his family or employer. Several commenters objected to the restricted ownership of the savings account funds, but the Bank Board believes at this time that such restriction is necessary to prevent abuses relating to low-equity loans. It is noted that pledged-savings-account loans may be combined with the AMIs described above but, in the case of GPMs, the maximum annual 7.5 percent total payment increase must be observed; this is pertinent to pledged-account plans where withdrawals from the account may be used to reduce monthly payments

during the early years of the mortgage.

The regulations are keyed to the Bank Board's present Federal Regulations section numbers, although a revision of these regulations has been proposed (43 FR 30730; July 17, 1978); it is contemplated that the regulations will be renumbered appropriately upon final revision of this subchapter. The alternative mortgage instrument regulations are set forth directly following § 545.6-1 pertaining to home loans, to which such regulations refer; the text of § 545.6-2, referring to Charter E associations, was obsolete and has been deleted and the AMI-regulation text substituted.

The Bank Board finds that publication of these amendments for the full 30-day period specified in 5 U.S.C. 553(d) is not necessary because the amendments relieve present restriction.

Accordingly, the Federal Home Loan Bank Board hereby amends its Rules and Regulations for the Federal Savings and Loan System, 12 CFR Parts 545 and 555, by adding a new subparagraph (a)(8) to § 545.6-1 thereof, deleting the text of § 545.6-2 thereof, and adding a new text thereto, and revoking § 555.4 thereof, to read as set forth below.

PART 545—OPERATIONS

1. Section 545.6-1 is amended by adding a new subparagraph (a)(8), as follows:

§ 545.6-1 Lending powers.

(a) Homes or combinations of homes and business property.

(8) Real-estate loans with pledged savings accounts as additional security.

Loans may be made under paragraphs (a) (4) and (5) of this section in excess of the maximum dollar, percentage-of-value, or percentage-of-purchase-price limitations thereof, with such excess secured by savings accounts, subject to the following restrictions:

(i) The loan shall not exceed the lesser of purchase price or value of the real estate;

(ii) The savings account shall consist only of funds belonging to the borrower, members of his family, or his employer;

(iii) The association shall fully disclose to the prospective borrower the difference (including interest, private-mortgage-insurance costs, and equity interest) between a loan secured by real estate and savings, and a loan secured by real estate alone; and

(iv) The loan shall comply with § 545.6-2 as it relates to the graduated payment mortgages.

2. The text of § 545.6-2 is deleted and a new text added, as follows:

§ 545.6-2 Alternative mortgage instruments.

(a) *General.* Associations making loans pursuant to § 545.6-1(a) of this Part may use the alternative mortgage instruments described in this section, which allow certain payment and other provisions different from those required elsewhere in this Subchapter. All prospective borrowers offered such instruments must also be offered a standard instrument, as described in this section. An association using an alternative mortgage instrument shall obtain and retain in the loan application file a certification signed by the prospective borrower indicating that s/he has received the disclosure materials specified in this section before electing to take the alternative mortgage instrument.

(b) *Graduated-payment mortgage.*
(1) *Description.* This instrument's scheduled payments begin at a level lower than that of a comparable standard mortgage instrument, and gradually rise to a predetermined point, after which they remain constant; the graduation period and rate of increase and the interest rate are fixed at loan origination.

(2) *Graduation period, rate, and frequency.* Graduation periods are limited to ten years, with maximum rates of increase in mortgage payments as follows:

- (i) 7.5 percent annually for a graduation period of five or fewer years;
- (ii) 6.5 percent annually for six years;
- (iii) 5.5 percent annually for seven years;
- (iv) 4.5 percent annually for eight years;
- (v) 3.5 percent annually for nine years; and
- (vi) 3 percent annually for ten years.

Payment amounts may not be changed more than once a year, and the first change may not occur less than one year after the date of the first regular loan payment.

(3) *Borrower option to convert.* Borrowers under this plan shall be given a right to convert, at a time chosen by the borrower, to a standard mortgage instrument, provided that the borrower is then eligible for such instrument under the association's normal underwriting standards. No assessment of penalties or fees shall be made if the borrower chooses to convert at the interest rate and outstanding maturity of the graduated-payment mortgage.

(4) *Interest capitalization.* Interest capitalization resulting from any negative amortization of these instruments

does not deny the loan first-lien status under § 541.9 of this Subchapter; such debt is considered to be contracted for at the time of loan origination.

(5) *Loan-to-value limitations.* Loan-to-value limitations under § 545.6-1(a) of this Part shall be complied with throughout the loan term.

(6) *Disclosure.* Each prospective borrower shall receive materials explaining in reasonably simple terms the graduated payment mortgage offered and a comparable standard mortgage instrument (with a fixed interest rate, level payments, and full amortization). Such materials shall include:

- (i) A side-by-side comparison of differing interest rates and other terms;
- (ii) Payment schedules for both types of instruments and the total payment in dollars over the full term of each loan;
- (iii) A description of the conversion option; and
- (iv) A statement, prominently displayed, that borrowers have the option to elect a standard mortgage instrument.

(c) *Variable-rate mortgage.* (1) *Description.* The interest rate of this instrument is tied to a reference index; thus, actual future payments are not known at the time of loan origination. Except as provided in subparagraph (c)(6), interest rates are subject to adjustment every year.

(2) *Restrictions.* (i) *Geographic limitation.* (a) A Federal association may make, purchase, or participate in variable rate mortgage loans on real estate located in its home State if the Board has determined that such associations require authority to invest in such loans to maintain competitive balance with other financial institutions lending in such State. Associations authorized to make these investments in their home States may also invest in them in other States where the Board has made similar determinations.

(b) The factors which the Board will take into account in determining a need for competitive balance include: the number of financial institutions offering such loans, the asset size and mortgage market share of such institutions, the dollar amounts of such loans originated in the State, the rate of growth of such loans, or a finding of economic or other factors which may necessitate authorization of such loans. Qualification will be made on a case-by-case basis; in some States a single factor may be determinative, while in others a combination of factors may affect the Board's decision.

(ii) *Percentage-of-loans limitation.* Not more than 50% of an association's home-mortgage loans by dollar amount made or purchased in any calendar year shall be in variable rate mortgages.

(iii) *"Sunset" provision.* Authority to invest in variable rate mortgages under this section will cease as of December 31, 1982, unless renewed or rescinded at an earlier date by the Board.

(3) *Index.* Associations shall use the latest cost-of-funds index published by the Federal Home Loan Bank in the district where the property securing the loan is located.

(4) *Interest-rate adjustments.* (1) *Frequency; grace period.* Interest-rate adjustments (and loan payment changes resulting from them) may not be made more than once a year, and the first adjustment may not occur less than one year after the date of the first regular monthly payment.

(ii) *Calculation and timing of adjustments.* The association shall specify the following in the mortgage contract:

(a) The month when rate review will take place, basing the new calculation on the most recent index information then available;

(b) The date when notification of any adjustment will be made to the borrower; and

(c) The annual monthly payment date when any such adjustment shall take effect.

(iii) *Minimum adjustments.* The smallest adjustment (up or down) shall be one tenth percent (0.10 percent).

(iv) *Maximum adjustments.* The maximum amount of rate adjustment (up or down) shall be one-half of one percent (0.5 percent) a year, with a maximum net increase of 2.5 percent over the life of the loan. Downward adjustments *must* be made, but increases are at the lender's option. Changes in the index rate which are not taken (either at lender's option in the case of increases or because they are too small or too large, *i.e.*, less than 0.10 or over 0.5 percent in a given year) may be accumulated by the lender in the case of increases, and must be accumulated in the case of decreases, and taken at a later time (but never more than 0.5 percent per year), or used to offset other changes.

(v) *Actions relating to rate increases.* Upon notification of an increase, the borrower shall have the following options:

(a) Not respond to the notice; payments will be adjusted upward to reflect higher interest rate;

(b) Request that loan maturity be extended up to a maximum of one-third of the original loan term; or

(c) Within 60 days of such notification, prepay the loan, either in full or in part, without penalty if the new rate is above the initial loan rate.

(vi) *Actions relating to rate decreases.* Rate decreases shall be applied first to reduction of extended

loan maturity (but not below original maturity) and then to reduction of monthly payments; however, loan terms shall not be reduced to such an extent that monthly payments would be increased.

(vii) *Notification requirements.* The borrower shall receive written notification of any rate adjustment at least one month before the date the new rate will take effect. The notification shall include:

(a) Current and new rates;

(b) Old and new index rates;

(c) Accumulated but unused rate changes;

(d) Current monthly payment and remaining maturity;

(e) For increases, a description of borrower's options, including the new payment and maturity if the loan is extended to the maximum; and

(f) For decreases, a description of the way the decrease will be applied.

(5) *Disclosure.* Each prospective borrower shall receive materials explaining in reasonably simple terms the type of variable rate mortgage offered and a comparable standard mortgage instrument (with a fixed interest rate, level payments, and full amortization). Such materials shall include:

(i) A side-by-side comparison of differing interest rates and other terms;

(ii) Payment schedules for both types of instruments, including a "worst case" schedule for the variable rate mortgage showing every maximum increase at the time it could first occur, the highest possible payment during the loan term, and the total payment in dollars over the full term of each loan (with a notation stating that the total payment for the VRM would be greater in the event of loan extension);

(iii) Information regarding the index used;

(iv) A description of borrower's options in the event of an interest-rate increase;

(v) A statement, prominently displayed, that borrowers have the option to elect a standard mortgage instrument; and

(vi) A statement that if the prospective borrower has questions regarding the disclosures, s/he may contact [title, telephone number, and address of officer] at the Federal Home Loan Bank of [—].

(6) *Multi-year variable rate mortgage.* Variable rate mortgages complying with all of the requirements of this paragraph (c) may be made with contractual adjustment periods exceeding one year, in multiples of twelve months. Index-rate changes are accumulated over the period, but the increase or decrease made at adjustment time may not exceed the specified maximum annual percent multiplied by the number of years in the

adjustment period. Maximum increase is 2.5 percent over the life of the loan; there is no maximum decrease. The minimum period for prepayment without penalty shall be 120 days after notification for these instruments.

(d) *Reverse-annuity, mortgage.* (1) *Description.* This instrument provides periodic payments to homeowners based on accumulated equity; the payments are made directly by the lender or through purchase of an annuity from an insurance company. The loan becomes due either upon a specific date or when a specified event occurs, such as sale of the property or death of the borrower.

(2) *Application.* Proposed mortgage plans shall be submitted to the Board for review. If objection is not taken within 60 calendar days from receipt of the proposed plan, the association may proceed to offer mortgages pursuant to such plan.

(3) *Requirements.* (i) Loan applicants shall not be bound for seven days after the loan commitment is made.

(ii) Associations shall obtain a statement signed by the borrower acknowledging disclosure of all contractual contingencies which could force a sale of the home.

(iii) If the mortgage has a fixed term, refinancing shall be made available at market rates current at the time payment is due.

(iv) The instrument shall provide for prepayment without penalty at any time during the loan term.

(v) If payments are to be made to the borrower through purchase of an annuity, the association shall use an insurance company authorized to engage in such business, and supervised, by the State in which it is incorporated.

(vi) Interest rates shall be fixed at loan origination; variable rate mortgages are prohibited.

(4) *Disclosure.* Each prospective borrower shall receive written materials explaining in reasonably simple terms the type of mortgage being offered and its specific terms, including:

(i) Schedule and explanation of payments to the borrower and whether property taxes and insurance are to be deducted;

(ii) Schedule of outstanding debt over time;

(iii) Repayment date if a fixed-term loan, or event (such as sale of home or death of one or more mortgagors) which causes loan to become due;

(iv) Method of repayment, and schedule if any;

(v) All contractual contingencies, including lack of home maintenance and other default provisions, which may result in forced sale of the home;

(vi) Interest rate, annual percentage rate, and total interest payable on the loan;

(vii) Effective interest rate and interest earned or expected to be earned on purchased annuities, based on standard mortality tables;

(viii) Name and address of insurance company issuing a purchased annuity;

(ix) Initial loan fees and charges;

(x) Description of prepayment and refinancing features; and

(xi) Inclusion of a statement that such mortgages have tax and estate-planning consequences and may affect levels of, or eligibility for, certain government benefits, grants, or pensions, and that applicants are advised to explore these matters with appropriate authorities.

PART 555—BOARD RULINGS

§ 555.4 [Deleted]

3. Section 555.4 is deleted.

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. § 1464; Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1947 Supp.)

By the Federal Home Loan Bank Board,

J. J. FINN,
Secretary.

[FR Doc. 78-35295 Filed 12-19-78; 8:45 am]

[3510-25-M]

Title 15—Commerce and Foreign Trade

CHAPTER III—INDUSTRY AND TRADE ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 369—RESTRICTIVE TRADE PRACTICES OR BOYCOTTS

Clarification to Final Rules

AGENCY: Industry and Trade Administration, Department of Commerce.

ACTION: Clarification to Final Rules.

SUMMARY: It has been brought to the Department's attention that the Interpretation published in 43 FR 16969 on April 21, 1978 omitted "Authority" and "Effective Date" information. This clarification furnishes that information.

FOR ADDITIONAL INFORMATION CONTACT:

Philip L. Ray, Jr., Telephone 202-377-2006.

CLARIFICATION

The following clarifies the Interpretation published in the FEDERAL REGISTER on April 21, 1978 in 43 FR 16969:

(Sec. 201, Pub. L. 95-52, 91 Stat. 244 (50 U.S.C. App. 2403a).)

EFFECTIVE DATE: January 18, 1978, unless otherwise stated in the Supplement No. 1—Interpretation.

Dated: December 15, 1978.

STANLEY J. MARCUSS,
Deputy Assistant Secretary
for Trade Regulation.

[FR Doc. 78-35271 Filed 12-19-78; 8:45 am]

[6351-01-M]

Title 17—Commodity and Securities Exchanges

CHAPTER I—COMMODITY FUTURES TRADING COMMISSION

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

Delegation of Authority to Deny Registration

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: On November 16, 1978, the Commodity Futures Trading Commission published for comment a proposal to adopt a new § 1.10e of Part 1 of its General Regulations under the Commodity Exchange Act (43 FR 53450). The purpose of the new section is primarily to delegate to the Commission's staff authority, in certain circumstances, to deny registration to an applicant where facts apparently exist upon the basis of which the applicant may be found unfit for registration and the applicant does not request a hearing to controvert those facts. The Commission received no response to its request for comments on the proposed new section. Accordingly, the commission has determined to adopt the new § 1.10e in the same form in which it was proposed. The provision, which is procedural in nature and does not affect any substantive rights that have previously existed, is effective immediately upon publication.

EFFECTIVE DATE: December 20, 1978.

FOR FURTHER INFORMATION CONTACT:

Patricia A. Seaton, Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. (202) 254-7566.

SUPPLEMENTARY INFORMATION: The Commodity Exchange Act requires registration with the Commission of futures commission merchants and persons associated therewith, commodity trading advisors, commod-

ity pool operators and floor brokers. Pursuant to Section 8a(2) of the Act, 7 U.S.C. 12a(2) (1976), the Commission may refuse to register a person in any of these capacities in certain specifically enumerated circumstances as well as "for other good cause shown." At present the Commission itself makes the decision in every case whether to institute proceedings that may lead to a refusal of registration to any person pursuant to Section 8a(2). This procedure has proven to be an unnecessary imposition upon the valuable time of Commission members, since, in most cases, a decision to institute proceedings to refuse registration to an applicant is based upon essentially indisputable facts showing unfitness for registration and the absence of any significant mitigating circumstance. The Commission therefore proposed and published for comment on November 16, 1978, a new § 1.10e of Part 1 of its General Regulations under the Commodity Exchange Act that would delegate this function to its staff in certain specified circumstances. The Commission did not receive any response to its request for comments. Accordingly, the Commission has determined to adopt Regulation 1.10e in the form originally proposed.

Regulation 1.10e delegates to its staff the authority to handle routine denials of applications for registration in those circumstances in which any one of several specifically enumerated disqualifications exist and the applicant, after having been notified of the disqualifying factor, does not request a hearing. The staff is also authorized, pursuant to Section 8a(2)(A) of the Act, to refuse registration without a hearing to any person whose prior registration has been revoked or has been suspended, the period of suspension not having expired. The rule also authorizes the Commission's staff to notify an applicant where an apparent disqualification exists and require that the applicant confirm in writing that he nevertheless wishes to have his application given further consideration; if the applicant fails to respond to such a notification his application will be deemed to have been withdrawn.

Subsection (a) of the rule provides a procedure by which it may be presumed that an applicant has withdrawn his application in the face of significant adverse information. Under its provisions, the Director or Deputy Director of the Division of Trading and Markets is permitted to advise an applicant when facts have come to his attention upon the basis of which the applicant might be found unfit for registration. The standards to be applied are substantially those contained in section 8a(2) of the Act and the Commission's release concerning good cause.¹ When those standards are met

the applicant would be required to reconfirm in writing that he wishes to have his application given further consideration. Unless he does so, subsection (a) provides that his application will be deemed to have been withdrawn and will be given no further consideration.

Under subsection (b) an applicant may be informed by the Executive Director of the Commission not merely that information has come to the staff's attention of a possible basis for a finding of unfitness—which is the standard under subsection (a)—but that the Division of Trading and Markets and the Division of Enforcement allege and are prepared to prove the fact of the disqualifying circumstance. In this situation, unless the applicant wishes to challenge the alleged facts by requesting a hearing, his application for registration may be denied on the basis of the alleged facts, which will be deemed to be true for that purpose. Of course, the applicant must be fully informed of the consequences of failing to request a hearing before any adverse action may be taken.

If an applicant requests a hearing on the question of denial of his application after he has received the kind of letter authorized by subsection (b), an Administrative Law Judge will conduct a proceeding in accordance with the Commission's rules of practice, 17 CFR Part 10. If a hearing is to be held, however, the Division of Enforcement will be free to seek whatever additional forms of relief would be appropriate in the circumstances and, with leave of the Commission, will also be permitted to allege grounds for denial of registration in addition to those that the Executive Director had originally set forth in his letter.

If an applicant does not request a hearing in response to a letter written pursuant to subsection (b), subsection (d) differentiates between the procedure for handling applications for initial licenses and applications for renewal of a registration previously granted. Where an initial license is involved, the Executive Director is delegated authority to determine the applicant's fitness and grant or deny registration; where the application involves renewal of a license previously granted, the matter will be referred to an Administrative Law Judge to determine whether the application should be granted or denied. This distinction is based upon a provision of the Administrative Procedure Act that no person may participate in the final decision of a matter if he has participated in the investigation or prosecution of that matter or a factually-related case. This provision of the Administrative Procedure Act does not apply, however, in the case of initial licenses.

Subsection (e) of the rule delegates to the Executive Director the Commission's authority under Section 8a(2)(a) of the Commodity Exchange Act summarily and without hearing to refuse to register any person whose registration is currently under suspension or has previously been revoked.

Subsection (f) permits an applicant or the Division of Enforcement to seek reconsideration by the Commission of orders granting or refusing registration. Under subsection (g), the Commission is authorized to stay the effectiveness of any order issued under the rule pursuant to delegated authority, either on its own motion or based upon a petition for reconsideration filed pursuant to subsection (f).

Under subsection (h)(1), the Director or Deputy Director of the Division of Trading and Markets may give notice pursuant to subsection (a), which may result in the withdrawal of an application, only with the concurrence of the Director of the Division of Enforcement or his designee. Where a notice is to be given by the Executive Director under subsection (b), which may result in a denial of registration or a hearing to determine fitness, that notice may be given only with the concurrence of the Director of the Division of Trading and Markets, the Director of the Division of Enforcement and the Deputy General Counsel, or their designees.

Under subsection (i), the Commission reserves to itself the decision whether to institute a denial proceeding in any case not covered by the disqualifying circumstances that are enumerated in subsection (a).

Regulation 1.10e is effective immediately upon publication. The rule as adopted is procedural in nature and does not affect any substantive rights since anyone may obtain a hearing by requesting one and Commission review of all staff decisions may be sought and obtained. Of course, anyone who would have chosen to default under the old procedure may still elect to do so.

Pursuant to authority contained in Sections 2a(11) and 8a(5) of the Commodity Exchange Act, as amended, 7 U.S.C. 4(a)(j) and 12a(5) (1976), the Commodity Futures Trading Commission hereby adopts § 1.10e of Part 1 of Chapter I of Title 17 of the Code of Federal Regulations as set forth below:

§ 1.10e Delegation of authority to deny registration.

(a) The Director or Deputy Director of the Division of Trading and Markets may at any time give written notice to any applicant for registration in any capacity under the Commodity Exchange Act, stating that:

¹40 FR 28125 (July 3, 1975).

(1) Information has come to his attention which tends to show that one or more of the following circumstances exist: That the applicant or any general partner, officer, director, person performing similar functions, controlling person, or holder of more than ten per cent of the stock of the applicant—

(i) Was convicted of any felony in any State or Federal court, or was debarred by any agency of the United States from contracting with the United States, or the applicant willfully made a false or misleading material statement in his application or willfully omitted to state a material fact in connection with the application; or

(ii) Within ten years preceding the filing of the application has been convicted of a misdemeanor which (A) involves any transactions or advice concerning any commodity or security; (B) arises out of conduct of the business of a futures commission merchant, floor broker, commodity trading advisor, commodity pool operator, securities broker, securities dealer, municipal securities dealer, transfer agent, clearing agency, investment adviser, investment company, or as an associated or affiliated person or employee of any of the foregoing; or (C) involves embezzlement, fraudulent conversion, misappropriation of funds, securities or other property, counterfeiting, gambling, or similar crimes reflecting upon the ability of the applicant, if registered, faithfully to discharge the fiduciary duties imposed by the Act; or

(iii) At the time of the application, is permanently or temporarily enjoined by order, judgment or decree of any court of competent jurisdiction, or is prohibited by agreement or settlement with the Commission or the Securities and Exchange Commission, (A) from acting as a commodity trading advisor, commodity pool operator, futures commission merchant, floor broker, securities broker or dealer, municipal securities dealer, transfer agent, clearing agency, investment adviser, investment company, or as an associated or affiliated person or employee of any of the foregoing, or (B) from engaging in or continuing any conduct or practice in connection with any such activity or involving any transaction or advice concerning commodities or securities; or

(iv) Within ten years preceding the filing of the application, has been found by any court of competent jurisdiction, by the Commission or the Securities and Exchange Commission, or has admitted by agreement or settlement to which the Commission or the Securities and Exchange Commission is a party, (A) to have violated any provision of the Commodity Exchange Act, the Securities Act of 1933, the Se-

curities Exchange Act of 1934, the Investment Company Act of 1940, Investment Advisers Act of 1940, or any rule or regulation under any such statutes; (B) to have aided, abetted, counseled, commanded, induced, or procured the violation by any other person of such statutes or rules or regulations; or (C) to have failed reasonably to supervise, with a view to preventing violations of such statutes, rules or regulations, another person who commits such a violation, if such person is subject to his supervision; or

(v) Is subject to an outstanding order of the Commission denying trading privileges on any contract market to such person, or suspending or revoking the registration of such person as a commodity trading advisor, commodity pool operator, futures commission merchant, floor broker, or associated person, or suspending or expelling such person from membership on any contract market;

(2) This information, if true, is a basis upon which the applicant may be found unfit for registration and upon which the applicant's registration may be denied;

(3) Unless the applicant voluntarily withdraws his application it may be necessary, after further investigation of these facts, to institute the public procedures for denial of registration described in paragraph (b) of this section;

(4) In these circumstances, an applicant is required to reconfirm in writing that he wishes to have his application given further consideration; and

(5) Unless the applicant files with the Director or Deputy Director of the Division of Trading and Markets a notification in writing, within thirty days of the date of the notice that the applicant wishes to have his application for registration given further consideration, his application will be deemed to have been withdrawn and will be given no further consideration.

(b) On the basis of apparently credible evidence the Executive Director may at any time give written notice to any applicant for registration in any capacity under the Commodity Exchange Act that:

(1) The Division of Trading and Markets and the Division of Enforcement allege and are prepared to prove that one or more of the circumstances set forth in paragraph (a)(1) of this section exist;

(2) The allegations set forth in the notice, if true, constitute a basis upon which the applicant may be found unfit for registration pursuant to Section 8a(2)(B) of the Commodity Exchange Act and upon which the applicant's registration may be denied;

(3) The applicant is entitled to a hearing at which he may challenge the truth of the allegations set forth

in the notice or show cause why, notwithstanding the truth of those allegations, registration should nevertheless be granted;

(4) A hearing for these purposes may be obtained by filing a written request with the Executive Director within thirty days after the date of the notice to the applicant;

(5) If the applicant does not timely request a hearing he will be deemed to have waived his right to a hearing on all issues concerning his application; and

(6) If the applicant does not timely request a hearing the Commission or the Executive Director or Chief Administrative Law Judge (acting pursuant to authority delegated under paragraph (d) of this section) may thereafter decide whether to grant or deny his registration based upon the facts stated in the notice, which will not have been disputed and which may be deemed to be true for that purpose.

(c) If an applicant should request a hearing in accordance with paragraph (b)(4) of this section, an adjudicatory proceeding on the question of the applicant's fitness for registration shall thereafter be conducted and concluded in accordance with the Commission's rules of practice, 17 CFR Part 10; the matter shall be referred to the Chief Administrative Law Judge who shall set a date for hearing and assign an Administrative Law Judge to conduct the proceeding. For purposes of that proceeding, the notice given in accordance with paragraph (b) of this section shall be treated as a duly authorized complaint by the Division of Enforcement seeking, as relief, denial of the application for registration, and the request for hearing shall be treated as an answer which generally denies every allegation contained in the notice upon which a hearing has been requested: *Provided, however*, That (1) the Division of Enforcement may thereafter amend the complaint to seek such other and further relief as may be appropriate in view of the matters charged and, with leave of the Commission, may allege further grounds as a basis for denial of registration; and (2) the applicant may supplement his answer to set forth any affirmative defenses he may wish to assert and the alleged facts upon which those defenses are based. The provisions of §§ 10.22 and 10.23 of the rules of practice, concerning a complaint and answer, shall otherwise be inapplicable.

(d) If no request for a hearing is received by the Executive Director within thirty days after a notice has been given in accordance with paragraph (b) of this section, the Executive Director may proceed as follows:

(1) In the case of an applicant for an initial registration, pursuant to au-

thority hereby delegated by the Commission, the Executive Director may determine the applicant's fitness for registration and may issue an order, pursuant to Section 8a(2) of the Commodity Exchange Act, granting or refusing registration to the applicant based upon the application, the notice with proof of service, and an appropriate showing that a hearing has not been requested.

(2) In the case of an applicant for renewal of a registration previously granted, the Executive Director may transmit to the Chief Administrative Law Judge a true copy of the application, the notice with proof of service, and an appropriate showing that a hearing has not been requested, and, based thereon, the Chief Administrative Law Judge, pursuant to authority hereby delegated by the Commission, may determine the applicant's fitness for registration and may issue an order, pursuant to Section 8a(2) of the Commodity Exchange Act, granting or refusing registration to the applicant.

(e) Notwithstanding any other provision contained in this section, the Executive Director is hereby delegated authority pursuant to Section 8a(2)(A) of the Commodity Exchange Act to enter an order refusing to register any person if the prior registration of such person has been suspended (and the period of such suspension shall not have expired) or has been revoked.

(f) A copy of any order issued pursuant to paragraph (d) or (e) of this section shall promptly be served upon the applicant and the Division of Enforcement and provided to each member of the Commission. Within fifteen days after service upon an applicant of an order granting or refusing registration issued pursuant to paragraph (d) or (e) of this section, the applicant or the Division of Enforcement may file with the Commission's Secretariat a petition for reconsideration setting forth the grounds in support thereof. The petition of an applicant shall not be based upon any matter of which the applicant had notice and opportunity for hearing under paragraph (b) of this section unless it be claimed, and supported by affidavit, that notice under paragraph (b) was not timely received by the applicant.

(g) An order granting or refusing registration issued pursuant to paragraph (d) or (e) of this section shall be effective as a final order of the Commission thirty days after the date it was served upon the applicant. Within that period the Commission, on its own motion, or based upon a petition filed pursuant to paragraph (f) of this section, may stay the effectiveness of the order and then or thereafter may reverse, affirm or modify the order or direct reconsideration of the order on

such basis and in accordance with such procedures as it may determine.

(h)(1) The Director or Deputy Director of the Division of Trading and Markets shall give notice under paragraph (a) of this section only with the concurrence of the Director of the Division of Enforcement or his designee. The Executive Director shall give notice under paragraph (b) of this section only with the concurrence of the Director of the Division of Trading and Markets, the Director of the Division of Enforcement and the Deputy General Counsel, or their designees.

(2) For purposes of this section, notice to and service upon the applicant shall be sufficient if mailed first class properly addressed to the applicant at the address shown on his application or any amendment thereto, and shall be complete upon mailing; a record showing the date upon which a document was duly mailed, and by whom, prepared and retained in the normal course of Commission business, shall be adequate proof of service of the document. Documents submitted to the Executive Director or the Director of the Division of Trading and Markets shall be considered filed only upon actual receipt.

(i) The Commission reserves to itself the decision in any case whether to institute a proceeding to determine whether to refuse an applicant's registration for reasons other than the existence of circumstances described in paragraph (a)(1) of this section.

Issued in Washington, D.C., on December 15, 1978.

GARY L. SEEVERS,
*Acting Chairman, Commodity
Futures Trading Commission.*

[FR Doc. 78-35320 Filed 12-19-78; 8:45 am]

[6351-01-M]

PART 9—COMMISSION REVIEW OF EXCHANGE DISCIPLINARY OR OTHER ADVERSE ACTION

Procedures and Standards Governing Commission Review of Exchange Disciplinary or Other Adverse Action

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission has adopted Part 9 of its regulations under the Commodity Exchange Act to implement Section 8c of the Act,¹ which grants the Commission broad power to review any decision by an exchange resulting in disciplinary or other adverse action.

¹ 7 U.S.C. 12c (1976).

The Commission may take review of such exchange action upon application of the person who is the subject of the action and may also review disciplinary actions on its own motion. The rules set forth the procedures and the standards under which review will be instituted and conducted in those cases where a person applies to the Commission for review. Proposed rules were published for comment on June 14, 1977.² As adopted, the rules are substantially in the form proposed, with certain technical and substantive revisions deemed appropriate as a result of comments received.

EFFECTIVE DATE: January 19, 1979.

FOR FURTHER INFORMATION CONTACT:

Teresa J. Hermsillo or Mark D. Young, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, telephone (202) 254-7602 or 254-5716, respectively.

SUPPLEMENTARY INFORMATION: On June 14, 1977, the Commission published proposed rules governing Commission review of exchange disciplinary and other adverse action pursuant to Section 8c of the Act. The release announcing those proposals contained a summary of the Commission's consideration of the issues pertaining to the review of these exchange actions; set forth a discussion of the basis and purpose of the proposal, including a section-by-section analysis of the proposed rules; and invited interested persons to participate in the rulemaking process by providing written submissions to the Commission. The Commission has considered all of the comments and suggestions received and has determined to adopt these rules in the form set forth below.

The Commission believes that adoption of these rules will not result in any substantial additional costs to either the exchanges or to the Commission. Exchanges are already required to enforce their rules and are empowered to take disciplinary actions. Section 8c of the Act requires the exchanges to notify the Commission and the person affected of these actions and empowers the Commission to review the actions taken on appeal or on its own motion. The Part 9 rules are procedural in nature and will govern the appeal and review process authorized by Section 8c. Thus, for example, the exchanges are presently required by Commission regulations to keep a record of exchange disciplinary action. The additional cost of providing the Commission a record of the exchange proceeding in the event the Commission determines to review the

² 42 FR 30472.

action will be marginal when viewed in the context of the basic purposes to be served by Section 8c: To permit the Commission to conduct its reviews of exchange action thoroughly and expeditiously.

Subpart A includes various general provisions and definitions applicable to the rules. Subpart B prescribes the form and manner of the notice which an exchange must provide to the Commission and to a person who is the subject of an exchange disciplinary action and sets forth information to be included in the notice concerning the exchange's disciplinary action. Subpart B further provides that, except in specified circumstances, the imposition of exchange disciplinary action shall be delayed for ten days after the notice of disciplinary action is delivered to the Commission in order to permit the person disciplined sufficient time to apply to the Commission for a stay of the disciplinary action. Subparts C and D establish the procedure for Commission review of exchange action upon application of an affected person. The procedure is designed to (1) provide the applicant with an adequate opportunity to present his reasons for believing that the specific exchange action does not accord with the policies of the Act; (2) establish a mechanism for the prompt review of exchange action; and (3) insure that the Commission will have before it all relevant information necessary for a fully-informed review of the exchange action. In this regard, subpart D provides that the Commission may remand the action to the exchange for further proceedings or to adduce additional information. Subpart D also sets forth the standards which the Commission will use to review the exchange decision.

The Commission did not propose, and is not at this time adopting specific procedures to govern review of an exchange action on its own motion. Consistent with its recognition of exchange self-regulation as an important policy of the act, the Commission believes that its power to review exchange actions on its own motion generally should be exercised in those instances where an exchange has apparently failed to carry out its self-regulatory responsibilities and did not take prompt, appropriate action to enforce its rules. (For example, where a nominal monetary penalty is imposed on an exchange member for egregious conduct and therefore the member is unlikely to appeal the decision of the Commission).² Thus, the Commission

does not expect that it will be necessary to review exchange action on its own motion as a common practice and has decided that it is not necessary at this time to adopt specific procedures for this purpose. But where the Commission discovers information which suggests that the exchange did not proceed as vigorously as it should have in a particular case, the Commission may find it appropriate to undertake review of the matter. In this event, the Commission will determine the procedures to be employed in the particular case and in rendering a decision anticipates using the standards for review set forth in §9.37 of the adopted rules.

One commentator suggested that the failure to adopt these procedures would create an aura of uncertainty and lack of finality to exchange actions due to the possibility that the Commission might reopen the proceeding long after the parties believe the matter resolved. The Commission believes this comment has merit. It has therefore determined to adopt §9.50 in Subpart E of Part 9 under which the Commission may review any exchange disciplinary action on its own motion where the person disciplined or denied access has not appealed the exchange action to the Commission. Other than in extraordinary circumstances such review shall be initiated within 180 days after the Commission has received the notice of exchange action provided for in §9.11. If a review action under §8c is not commenced within this period, the exchange may generally consider the matter closed. It is emphasized, however, that the 180-day period applies only to Commission review of the particular decision under Section 8c of the Act and failure to commence this review neither precludes the Commission from considering the matter in the course of its routine oversight of an exchange's operations or its review of an exchange rule enforcement program nor forecloses action by the Commission under the Act against either the exchange or the person disciplined for any violation of the Act or Commission regulations.

There follows a synopsis of the rules in the form adopted, together with a discussion of certain general and spe-

remand for further proceedings, in whole or in part, the decision of the exchange. Such review also will complement the Commission's general oversight of the exchanges. If review of exchange disciplinary action discloses that the exchange has failed to carry out properly its self-regulatory responsibilities, the Commission may deem it appropriate to initiate an enforcement proceeding, which could include review of the exchange's designation as a contract market and the assessment of a civil penalty. The Commission may also institute enforcement actions against individuals or firms for any violation of the Act or regulations thereunder.

cific comments received by the Commission and of the revisions made in the proposed rules as a result of those comments and further consideration by the Commission. Where the proposed rules are adopted without amendment or where no material public comment was received on the rule, the release will not repeat the discussion of that rule contained in the June 14, 1977 release.

SUBPART A—GENERAL PROVISIONS

Section 9.1 sets forth the scope and purpose of the rules. Several commentators suggested that the scope of §9.1 was overly broad in that it could be construed to cover exchange actions that have nothing to do with disciplinary matters. The Commission points out, however, that the scope of rules as set forth in §9.1 is based upon the express provisions of Section 8c(2) of the Act, which provides that "[i]n addition" to reviewing disciplinary and denial of access actions taken by an exchange, the Commission may review "any other exchange action" if a person "adversely affected" by such action files an application with the Commission.⁴ Thus, Section 8c(2) is not limited in its scope to disciplinary or access denial actions of the exchanges. Other commentators felt that a denial of access action should be excluded from the scope of the rules because a disciplinary proceeding differs in substance from a proceeding involving a denial of access. The Commission recognizes that the exchanges may find it appropriate to employ different procedures for denial of membership and other denial of access actions than for disciplinary actions. However, the procedure for reviewing those determinations should, in the Commission's view, be the same.

Section 9.2 defines various terms used in the rules. Section 9.2(a) de-

⁴The Commission wishes to stress, however, that it intends to evaluate carefully the merits of an application for review in order to ascertain whether in its judgment, the matter involves the type of "other exchange action" with which Section 8c is concerned. Thus, the Commission has declined to review an exchange arbitration decision concerning a dispute between a customer and an exchange member. The Commission determined that it was not readily apparent that the Commission had jurisdiction to review the matter under Section 8c, and even if it did, it would be inappropriate for the Commission to exercise its discretion to review the matter because the exchange appeared to have no substantial interest in the action taken and other remedies were available to the petitioners. *In the Matter of Board of Trade of the City of Chicago and the Committee of Arbitration and the Appeals Committee of the Board of Trade of the City of Chicago and Abdallah W. Tamari, Ludwig W. Tamari and Farah W. Tamari, Petitioners*, Order Denying Petition for Commission review pursuant to Section 8c of the Commodity Exchange Act, February 14, 1978.

²Review of exchange disciplinary action on its own motion will permit the Commission to determine whether the exchange has discharged its responsibilities in a particular case. As in the case of appeals from exchange disciplinary proceedings, the Commission may affirm, modify, set aside or

finer "disciplinary action" as any suspension, expulsion or other penalty imposed on any member of an exchange by that exchange or any action by an exchange which denies access to the exchange to any person. One commentator expressed concern that minor disciplinary actions taken by an exchange would be subject to review under the rules as proposed. However, §9.2 specifically excludes from the definition of disciplinary action an exchange action imposing a minor sanction as a result of a violation of exchange rules of decorum, attire or similar rules.⁵ Two commentators suggested that the definition of disciplinary action conform to the proposed definition of "penalty" of the Commission's rules governing exchange disciplinary actions.⁶ The Commission points out, however, that the terms are not coextensive. The term penalty in Part 8 relates to the sanction imposed pursuant to a finding that a violation within the disciplinary jurisdiction of the exchange has occurred. The term disciplinary action in §9.2(a) encompasses those actions which may be appropriate for Commission review. Thus, as noted above, minor penalties for certain types of violations constitute a penalty for purposes of Section 8.03(i), but are not included in the definition of the term disciplinary action in §9.2. Similarly, the term disciplinary action includes a denial of access action, an action which is not included in the definition of penalty in Part 8. Accordingly, the Commission has not modified the definition of disciplinary action from its proposed form.

In response to several comments, the definition of "member of an exchange" in §9.2(f), as adopted, includes not only a person who is admitted to exchange membership, or has been granted membership privileges thereon, but also includes employees, officers and other persons affiliated with that member or person with membership privileges, including any agent or associated person, and any other person under the supervision or control of the member or person with membership privileges. The Commission has changed this definition in order to clarify the scope of the term "affiliate" as used in the definition. The Commission does not intend that the definition should be construed so broadly as to include business entities which control the

⁵ Warning and cautionary letters for other actions may not be considered to be a disciplinary action within the scope of these rules unless issued pursuant to a finding by the exchange that a rule has been violated.

⁶ The term "penalty" was defined in §8.01(g) of the proposed regulations. 42 FR 11145 (February 25, 1977). That section was redesignated as §8.03(i) in the regulations, as adopted. 43 FR 41950, 41962 (September 19, 1978).

person who is a member of the exchange or has membership privileges on the exchange.

A "party" has been defined to include both the person who has been the subject of a disciplinary action or other adverse action by an exchange and that exchange. One commentator stated that the definition should be amended expressly to include corporate and other entities. The Commission does not believe that an amendment is necessary, because the term "person" is defined in 17 CFR 1.3(u) (1977) to include not only individuals, but also "associations, partnerships, corporations, and trusts."

In order to clarify that the record referred to in certain sections of Part 9 is the record of the exchange action and not the record developed by the Commission in the course of the review proceeding, §9.2(h) as adopted replaces the proposed definition of "record" with a definition of "record of the exchange disciplinary proceeding or other adverse action". In addition, many commentators opposed as too broad the proposed definition of "record", which basically included all evidentiary and other documents compiled by an exchange during the course of any proceeding resulting in a disciplinary or other adverse action, including the record which the exchange is required to maintain in accordance with Commission regulations.⁷ It was suggested that this term should include only those items actually submitted to exchange disciplinary committees before exchange action is taken. The Commission believes these comments have merit. Thus, the portion of the definition, as adopted, which describes the record of an exchange disciplinary proceeding basically coincides with the definition of record contained in Part 8 of the Commission's regulations as adopted; that is, all testimony, exhibits, papers and requests produced at or filed in the proceeding or served on a party to such a proceeding.⁸ That part of the definition which describes the exchange record of other adverse action is new and includes all documents, minutes or other records serving as a basis for or reflecting deliberations concerning other adverse action taken

⁷ Currently 17 CFR 1.51(a) (1977) sets forth these requirements insofar as exchange disciplinary actions are concerned. However, in adopting new Part 8 of the Commission's regulations, the Commission has supplemented those requirements. See 43 FR 41950 (September 19, 1978).

⁸ Naturally, the Commission might request that an exchange provide certain information in addition to the record of the disciplinary proceeding in a particular case. Such additional information will not become part of the record upon which the Commission decision under §9.37 is based unless the information is required to be submitted in accordance with §9.34(b).

by an exchange. The Commission has further specified that the adopted definition includes the transcription or recording of any oral argument made by the parties at any stage of the proceeding.

Section 9.4 provides that if either party fails to file any document or make any appearance which would be required by the rules, the Commission may dismiss the proceeding before it or, based on the record before it, may affirm, modify or set aside the exchange decision or remand the matter for further proceedings before the exchange, as it deems appropriate. One commentator stated that the Commission should affirm the decision of an exchange where an applicant seeking review in effect abandons the case. Other commentators suggested that the proposed rule be modified so that the Commission would be required to halt its review and dismiss an application for review in those instances where the applicant had ceased to participate. The Commission believes that it should retain discretion to deal with matters pending before it and thus does not believe this provision should be modified. If an applicant for review of an exchange action abandons a case or ceases to participate, the Commission will evaluate the circumstances and determine whether it would be appropriate either to dismiss the application or affirm the exchange action. On the other hand, circumstances might arise where based on the information before it the Commission might decide that it is more appropriate to modify or set aside the exchange decision or remand the matter for further proceedings.

Section 9.5 as proposed dealt with offers of settlement of Commission review proceedings which were sought or instituted, and prescribed the various matters to be included in any offer of settlement. The proposed rule also provided that the Commission could, in its discretion, accept or reject an offer of settlement. Numerous commentators objected to this provision stating that once the parties have reached agreement there is no necessity for Commission concurrence in any settlement. The Commission agrees with this view since the regulations of this part do not apply to review of exchange actions undertaken on the Commission's own motion, but are limited to those instances where the Commission has granted review at the request of an applicant who is dissatisfied with the outcome of the exchange's decision below. Accordingly, §9.5 has been amended to delete the provision that the Commission may accept or reject offers of settlement. Rather, it shall enter an order based upon the terms of the settlement and terminate the proceeding before the

Commission as to all parties! The Commission wishes to emphasize, however, that the adopted rule expressly provides that the Commission may proceed with a review of the matter on its own motion despite the accord between the parties of an exchange disciplinary action.

Section 9.6 provides that in a particular case the Commission may waive any of the rules if it determines that no party will be prejudiced and that the ends of justice will be served. One commentator requested that the Commission alter this provision so that the time limitations could not be waived. However, the Commission believes it more consistent with the broad grant of Commission review power contained in Section 8c of the Act for it to retain flexibility with respect to all provisions of the rules, including time restrictions. The Commission has delegated to the General Counsel part of its authority under this section. Pursuant to this delegation of authority, the General Counsel may waive or modify procedural requirements under this part concerning the form, execution, service and filing of documents; submission of briefs; and time limits for filing.

SUBPART B—NOTICE OF DISCIPLINARY PROCEEDING

Section 8c(1)(A) of the Act requires that an exchange disciplinary action shall be taken solely in accordance with the rules of the exchange. Section 8c(1)(B) of the Act requires the exchange to provide written notice in the form and manner prescribed by the Commission within thirty days of the exchange disciplinary action to the affected person and to the Commission. Consistent with this authority, the Commission has adopted § 9.11(a) which requires that written notice be sent within 30 days of the exchange action. Because exchanges are required under the Act to advise the Commission of all denials of access and disciplinary sanctions imposed, the notice provisions of § 9.11 apply to any disciplinary penalty as that term is defined in 17 CFR 8.03(i) (see 43 FR 41950, 41962 (September 19, 1978)) as well as to any disciplinary action within the meaning of § 9.2(a). The effect of § 9.11 is to require exchanges to provide the requisite notice whenever any disciplinary sanction is to be imposed, including sanctions for violations of exchange rules of decorum, attire or similar rules, even though these minor sanctions are not subject to Commission review under Part 9.

One commentator suggested that § 9.11(a) should specify that the 30-day period within which the written notice must be sent to the affected person and to the Commission should commence after the person has ex-

hausted all routes of appeal afforded by the rules of the exchange, thereby causing the exchange action to become final. The Commission is in basic agreement with this position. Therefore, § 9.11(a) has been modified to provide that the 30-day period will begin to run when the exchange decision pursuant to which the sanction is to be imposed becomes final.⁹

Two commentators urged that denial of access actions should be treated separately from other disciplinary actions because of the difficulty in determining at what point in an exchange's internal proceeding a denial of access takes place. The amendment to § 9.11(a) referred to above, in conjunction with the adopted definition of disciplinary action in § 9.2(a), make clear that a denial of access action occurs for purposes of Part 9 when an exchange imposes a denial of access on a person (e.g., when an applicant is denied membership), or the decision pursuant to which a person is to be denied access to the exchange is deemed final, whichever occurs first.

Section 9.11, as proposed, also required that the notice sent to the Commission and the affected party include the name of the affected party; the reasons for the exchange action; together with an enumeration of the rules which the affected party was charged with having violated; a statement of the conclusions and findings made by the exchange with regard to each rule violation or, in the event of settlement, a statement specifying those rule violations which the exchange has reason to believe were committed; and the terms of the disciplinary action imposed on the affected party.

Two commentators stated that the notice provisions of § 9.11(a) (2) and (3) would not be applicable to denial of access actions since these actions do not generally involve rule violations. Conversely, one commentator stated that the requirement of § 9.11(a)(2) that the notice include a statement of reasons for the exchange actions should only be applicable to denial of access actions because the basis for exchange disciplinary actions would be reflected adequately in a listing of the rules violated. The Commission points out, however, that whether a person is denied access or is disciplined by an exchange, Section 8c requires that the exchange action be taken in accordance with exchange rules and the exchange provide the Commission and the person subject to the exchange action a statement of the reasons for

the exchange action. Thus, the Commission believes the exchange should cite in the notice which of its rules, including procedural rules, the exchange employed as a basis for its action. The Commission has therefore determined to adopt § 9.11(a) (2) and (3) in the form proposed.¹⁰

Section 9.11(c) as proposed would have empowered the Division of Trading and Markets to request that the exchange provide further information relating to the exchange action, including the record or portions thereof, and a brief statement of the evidence and testimony adduced to support the exchange's finding that a rule or rules of the exchange have been violated. The exchange was further required to advise the person who is the subject of the disciplinary action of the Division's request so that he may also request a copy of the materials. The information requested by the Division must be furnished to the Division and the affected person, if he so requests, within thirty days. In response to comments, the Commission has amended § 9.11(c) to provide that an exchange's rules may require that if the affected person requests a copy of the information furnished to the Division, he shall pay the exchange reasonable reproduction costs.

Two commentators suggested that the Commission, through the Division of Trading and Markets, should not be able to obtain, as a part of the appeal process, information outside of the record of the exchange proceeding. The Commission has determined not to amend § 9.11(c). The purpose of permitting the Division of Trading and Markets to obtain additional information under § 9.11(c) is not solely related to the Commission's authority to grant a request for or to undertake review of an exchange action. For example, such information might well aid the Commission in exercising its discretion under Section 8c to discipline someone other than the person against whom disciplinary action was taken. Under Section 8c the Commission is broadly empowered, if the exchange fails to act, to discipline any person who is a member of an exchange, and, in its discretion, to review any exchange disciplinary action on its own motion. In addition, the Division may find that the notice provided by the exchange is not sufficient, in a particular case, to enable it to carry out its general oversight responsibilities and to assess whether further Commission action, on its own motion, under Section 8c is appropriate. Accordingly, the adopted regulation pro-

⁹The Commission has adopted regulations §§ 8.20 and 8.28 in Part 8 requiring each exchange to adopt rules setting forth the time at which an exchange decision shall be deemed to be final. See 43 FR at 41965.

¹⁰In lieu of the written notice, § 9.11 permits the exchange to provide a written decision which conforms with §§ 8.16, 8.18 or § 8.19(c) (including copies of any materials incorporated by reference) of the Commission's rules. See 43 FR at 41964-5.

vides that the Division may obtain the exchange record of the proceeding, designated portions of the record, and such recordings, transcripts and other documents applicable to the particular disciplinary or other proceedings as may aid the Commission in the review of such proceeding and of the decision rendered therein.

One commentator also objected to the requirement of § 9.11(c) that the exchange furnish the Division with a brief statement of the evidence because preparation of such a statement would be unduly time consuming and might reflect the personal bias of exchange personnel who would prepare the summary. The Commission is not persuaded that preparation of a brief statement would be overly burdensome to the exchange. Moreover, the Commission believes that a brief statement of the evidence in a proceeding will be a useful tool to evaluate the matter expeditiously. One commentator objected to the brief statement of evidence requirement on the ground that since the exchange was not required by the proposed Part 8 rules to maintain a transcript of the disciplinary proceeding, it would be extremely difficult to summarize the evidence. To the extent this requirement created a problem, it has been resolved by § 8.17(a)(10) of the adopted Part 8 rules, which provides that when a disciplinary hearing is held "a substantially verbatim record of the hearing shall be made * * *." Also, the Commission believes that the exchange has the responsibility to insure that the summary be prepared to reflect accurately and objectively the evidence adduced in a particular proceeding.

In response to the suggestion of numerous commentators, the Commission has modified § 9.11(d) in order to allow an employee as well as an officer or agent of the exchange to certify as true and correct the requested copies of the notice and record or portions thereof. The Commission again points out that the purpose of the certification requirement is to insure that the exchange will review carefully the notice and information required to be furnished under Section 8c of the act and these rules.

At the time the Commission proposed Part 9, Section 8c(1)(B) of the Act required exchanges to keep confidential the notice and reasons for the exchange action in disciplinary and access denial proceedings. However, the Futures Trading Act of 1978 has replaced this requirement with the requirement that "An exchange shall make public its findings, and the reasons for the exchange action in any such proceeding, including the action taken or the penalty imposed, but shall not disclose the evidence there-

for, except to the person who is suspended, expelled, or disciplined, or denied access, and to the Commission."¹² In view of this statutory amendment, the Commission has not adopted proposed § 9.13, which would have implemented the confidentiality provisions formerly contained in Section 8c(1)(B). In addition, the Commission intends to propose shortly a rule implementing the new statutory provision and has reserved § 9.12 of Part 9 for that purpose.

As stated above, Section 8c(1)(B) of the Act requires that the exchange must provide the notice of disciplinary action to both the Commission and the affected party within thirty days. Section 8c(4) authorizes the Commission to stay the effective date of any disciplinary or denial of access action taken by an exchange pending Commission review of such action. Section 9.13(a) of the adopted rules provides that, except in certain circumstances, an exchange disciplinary action may not become effective until at least ten days after the notice of the exchange's action is delivered to the Commission. This delay will provide the affected party with adequate time to apply to the Commission for stay of the disciplinary action where immediate imposition of the sanction might cause substantial hardship.

The proposed rules recognized the existence of situations in which the integrity of the exchange or the contracts traded thereon can be called into question, requiring an exchange to take prompt disciplinary action which will be effective prior to the expiration of ten days. Two commentators requested that the Commission slightly broaden the circumstances enumerated in the proposed rules pursuant to which an exchange might take such action. Specifically, it was suggested that violations or apparent violations of an exchange's minimum financial requirements should be added. The Commission has amended § 9.13(a)(1) to provide, among other things, that an exchange action may become effective immediately, in accordance with § 8.25, if the exchange reasonably believes such action is necessary to protect the best interest of the marketplace. To the extent that a violation of exchange financial rules results in a situation covered by this standard, immediate exchange action is permitted. Two other exceptions to the general requirements that exchange action shall not become immediately effective have been added to § 9.13(a) to conform to those provisions in Part 8 providing for summary action. Thus, under § 9.13(a)(2) and (3) an exchange may immediately impose a penalty on a person who impedes the

progress of a hearing (see § 8.17(b)) or who has failed to timely submit accurate records required for clearing or verifying each days transactions or other similar activities (see § 8.27). Although summary action may be taken under Part 8 for violations of rules of decorum under § 8.27, a parallel exemption was not provided in § 9.13(a) since these actions are not disciplinary actions as that term is defined in § 9.2(a).

One commentator asked whether improper conduct by a person on a continual basis would fall within any of the circumstances contained in § 9.13(a). Whether such conduct would be within the scope of any of these subsections would depend upon the nature of the impropriety involved and whether the exchange could reasonably find that recurring conduct requires immediate discipline.

Section 9.13(b) requires an exchange to notify immediately both the Commission and the affected party when the exchange makes the finding required by § 9.13(a) in order to impose disciplinary action before the ten-day stay period has elapsed. The rule as adopted has been broadened from the proposed version, which authorized notice by telegram only, to authorize the use of other means of written telecommunications as well. The communication must state the reasons for which the exchange has determined that it must accelerate the effective date of the disciplinary action. Of course, under § 9.22, a person who is the subject of a disciplinary action taken pursuant to § 9.13(a)(1) may petition the Commission to stay the effectiveness of the disciplinary action pending completion of the exchange hearing conducted under § 8.26.

SUBPART C—INITIAL PROCEDURE WITH RESPECT TO APPLICATIONS FOR REVIEW

Section 9.21(a) as proposed gave a person seeking Commission review of exchange disciplinary action thirty days after the notice of the exchange action to apply to the Commission for review. As proposed the process involved only one step, the filing of the application. In response to the suggestion of a number of commentators, the procedure has been modified into a two-step process requiring notice of an intention to appeal as well as the actual application for review. Section 9.21(a) as adopted still gives an applicant thirty days to apply for review, but in order to file such an application he must have advised the Commission and the exchange of his intention to appeal by filing a notice of appeal within ten days after notice of disciplinary or other adverse action has been provided. This revision will enable an exchange to assess the most appropriate course of action to take

¹² 43 FR at 41964.

¹³ Section 18 of Pub. L. No. 95-405, 92 Stat. 865, 874-75 (September 30, 1978).

pending a final Commission determination on the application. The ten-day period within which a notice of appeal may be filed conforms to the ten-day automatic stay of final exchange action. The stay may be extended if the person subject to the disciplinary action files a petition for a stay under § 9.22, as adopted. The Commission contemplates that the notice of appeal and petition for stay may be included in the same document.

One Commentator urged the Commission to add to § 9.21(a) a provision that if a person subject to disciplinary or other adverse action fails to file an application for review within the required 30 days, the right to Commission review shall be deemed waived. The Commission wishes to point out that it generally will not consider an application for review from a disciplinary or other adverse action unless the notice of appeal and the application have been timely filed. But, in the event the notice or application is not timely filed because of unusual or extraordinary circumstances, Commission review should not automatically be foreclosed. See also the discussion of § 9.6 above.

Section 9.21(b), as modified, specifies the content of the application for review, which includes, among other things, a concise statement of all the facts which would be relevant to the Commission's consideration of the application, including, if known, the date on which the exchange imposed the disciplinary or other adverse action or the date on which the final exchange decision was rendered imposing disciplinary or other adverse action; a description of the action taken by the exchange and the specific relief sought; and a statement of the reasons why the applicant believes that the exchange action was not in accordance with the rules of the exchange or the policies of the Act, and the specific facts which support those reasons. Two commentators suggested that the application include a waiver of the right to bring collateral judicial proceedings challenging the exchange action. The Commission disagrees. The Commission believes that this suggestion is inconsistent with the Congressional intent in enacting Section 8c of the Act. The Conference Report concerning the 1974 amendments to the Act, specifically states with reference to the provisions of Section 8c: "The appeal procedure *** is discretionary. While as a matter of primary administrative jurisdiction, courts may defer to any review afforded by the Commission, the availability of such review procedure will not affect rights that are otherwise available to persons adversely affected by exchange action." S. Rep. No. 93-1194, 93d Cong., 2d Sess.

38-39 (1974). Similarly, even if an application for Commission review is made, a Commission determination not to grant an application for review does not constitute a decision on the merits of the appeal and should not, in the Commission's view, foreclose the appealing party from seeking relief in the courts.

Section 9.21(c) has been modified to require that the applicant or a duly authorized officer or agent of an applicant who is not a natural person sign the application and attest that the facts set forth are true. The applicant must also include a certification that a copy of the application has been served on the exchange concurrently with its filing with the Commission.

Section 9.22(a) provides that any applicant may petition the Commission for a stay of a disciplinary or other adverse action taken by an exchange. As noted above, Section 8c(4) of the Act authorizes the Commission, in its discretion, to stay any exchange action which results in any member being suspended, expelled, or otherwise disciplined or in any person's being denied access to the exchange, pending Commission review. One apparent misconception should be clarified. A number of comments were received which expressed the fear that a "stay" of a denial of access action concerning a denial of membership would result in a person being admitted to membership on the exchange. A stay of any exchange action would result only in the maintenance of the status quo. Thus, a person not a member of an exchange, who is denied membership, would not become a member by virtue of the stay. Similarly a person who is a member of an exchange but who has been denied access to a particular facet of an exchange's operation by an exchange action would not be denied such access during the ten day stay period. As discussed in the June 14, 1977 release, Section 8c(4) does not specifically provide that the Commission may stay other exchange action adversely affecting a person. However, the Commission is of the view that § 9.22(a) is consistent with the overall purpose of Section 8c in granting broad discretion to the Commission in overseeing exchange actions and would enable the Commission to forestall the possibly adverse consequences of exchange action in appropriate circumstances.¹³ In general, the

¹³ In any event, under Section 8a(5) of the Act, 7 U.S.C. 12a(5) (1976), the Commission may adopt such rules and regulations as, in the judgment of the Commission, are reasonably necessary to effectuate any of the provisions or to accomplish any of the purposes of the Act. See *Ames v. Merrill Lynch*, 567 F. 2d 1174, 1177-8 (2d Cir. 1977). See also *Board of Trade Clearing Corporation v. United States*, Comm. Fut. L. Rep. (CCH) ¶20,534, pp. 22,206-22,207 (D.D.C. 1978),

Commission will not stay an exchange action unless it has not had sufficient time to determine whether review is appropriate; or the party seeking the stay has shown that he is likely to prevail on the merits, a stay is necessary to prevent irreparable injury to the affected party, and imposition of the stay will not endanger orderly trading or adversely affect market participants, the exchange or its members.

A provision has been added to § 9.22(a) which requires that the stay petition include a certification of service of the petition on the applicable exchange. This addition should help to ensure the effectiveness of another new provision the Commission has adopted in response to comments, § 9.22(b), which provides an exchange with an opportunity to file a written response to the petition for a stay within 10 days of service of the stay petition. In cases where an exchange disciplines a person and takes action pursuant to § 9.12(a)(1) or where the disciplinary or other adverse action is to become effective before the ten-day period for filing a response expires, the Commission may act on the stay petition filed on behalf of the disciplined person without waiting for an answer due to the potentially substantial nature of the interests involved. An exchange may, however, seek reconsideration, vacation or modification of a stay. Section 9.22(c), formerly proposed § 9.22(b), provides that the Commission may grant a stay of disciplinary or other adverse action on its own motion although no stay is requested, if it determines that a stay is justified by the information then before the Commission.

Section 9.23 has been modified to permit an exchange to file an answer to an application for review within twenty days of receiving the application instead of the fifteen days in the rule as proposed. The Commission believes that the additional five days will permit an exchange a better opportunity to develop a full response to an application for review and notes that the twenty days coincide with the time provided a party appealing an exchange action, to prepare its application after the timely filing of its notice of appeal. The exchange answer must set forth the facts which support the disciplinary or other adverse action and a statement of why the disciplinary or other adverse action was in accordance with the policies of the Act. As proposed and as adopted, this provision does not make a separate answer mandatory. The Commission has taken this approach in order to simplify the procedure under this subpart and in light of the fact that exchange action may be fully explained

appeal pending, No. 78-1263 (D.C. Cir. 1978).

in the written notice required by § 9.11. If the exchange chooses not to file an answer in the case of an application to review disciplinary action, the exchange's notice under § 9.11 shall be deemed its answer. Section 9.23 also has been modified to require that an answer include a certificate of service upon the applicant.

SUBPART D—COMMISSION REVIEW OF DISCIPLINARY OR OTHER ADVERSE ACTION INITIATED BY APPLICATION

Section 8c(2) provides the Commission with discretionary authority to determine whether or not to grant review of exchange disciplinary or other adverse action upon application of the person who is adversely affected. Commission review under Section 8c of the Act is as much a regulatory tool as a remedy for aggrieved persons. This is apparent from the fact that the Commission itself may discipline persons if the exchange fails to act and may initiate review of exchange actions on its own motion. Moreover, a disciplined person is not required to seek relief through the commission but may pursue other rights that may be available.¹⁴ Because of these aspects of Section 8c, the Commission's determination to grant or deny review of an action may only be partially based upon the facts and issues of the individual case. The Commission may also consider such other factors as the importance of any policy considerations which are involved, the workload of the Commission at the time review is requested, the precedential benefit of a Commission opinion for future cases, whether other exchanges acting on similar matters have reached different conclusions or imposed substantially different penalties and any other factors it deems relevant. So that persons contemplating seeking Commission review of exchange action under this part may be aware of the discretionary nature of that review, the Commission has adopted § 9.30 which enumerates several considerations including those discussed above, upon which a Commission determination to grant or deny review may be based. The Commission wishes to make clear that a determination to deny review is *not* an

¹⁴The Conference Report for the 1974 legislation provides with respect to Section 8c: "The appeal procedure * * * is discretionary. While as a matter of primary administrative jurisdiction, courts may defer to any review afforded by the Commission, the availability of such review procedure will not affect rights that are otherwise available to persons adversely affected by exchange action." S. Rep. No. 93-1194, 93d Cong., 2d Sess. 38-39 (1974). The Commission interprets this statement to mean that persons seeking judicial review of exchange actions are not required to exhaust their administrative remedies by applying to the Commission for review before proceeding with a court action.

indication by the Commission of its affirmation of the exchange action. By denying review the Commission is indicating that in view of all the circumstances, the issues presented by the application do not warrant Commission review at that time.

If the Commission determines to deny an application for review, it will promptly notify the exchange and the applicant under § 9.31(a). One commentator suggested that "promptly" be changed to fifteen days. While the commission expects to notify the parties in most cases well within fifteen days, the Commission believes, however, that it is preferable to retain maximum flexibility in the timing of a commission response to the unique circumstances of a particular case. If the Commission determines to grant the application for review, the commission will issue an order instituting review of the disciplinary action or other adverse action under § 9.31(b). Two commentators suggested that where the Commission denies review of an application it should issue an order affirming the exchange action.

In response to comment, the Commission has extended to ten days the period within which the exchange must file a copy of the record following the issuance of the Commission's order instituting review under § 9.34(a). That section has also been modified to provide that a copy of the record will be served on the applicant if the applicant agrees to pay the exchange the reasonable reproduction costs. In any event, inspection of the record may be made at the Commission's Office of Hearings and Appeals.

If the Commission finds upon reviewing the record provided by the exchange that further proceedings or additional evidence is necessary for and relevant to further Commission review, the Commission may remand the record to the exchange under § 9.34(b). The exchange must then promptly conduct such proceedings or provide the additional evidence requested by the Commission and file the record thereof with the Hearing Clerk and serve a copy on the applicant as set forth in § 9.34(a). Certain commentators have questioned the Commission's authority to remand a proceeding for the taking of additional evidence. The Commission's authority to take such action is clear. Section 8c of the Act grants substantial supervisory and appellate review powers to the Commission and expressly provides that a remand of a proceeding is one of the possible actions the Commission may take in fulfilling this responsibility.

Section 9.35 is adopted in substantially the same form as proposed and provides that, unless otherwise ordered by the Commission, the appli-

cant has twenty days to file an opening brief with the Commission after receiving the Commission's order initiating review. In order to equalize the time for preparation of briefs and to allow the exchange to sharpen the focus of its answering brief, the exchange will also have twenty days to answer the applicant's brief. Both briefs are limited to forty pages, unless the Commission otherwise permits, and no further briefs will be permitted. Each party must file an original and five copies of its brief with the Hearing Clerk. The applicable sections of the Commission's rules of practice will govern the form and the manner of service of briefs.

Section 9.37 is adopted in the same form as proposed and § 9.37(a) provides that the Commission may affirm, modify, set aside or remand to the exchange for further proceedings the decision of the exchange, either in whole or in part. If the Commission is equally divided in its decision, the decision of the exchange will be affirmed without a Commission opinion. Commentators suggested additions to and clarification of the standards for commission review outlined in § 9.37(b), as proposed. One exchange objected to Commission review of exchange action to determine whether it accords with the policies of the Act. It was contended that this standard was vague and that an exchange may not understand the basis of a Commission decision which reverses an exchange action on this ground.

The Commission has retained the "in accordance with the policies of the Act" standard for reviewing exchange action since it is expressly provided for in Section 8c of the Act. The Commission believes, however, that the other four standards of review provide sufficient guidance to the exchanges concerning the propriety of exchange action. If the Commission should find that it is necessary to modify, set aside or remand an exchange action because it is not in accord with the policies of the Act, the reasons for the determination will be fully explained in the Commission's decision. Other commentators sought to have additional standards in § 9.37(b) that would specify the Commission's concerns that exchange discipline be free from bias or prejudice, that all legal defenses of a respondent were considered by the exchange and that the exchange disciplinary body be constituted in a fair, unblinded fashion. The Commission is of the view that each of these substantial concerns are embodied in the standards of § 9.37(b), as adopted. Moreover, the standards for Commission review of an application enumerated in § 9.37(b) are derived from three important policies of the Act: (1) That in exercising their self-regulatory re-

sponsibilities, exchanges should take vigorous action against those who engage in activities that violate their rules, (2) that exchange disciplinary proceedings should be conducted in a manner consistent with considerations of due process and (3) that the discipline imposed by exchanges must be fair and have a reasonable basis in fact. These policies also are reflected in the Part 8 rules the Commission has adopted regarding exchange disciplinary procedures.

In consideration of the foregoing, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations by adding the new Part 9 to read as follows:

PART 9—RULES RELATING TO REVIEW OF EXCHANGE DISCIPLINARY OR OTHER ADVERSE ACTION

Subpart A—General Provisions

Sec.

- 9.1 Scope of Rules.
- 9.2 Definitions.
- 9.3 Provisions Incorporated by Reference.
- 9.4 Default by the Parties.
- 9.5 Settlement.
- 9.6 Waiver of Rules.

Subpart B—Notice of Disciplinary Action

- 9.11 Form and Content of Notice.
- 9.12 [Reserved]
- 9.13 Effective Date of Disciplinary Actions.

Subpart C—Initial Procedure With Respect to Applications for Review

- 9.21 Application.
- 9.22 Publication of Violations.
- 9.23 Effective Date of Disciplinary Action.

Subpart D—Commission Review of Disciplinary or Other Adverse Action Initiated by Application

- 9.30 Determination to Review Exchange Action.
- 9.31 Institution of Review.
- 9.32 Docketing of the Proceeding.
- 9.33 Consolidation.
- 9.34 Record.
- 9.35 Briefs.
- 9.36 Oral Argument.
- 9.37 Decision by the Commission.

Subpart E—Commission Review of Disciplinary Action on Its Own Motion

- 9.50 Institution of Review.

AUTHORITY: Secs. 2(a)(4) and (11), 8a(5) and 8c of the Commodity Exchange Act, 7 U.S.C. 4a(c) and (j), 12a(5) and 12c (1976), as amended by the Futures Trading Act of 1978, Pub. L. No. 95-405 Sec. 18, 92 Stat. 874-75 (1978).

Subpart A—General Provisions

§9.1 Scope of Rules.

This part governs the review by the Commission, pursuant to Section 8c of the Commodity Exchange Act, as amended, of any suspension, expul-

sion, disciplinary or access denial action, or other adverse action by an exchange, upon application of a member of an exchange who is suspended, expelled, or otherwise disciplined or of any person who is denied access to an exchange or who is otherwise adversely affected by any other action of an exchange. Under Subpart E the Commission may also institute review of an exchange disciplinary action on its own motion.

§9.2 Definitions.

For purposes of this part:

(a) "Disciplinary action" means the suspension, expulsion or other penalty imposed on a member of an exchange by that exchange or any action by an exchange which denies access to that exchange to any person; but does not include the imposition of a minor sanction against a person for violation of exchange rules of decorum, attire or similar rule.

(b) "Disciplinary proceeding" means any formal or informal proceeding by an exchange which results in a disciplinary action.

(c) "Division of Trading and Markets" means that division within the Commission which, among other things, reviews notices of disciplinary action under this part.

(d) "Exchange" means any board of trade which has been designated as a contract market for one or more commodities pursuant to Section 5 of the Commodity Exchange Act.

(e) "Hearing Clerk" means the employee of the Commission designated as such in the Commission's Office of Hearings and Appeals.

(f) "Member of an exchange" means any person who is admitted to membership or has been granted membership privileges on an exchange, any employee, officer, partner, director or affiliate of such member or person with membership privileges including any agent or associated person, and any other person under the supervision or control of such member or person with membership privileges.

(g) "Party" means both the person who has been the subject of a disciplinary action or other adverse action by an exchange and that exchange.

(h) "Record of the exchange disciplinary proceeding or other adverse action" means all testimony, exhibits, papers and records produced at or filed in an exchange disciplinary proceeding or served on a party to that proceeding; all documents, minutes or other exchange records serving as a basis for or reflecting the deliberations concerning other adverse action taken by an exchange; and a transcript or recording of any oral argument made before any body of the exchange in connection with the disci-

plinary proceeding or other adverse action.

(i) "Rules of an exchange" means any constitutional provision, article of incorporation, bylaw, rule, regulation, resolution, interpretation, or stated policy of an exchange or instrument corresponding thereto.

(j) "Rules of Practice" mean the Commission's Rules of Practice contained in Part 10 of this chapter.

§9.3 Provisions Incorporated by Reference.

The following provisions of the rules of practice apply to this part: Section 10.4 (Business Address; Hours), Section 10.5 (Computation of Time), Section 10.6 (Changes in Time Permitted for Filing), Section 10.7 (Date of Entry of Orders), Section 10.10 (Ex Parte Communications), Section 10.11 (Appearance in Adjudicatory Proceedings), Section 10.12 (a), (b), (c), (d), (e)(1)-(e)(4), (e)(6), (f) and (g) (Service and Filing of Documents; Form and Execution) and such other sections of the rules of practice as the Commission shall declare to be applicable during a proceeding under this part. For purposes of this part, functions assigned by the rules of practice to an "Administrative Law Judge" shall be performed by the Commission.

§9.4 Default by the Parties.

In the event that either party fails to file any document or make any appearance which is required under this part, the Commission, in its discretion, may dismiss the proceeding before it, or, based on the record before it, may affirm, modify, or set aside the exchange decision or remand the matter for further proceedings before the exchange, as it deems appropriate.

§9.5 Settlement.

At any time before there has been a final determination by the Commission of any review proceeding sought or initiated under this part, the parties may propose offers of settlement. All offers of settlement shall be in writing and shall be filed with the Commission. All offers of settlement shall:

(a) Acknowledge service of the order instituting review,

(b) Admit the jurisdiction of the Commission with respect to the matters stated in the order,

(c) Include a waiver of (1) all subsequent procedures in the proceeding, (2) judicial review, and (3) any objection to staff participation in the Commission's consideration of the offer,

(d) Stipulate the record basis on which an order may be entered, and

(e) Consent to the entry of an order reflecting the terms of the settlement agreed upon.

The Commission will issue an order based on the settlement which will terminate the proceeding before the Commission as to all parties. Notwithstanding the entry of such an order, the Commission may undertake review of the exchange action on its own motion.

§ 9.6 Waiver of Rules.

(a) To prevent undue hardship on any party or for other good cause the Commission may waive any rule in Subparts A through D of this part in a particular case and may order proceedings in accordance with its direction upon a determination that no party will be prejudiced and that the ends of justice will be served. Reasonable notice shall be given to all parties of any action taken pursuant to this provision.

(b) The Commission hereby delegates, until the Commission orders otherwise, to the General Counsel and such person or persons under his supervision as he may designate from time to time, the authority to waive or modify any of the requirements of § 9.35 and to waive or modify the requirements of the Commission's rules of practice incorporated by § 9.3 insofar as such requirements pertain to exchanges in time permitted for filing, and to the form, execution, service and filing of documents.

Subpart B—Notice of Disciplinary Action

§ 9.11 Form and Content of Notice.

(a) Whenever an exchange decision pursuant to which a disciplinary action or other disciplinary penalty (as defined in § 8.03(i)) of this chapter is to be imposed becomes final, the exchange shall, within thirty (30) days thereafter provide written notice of such action to the person against whom the action was taken and to the Commission. For purposes of this part, the written notice of disciplinary action may be either a copy of a written decision, which accords with §§ 8.16, 8.18, or 8.19(c) (including copies of any materials incorporated by reference) of this chapter or other written notice which shall include:

- (1) The name of the person against whom disciplinary action was taken;
- (2) A statement of the reasons for the exchange action together with a listing of any rules which the person who was the subject of the disciplinary action was charged with having violated or which otherwise serve as the basis of the exchange action;
- (3) A statement of the conclusions and findings made by the exchange with regard to each rule violation charged; or, in the event of settlement, a statement specifying those rule vio-

lations which the exchange has reason to believe were committed; and

(4) The terms of the disciplinary action.

(b) Delivery of the notice shall be made either personally to the person who was the subject of the disciplinary action or by mail to such person at his last known address. Copies of the notice shall be delivered to the Commission, either in person during normal business hours or by mail at its principal office in Washington, D.C., to the attention of the Division of Trading and Markets. Notice by mail to the Commission shall be effective upon receipt.

(c) Upon review of the notice, the Division of Trading and Markets may request that the exchange provide the record of the disciplinary proceeding or other adverse action or designated portions of the record, a brief statement of the evidence and testimony adduced to support the exchange's findings that a rule or rules of the exchange were violated and such recordings, transcripts and other documents applicable to the particular disciplinary or other proceedings as may aid the Commission in the review of such proceeding and of the decision rendered therein. The exchange shall promptly advise the person who is the subject of the disciplinary action of the Division's request. Within thirty (30) days the exchange shall deliver the information requested to the Division and upon request to the person who is the subject of the disciplinary action. Delivery shall be in the manner prescribed by paragraph (b) of this section. A person subject to the disciplinary action requesting a copy of the information furnished to the Division, shall, if the exchange rules so provide, pay the exchange reasonable fees for the reproduction of his copy.

(d) Copies of the notice and the submission of any additional information provided pursuant to this section shall be certified as true and correct by a duly authorized officer, agent or employee of the exchange.

§ 9.12 [Reserved]

§ 9.13 Effective Date of Disciplinary Actions.

(a) Any disciplinary action taken by an exchange shall not become effective until at least ten (10) days after written notice prescribed by § 9.11(a) is delivered to the Commission. However, the exchange may cause the disciplinary action to become effective prior to that time if:

- (1) In accordance with § 8.25, the exchange reasonably believes that immediate action is necessary to protect the best interests of the marketplace;

(2) In accordance with § 8.17(b), the actions of a person who is within an exchange's jurisdiction impede the progress of disciplinary hearing;

(3) In accordance with § 8.27, a person has failed to timely submit accurate records required for clearing or verifying each day's transactions or other similar activities; or

(4) The person against whom the action is taken has consented to the sanction to be imposed.

(b) If the exchange determines in accordance with paragraph (a)(1) of this section that the disciplinary action shall become effective prior to the expiration of ten (10) days after written notice thereof, it shall by telegram or other means of written telecommunication immediately notify the Commission and the person against whom the action is taken, stating the reasons for that determination.

Subpart C—Initial Procedure With Respect to Applications for Review

§ 9.21 Application.

(a) Any person who is the subject of disciplinary action by an exchange or any person who is adversely affected by any other action of an exchange may, at any time within ten (10) days after notice of the disciplinary action has been provided to the person in accordance with § 9.11(a) or within ten (10) days of that adverse action, file a written notice of appeal with the Commission stating an intention to apply to the Commission for review of such action and within thirty (30) days after the notice of disciplinary or other adverse action has been mailed, file with the Commission a written application for review of the exchange action.

(b) Each application submitted to the Commission pursuant to this section shall include:

- (1) The name and residence address of the applicant;
- (2) The name of the exchange;
- (3) If known, the specific rule or rules of the exchange which resulted in the applicant's being the subject of disciplinary or other adverse action;
- (4) A concise statement of all facts relevant to the consideration of the application, including, if known, the date and place of each alleged act or omission forming the basis of the exchange's action;
- (5) The date on which the disciplinary or other adverse action was imposed by the exchange or the date on which the final exchange decision was rendered;
- (6) A full description of the disciplinary or other adverse action imposed and the relief sought; and
- (7) A statement of the reasons why it is claimed that the disciplinary action or other adverse action is not in

accordance with the rules of the exchange or the policies of the Act, and the specific facts which support those reasons.

(c) Each application shall be signed personally by an individual applicant or by a duly authorized officer or agent of an applicant that is not a natural person. The applicant must attest that he knows the facts set forth in the application to be true, or believes the facts set forth to be true, in which event the information upon which he formed that belief shall be set forth with particularity. The application must also include a certification showing that a true copy of the application has been served on the exchange involved concurrently with its filing with the Commission.

§ 9.22 Stay Pending Review.

(a) A party who is the subject of a disciplinary action taken pursuant to § 9.13(a)(1) may petition the Commission to stay the effectiveness of the disciplinary action pending completion of the exchange hearing conducted under § 8.26. A party who has filed a notice of appeal in accordance with § 9.21(a) may petition the Commission to stay the disciplinary or other adverse action, pending consideration by the Commission of the application for review and, if granted, the appeal underlying the application. A petition filed under this section shall state the reasons that the stay is requested and the facts relied upon, and if the facts are subject to dispute, the petition shall be supported by affidavits or other sworn statements or copies thereof. The petition must also include a certification showing that a true copy of the petition has been served on the exchange involved concurrent with the filing of the petition with the Commission. Based upon the petition, the Commission, in its discretion, may order a stay of the disciplinary or other adverse action.

(b) An exchange may serve and file a written response to any petition for a stay within ten (10) days after service of the petition. However, if a petition for a stay involves a disciplinary action taken pursuant to § 9.13(a)(1) or other disciplinary or other adverse action which is to become effective before the ten-day period for filing a response expires, the petition may be acted upon by the Commission at any time, without waiting for a response thereto. An exchange may, however, request reconsideration, vacation or modification of a stay granted.

§ 9.23 Answer.

Within twenty (20) days after receipt of an application, served in accordance with § 9.21(c), the exchange may, at its election, file an answer with the Commission, setting forth

facts which support the disciplinary action or other adverse action taken by the exchange, and a statement expressing why, notwithstanding the claims made in the application, the disciplinary action or other adverse action by the exchange is in accordance with the rules of the exchange and the policies of the Act. If an answer is filed, it shall be accompanied by certification showing that a true copy of the answer has been served upon the applicant. If no answer is filed by the exchange in the case of an application to review disciplinary action of the exchange, the notice of the disciplinary action filed with the Commission under § 9.11 shall be deemed the exchange's answer to the application.

Subpart D—Commission Review of Disciplinary Action or Other Adverse Action Initiated by Application

§ 9.30 Determination to Review Exchange Action.

The determination to review any exchange disciplinary or other adverse action is a matter committed to the Commission's discretion. In determining whether to grant or deny review of any exchange disciplinary or other adverse action, the Commission may consider such factors as:

(a) Whether the issues presented involve an important policy under the Act;

(b) The extent to which a review proceeding would interfere with the efficient disposition of other Commission business;

(c) The precedential value of a Commission decision on the issues presented;

(d) Whether there is substantial divergence among the exchanges in their treatment of similar matters;

(e) Whether it appears from the application or other information available to the Commission that the exchange action may not have been taken in accordance with any of the standards contained in § 9.37(b); or

(f) Any other factors which the Commission deems relevant.

§ 9.31 Institution of Review.

(a) If the Commission determines to deny the application for review of the disciplinary action or other adverse action, it shall promptly give notice to that effect to the exchange and to the applicant.

(b) If the Commission determines to grant the application for review, the Commission shall issue an order to institute a review of the disciplinary action or other adverse action.

§ 9.32 Docketing of the Proceeding.

If the Commission institutes review pursuant to the provisions of § 9.31, the Hearing Clerk shall promptly serve the order instituting review on the exchange and the applicant. Thereafter, the Hearing Clerk shall assign a docket number to the proceeding and maintain the official docket. The proceeding may be identified by such number.

§ 9.33 Consolidation.

The Commission may consolidate a proceeding hereunder with any other proceedings under this part in accordance with the procedures set forth in § 10.63(a) of the rules of practice.

§ 9.34 Record.

(a) Within ten (10) days of the receipt of the order served under § 9.32, the exchange shall file a copy of the record of the disciplinary proceeding or other adverse action on the Hearing Clerk, and serve a copy on the applicant provided that the applicant agrees to pay the exchange reasonable fees for printing his copy.

(b) The Commission may remand the record to the exchange for other proceedings or to have the record supplemented with additional evidence as the Commission may deem necessary and relevant. The exchange shall promptly conduct proceedings or adduce the additional evidence as ordered by the Commission, and shall promptly file a copy of the record of these additional proceedings or evidence with the Hearing Clerk and the applicant as set forth in paragraph (a) of this section.

§ 9.35 Briefs.

(a) Unless otherwise ordered by the Commission, the applicant shall file an opening brief within twenty (20) days after receipt of the order instituting review under § 9.32. The brief shall not exceed forty (40) pages, without leave of the Commission.

(b) An answering brief shall be filed by the exchange within twenty (20) days after service of the opening brief and shall not exceed forty (40) pages, without leave of the Commission.

(c) No further briefs shall be permitted.

(d) An original and five (5) copies of all briefs submitted under this section shall be filed with the Hearing Clerk.

(e) The briefs shall follow the form prescribed in § 10.82(c) (1) and (2) of the rules of practice.

§ 9.36 Oral Argument.

On its own motion or at the request of either party, the Commission may, in its discretion, hear oral argument by the parties any time before the decision of the Commission is filed with the Hearing Clerk. Any such oral ar-

gument shall be recorded and transcribed in written form.

§ 9.37 Decision by the Commission.

(a) Upon review, the Commission may affirm, modify, set aside or remand for further proceedings, in whole or in part, the decision of the exchange. The Commission's decision shall be based upon the record before it including the record of the disciplinary proceeding or other adverse action, any additional evidence provided in accordance with § 9.34(b) and any oral argument made in accordance with § 9.36. The Commission's decision shall be contained in its opinion and order. In the event the Commission is equally divided as to its decision, the decision of the exchange shall be affirmed without a Commission opinion.

(b) The standards for Commission review of the disciplinary action or other adverse action shall be:

(1) Whether the exchange disciplinary action or other adverse action was taken in accordance with the rules of the exchange;

(2) Whether fundamental fairness was observed in the conduct of the disciplinary proceeding or the proceeding resulting in other adverse action;

(3) Whether there is substantial evidence in the record to support a finding that there has been a violation of the rules of the exchange or that the exchange was otherwise justified in taking the disciplinary or other adverse action;

(4) Whether the disciplinary or other adverse action taken by the exchange was reasonable in light of all circumstances; and

(5) Whether the disciplinary action or other adverse action otherwise accords with the policies of the Act.

Subpart E—Commission Review of Disciplinary Action on Its Own Motion

§ 9.50 Institution of Review.

The Commission may institute review of an exchange disciplinary action on its own motion where the person disciplined or denied access has not appealed the exchange decision to the Commission. Other than in extraordinary circumstances such review shall be initiated within 180 days after the Commission has received the notice of exchange action provided for in § 9.11.

Issued in Washington, D.C., on December 15, 1978.

By the Commission.

GARY L. SEEVERS,
Acting Chairman, Commodity
Futures Trading Commission.

[FR Doc. 78-35319 Filed 12-19-78; 8:45 am]

[6351-01-M]

PART 32—REGULATION OF
COMMODITY OPTION
TRANSACTIONS

Revocation of Reissuance of and
Amendments to Commodity Option
Regulations

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commission has revoked the administrative action it had announced on November 21, 1978, which reissued and amended its commodity option regulations. The reissuance and amendments were to have become effective on December 21, 1978. The result of the revocation will be to continue in effect the commodity option regulations that would, in any event, have been operative until December 21, 1978. For that reason, the Commission's present revocation does not affect the general statutory and administrative prohibition against the offer and sale of commodity options to the public.

FOR FURTHER INFORMATION CONTACT:

Mark N. Rae, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, (202) 254-7285.

SUPPLEMENTARY INFORMATION: On November 15, 1978, the Commission reissued and adopted certain amendments to its commodity option regulations. See 43 FR 54220 et seq. (November 21, 1978). The purpose of the Commission's action was to implement those provisions of the Futures Trading Act of 1978, Pub. L. 95-405, Section 3, 92 Stat. 865, 867-869 (September 30, 1978), which direct the Commission to issue regulations governing the grant, offer and sale of options on physical commodities (so-called "dealer options"). With one exception, the amendments that the Commission adopted at that time were to become effective on December 21, 1978.¹

In announcing its action, the Commission stated that it would consider any comments that it received on the reissuance of and amendments to its

¹The exception was the repeal of rule 32.12(d) which was effective immediately. That rule had provided that other provisions of rule 32.12 were to have expired 60 days after the effective date of any amendments to section 4(c) of the Commodity Exchange Act. The enactment of the Futures Trading Act of 1978 rendered rule 32.12(d) obsolete. See 43 F.R. at 54225. The present action of the Commission does not affect the repeal of rule 32.12(d).

regulations prior to December 21, 1978, in order to determine whether they should be modified in any respect. See 43 F.R. at 54225. To date, several comments have been received. In addition, a petition to repeal the rules or delay their implementation has been submitted to the Commission. From these comments, and the Commission's own continuing evaluation of the rules, the Commission has concluded that additional means of providing the purchasers of dealer options with protection might be developed at this time, and that further public participation in this rulemaking proceeding may contribute to that objective.

In order to avoid any uncertainty for grantors and customers that might result if rules governing dealer option transactions became effective and then were subsequently amended, and to encourage the fullest possible public participation in the formulation of these rules, the Commission has determined that the appropriate course is to revoke the amendments that were to have become effective on December 21, 1978, and to republish the reissuance and the amendments as proposals for public comment in a FEDERAL REGISTER release being published concurrently with this notice. See Proposed Rulemaking Section of this issue. In that release, the Commission is also seeking specific comment on other amendments to its existing option regulations.²

The Commission has also revoked the reissuance of the balance of its commodity option regulations.³ It may be that comments received by the Commission will warrant revisions or modifications to these regulations particularly suited to dealer options. Since the reissuance merely continued these regulations in effect, however, revocation of the reissuance does no more than preserve the status quo. Accordingly, the Commission's commodity option regulations now in effect will remain in effect.⁴

²In this connection, all comments received by the Commission on the amendments that are now being revoked will also be treated as comments on the rules as published in proposed form. In addition, all persons who submit comments in response to the Commission's November 21, 1978 notice will be furnished with a copy of this notice and of the release proposing the adoption of the amendments.

³The Commission's commodity option regulations that are in effect are published at 17 CFR Part 32 (1978), as amended 43 FR 16153 et seq. (April 17, 1978), 43 FR 23704 et seq. (June 1, 1978), 43 FR 47492 (October 16, 1978) and 43 FR 52467 et seq. (November 13, 1978). Rule 32.12(d) published at 43 FR 23708, has been repealed. See 43 FR 54228 (November 21, 1978) and note 1. *supra*.

⁴In its November 21, 1978 release, the Commission also amended the statutory authority citations applicable to Part 32 to re-

Footnotes continued on next page

In consideration of the foregoing, the Commission, pursuant to the authority contained in sections 2a(1), 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6c and 12a (1976), as amended by Pub. L. 95-405, 92 Stat. 865 *et seq.*, hereby amends Part 32 of Chapter I of Title 17 of the Code of Federal Regulations by revoking the action taken at 43 FR 54220 *et seq.* (November 21, 1978), which added paragraphs (a)(9), (a)(10) and (a)(11) to § 32.12; which amended (1) paragraph (a) of § 32.4, (2) paragraphs (a)(1)(ii) and (c) of § 32.5, (3) paragraph (a) of § 32.6 and (4) paragraphs (a)(1), (a)(3) and (c) of § 32.12; and which reissued the balance of Part 32.⁵

The rules which are now being revoked were to have become effective on December 21, 1978. In order to avoid the hardship that might result if these rules were revoked or amended after they had become effective, the Commission has determined to make the revocation effective on December 20, 1978.

Issued in Washington, D.C., by the Commission on December 15, 1978.

GARY L. SEEVERS,
Acting Chairman.

[FR Doc. 78-35316 Filed 12-19-78; 8:45 am]

[4830-01-M]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF THE TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7578]

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

Moving Expenses of the Military

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to moving

Footnotes continued from last page
reflect enactment of the Futures Trading Act of 1978. That action will become effective on December 21, 1978, as announced at that time.

⁵In taking this action, the Commission, consistent with its obligations under section 15 of the Act, 7 U.S.C. 19 (1976), has taken into account the public interest to be protected by the antitrust laws and has endeavored to take the least anticompetitive means of achieving the objectives, policies and purposes of the Act. Here, the primary objective of assuring customer protection overrides any anticompetitive implications that may result from deferring the issuance of dealer option regulations for the relatively brief public comment period.

expenses of members of the Armed Forces. Provisions for special treatment of these moving expenses were added by the Tax Reform Act of 1976. The regulations provide members of the Armed Forces and the Departments of Defense and Transportation with the guidance needed to comply with the new law.

DATE: The regulations are effective for taxable years beginning after December 31, 1975.

FOR FURTHER INFORMATION CONTACT:

Barbara B. Coughlin of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-6618).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On August 14, 1978, the FEDERAL REGISTER published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 217(g) of the Internal Revenue Code of 1954 (43 FR 35949). The amendments were proposed to conform the regulations to section 506(c) of the Tax Reform Act of 1976 (90 Stat. 1568). No comments were received with respect to the proposed amendments, and no public hearing was requested or held.

MOVING SERVICES OR REIMBURSEMENT PROVIDED BY GOVERNMENT

The regulations adopted by this Treasury decision explain the manner in which moving services, reimbursements, or allowances provided by the Government to members of the Armed Forces are treated for tax purposes. Generally, military moving services, reimbursements, and allowances are not includible in gross income, and no reporting or withholding with respect to them is required. However, reimbursements and allowances that exceed a member's actual moving expenses must be included in gross income, and reporting and withholding is required with respect to the excess.

PERMANENT CHANGE OF STATION

The regulations adopted by this Treasury decision apply only to moves that are made by members of the Armed Forces who are on active duty and that are made pursuant to a military order and incident to a permanent change of station. The regulations cover common situations that are considered permanent changes of station for tax purposes. Ordinary transfers from one duty station to another are considered permanent changes of station. Also considered

permanent changes of station are the initial move from home to a duty station upon commencement of active duty and the final move from a duty station to home or a nearer point in the United States upon termination of active duty. These rules are similar to the military's moving expense reimbursement rules.

MISCELLANEOUS MATTERS

The regulations define storage expenses and also make clear that, in a case involving a move by a member's spouse or dependents from or to a location other than that from or to which the member moves, the moves are considered to be a single move for purposes of section 217. The regulations also make clear that section 217(g) applies to a move by a spouse or dependents of a member of the Armed Forces who dies, is imprisoned, or deserts while on active duty, if the move is to the member's place of enlistment or induction or to the member's, spouse's, or dependents' home of record or a nearer point in the United States.

The regulations adopted by this Treasury decision impose no new reporting burdens or recordkeeping requirements. The principal effect of the final regulations is to conform existing regulations under section 217 of the Code to changes made by the Tax Reform Act of 1976. The Treasury Department will review these regulations from time to time based upon comments received from offices within the Treasury, the Internal Revenue Service, and the Departments of Defense and Transportation, and comments received from members of the Armed Forces.

DRAFTING INFORMATION

The principal author of these regulations is John M. Coulter, Jr., of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing these regulations, both on matters of substance and style.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

Accordingly, the amendments to 26 CFR Part 1 published as a notice of proposed rulemaking in the FEDERAL REGISTER for August 14, 1978 (43 FR 35949), are hereby adopted as proposed.

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).

JEROME KURTZ,
Commissioner of
Internal Revenue.

Approved: December 4, 1978.

DONALD C. LUBICK,
Assistant Secretary
of the Treasury.

§ 1.82-1 [Amended]

PARAGRAPH 1. Section 1.82-1(b)(2) is amended by deleting the phrase "paragraph (g)" and inserting in its place the phrase "paragraph (h)".

§ 1.217 [Amended]

PARAGRAPH 2. Section 1.217 and the historical note are deleted.

PARAGRAPH 3. Paragraph (g) of § 1.217-2 is redesignated as paragraph (h).

PARAGRAPH 4. The following new paragraph is added immediately after paragraph (f) of § 1.217-2:

§ 1.217-2 Deduction for moving expenses paid or incurred in taxable years beginning after December 31, 1969.

(g) *Rules for members of the Armed Forces of the United States*—(1) *In general.* The rules in paragraphs (a)(1) and (2), (b), and (e) of this section apply to moving expenses paid or incurred by members of the Armed Forces of the United States on active duty who move pursuant to a military order and incident to a permanent change of station, except as provided in this paragraph (g). However, if the moving expenses are not paid or incurred incident to a permanent change of station, this paragraph (g) does not apply, but all other paragraphs of this section do apply. The provisions of this paragraph apply to taxable years beginning after December 31, 1975.

(2) *Treatment of services or reimbursement provided by Government*—

(i) *Services in kind.* The value of any moving or storage services furnished by the United States Government to members of the Armed Forces, their spouses, or their dependents in connection with a permanent change of station is not includible in gross income. The Secretary of Defense and (in cases involving members of the peacetime Coast Guard) the Secretary of Transportation are not required to report or withhold taxes with respect to those services. Services furnished by the Government include services rendered directly by the Government or rendered by a third party who is compensated directly by the Government for the services.

(ii) *Reimbursements.* The following rules apply to reimbursements or

allowances by the Government to members of the Armed Forces, their spouses, or their dependents for moving or storage expenses paid or incurred by them in connection with a permanent change of station. If the reimbursement or allowance exceeds the actual expenses paid or incurred, the excess is includible in the gross income of the member, and the Secretary of Defense or Secretary of Transportation must report the excess as payment of wages and withhold income taxes under section 3402 and the employee taxes under section 3102 with respect to that excess. If the reimbursement or allowance does not exceed the actual expenses, the reimbursement or allowance is not includible in gross income, and no reporting or withholding by the Secretary of Defense or Secretary of Transportation is required. If the actual expenses, as limited by paragraph (b)(9) of this section, exceed the reimbursement or allowance, the member may deduct the excess if the other requirements of this section, as modified by this paragraph, are met. The determination of the limitation on actual expenses under paragraph (b)(9) of this section is made without regard to any services in kind furnished by the Government.

(3) *Permanent change of station.* For purposes of this section, the term "permanent change of station" includes the following situations:

(i) A move from home to the first post of duty when appointed, reappointed, reinstated, called to active duty, enlisted, or inducted.

(ii) A move from the last post of duty to home or a nearer point in the United States in connection with and within 90 days of retirement, discharge, resignation, separation under honorable conditions, transfer, relief from active duty, temporary disability retirement, or transfer to a Fleet Reserve.

(iii) A move from one permanent post of duty to another permanent post of duty at a different duty station, even if the member separates from the Armed Forces immediately or shortly after the move.

The terms "permanent," "post of duty," "duty station," and "honorable" have the meanings given them in appropriate Department of Defense or Department of Transportation rules and regulations.

(4) *Storage expenses.* This paragraph applies to storage expenses as well as to moving expenses described in paragraph (b)(1) of this section. The term "storage expenses" means the cost of storing personal effects of members of the Armed Forces, their spouses, and their dependents.

(5) *Moves of spouses and dependents.* (i) The following special rule applies for purposes of paragraphs (b)(9) and

(10) of this section, if the spouse or dependents of a member of the Armed Forces move to or from a different location than does the member. In this case, the spouse is considered to have commenced work as an employee at a new principal place of work that is within the same general location as the location to which the member moves.

(ii) The following special rule applies for purposes of this paragraph to moves by spouses or dependents of members of the Armed Forces who die, are imprisoned, or desert while on active duty. In these cases, a move to a member's place of enlistment or induction or the member's, spouse's, or dependent's home of record or nearer point in the United States is considered incident to a permanent change of station.

[FR Doc. 78-35386 Filed 12-19-78; 8:45 am]

[4830-01-M]

[I.D. 7579]

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

Corporations Required to File Form for Computation of Minimum Tax

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the requirements for corporations to file the Computation of Minimum Tax Form. These regulations provide necessary guidance to the public and affect corporations with items of tax preference amounting to \$10,000 or less in a taxable year.

DATE: The regulations are effective for taxable years ending after December 31, 1969.

FOR FURTHER INFORMATION CONTACT:

Robert Coplan of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 Attention: CC:LR:T, 202-566-3287, not a toll-free call.

SUPPLEMENTARY INFORMATION:

BACKGROUND

This Treasury decision relaxes the requirement that corporations with items of tax preference in any amount must file Form 4626. When this regulation takes effect, a corporation will

have to file Form 4626 only if required to do so by the Form, which presently requires a corporation to file if it has items of tax preference for the taxable year in excess of \$10,000, the amount of the minimum tax exemption. This will eliminate the burden of filing Form 4626 for certain corporate taxpayers who owe no minimum tax. Because this regulation is non-substantive and is essentially a procedural change that can only reduce an unnecessary taxpayer burden, it is found unnecessary to issue this Treasury decision with notice and public procedure. For the same reasons, this regulation is not a significant regulation under paragraph 8 of the proposed Treasury Directive appearing in the FEDERAL REGISTER for May 24, 1978 (43 FR 22319).

DRAFTING INFORMATION

The principal author of this regulation was Robert Coplan of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

WAIVER OF CERTAIN PROCEDURAL REQUIREMENTS OF PROPOSED TREASURY DIRECTIVE

A determination has been made by one of the undersigned, Jerome Kurtz, Commissioner of Internal Revenue, that there is an immediate need for amendment of the regulations under section 6012(a)(2) in order to make the regulations consistent with the filing requirements for Form 4626 for prior years and also for taxable year 1978. Because of the immediate need for such clarification, compliance with the procedural requirements of paragraph 8 through 13 of the proposed Treasury directive, relating to improving regulations (43 FR 22319), would be impractical, and, therefore, these requirements have not been followed.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

Accordingly, 26 CFR Part 1 is amended as follows:

Section 1.6012-2(i)(1) is amended to read as follows:

§ 1.6012-2 *Corporations required to make returns of income.*

(i) *Items of tax preference—(1) In general.* Every corporation required to make a return under this section, and having items of tax preference (described in section 57 and the regulations thereunder) in an

amount specified by Form 4626, shall file such form as part of its return.

This Treasury decision reduces the number of corporate taxpayers required to file a form, and there is a need for immediate guidance with respect to the change. For those reasons, it is found unnecessary and impracticable to issue this Treasury decision with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

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).

JEROME KURTZ,
Commissioner of
Internal Revenue.

Approved: December 4, 1978.

DONALD C. LUBICK,
Assistant Secretary
of the Treasury.

§ 1.6012-2 *Corporations required to make returns of income.*

(i) *Items of tax preference—(1) In general.* Every corporation required to make a return under this section, and having items of tax preference (described in section 57 and the regulations thereunder) in an amount specified by Form 4626, shall file such form as part of its return.

(2) *Organizations with unrelated business income and foreign corporations.* Regardless of the provisions of paragraphs (e) and (g) of this section, any organization described in either such paragraph having items of tax preference (described in section 57 and the regulations thereunder) in any amount entering into the computation of unrelated business income is required to make a return on form 990-T or form 1120F, respectively, and to attach the required form as part of such return.

(j) *Other provisions.* * * *
[FR Doc. 78-35387 Filed 12-19-78; 8:45 am]

[4830-01-M]

[T.D. 7577]

FEDERAL COLLECTION AND ADMINISTRATION OF QUALIFIED STATE INDIVIDUAL INCOME TAXES; REPORTS TO JOINT COMMITTEE ON TAXATION

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to Federal collection and administration of qualified State individual income taxes. Changes to the applicable tax law were made by the Federal-State Tax Collection Act of 1972 as amended by the Tax Reform Act of 1976. These regulations provide the States with guidance needed in determining whether to elect Federal collection and administration of their individual income taxes.

EFFECTIVE DATE: Federal collection and administration of qualified State individual income taxes will go into effect on the first January 1 which is more than one year after the first date on which at least one State has filed a notice of its election with the Secretary of the Treasury or his delegate.

FOR FURTHER INFORMATION CONTACT:

William E. Mantle of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Ave., N.W., Washington, D.C. 20224, Attention: CC:LR:T, 202-566-3829.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On September 29, 1977, the FEDERAL REGISTER published proposed amendments to the Income Tax Regulations (26 CFR Part 1), the Employment Tax Regulations (26 CFR Part 31), the Temporary Employment Tax Regulations Under the Tax Reform Act of 1969 (26 CFR Part 32), and the Regulations on Procedure and Administration (26 CFR Part 301). The amendments were proposed to conform the regulations to sections 202(a), 203(a), and 204 (a) and (b) of the Federal-State Tax Collection Act of 1972 (86 Stat. 936, 944, 945), and to section 2116 of the Tax Reform Act of 1976 (90 Stat. 1910). After consideration of the comments received from interested persons on the proposed amendments they are adopted by this Treasury decision without change.

EXPLANATION OF PROVISIONS

In essence, the amendments provide a system for the Federal Government to collect individual income taxes imposed by a State which elects to participate in the system. Those taxes will be collected as if they were Federal income taxes and the revenue collected will be turned over to the electing State. No fee or other charge will be imposed on any State for the collection or administration of its individual income taxes.

"Piggybacking", as the Federal collection system is generally known, is

designed to increase the efficiency of collecting State taxes by eliminating duplication of effort by State and Federal tax administrators, eliminating duplicate recordkeeping by taxpayers, establishing uniform treatment for individual taxpayers at both the State and Federal levels, providing faster collection of State income taxes, and freeing State courts from individual income tax controversies.

The effectiveness of the piggybacking system will be monitored by the Federal and State officials who will administer piggybacking.

A qualified State tax may be imposed on nonresidents as well as residents, at the option of the State. A qualified resident tax may be based either on Federal taxable income or a percentage of Federal tax liability, in either case with certain mandatory or optional adjustments. This conformity with the Federal income tax laws is necessary for the administrability of the piggybacking system.

DISCUSSION OF COMMENTS

Some of the comments submitted on the proposed amendments questioned the constitutionality of certain of the statutory provisions implemented by the regulations. Other suggested positions that would require an amendment of the statute.

Concern was also expressed about the rules of the proposed amendments for identifying the source of business income. The comments suggested that most States use criteria other than those proposed to apportion business income, and that the proposed method apportionment would be extremely difficult to administer. However, the rules proposed for allocating business income are similar to the New York rules for allocation of income of an unincorporated business which is carried on both within and without the State. Similar rules are also in operation in Maryland, New Jersey, Massachusetts, and Delaware. Accordingly, it was concluded that the regulation should not be modified.

DRAFTING INFORMATION

The principal author of this regulation is William E. Mantle of the Legislation and Regulations Division of the Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

Accordingly, the amendments to 26 CFR Parts 1, 31, 32, and 301 published as a notice of proposed rulemaking in the FEDERAL REGISTER on September

29, 1977 (42 FR 51790), are hereby adopted as proposed.

This Treasury decision is issued under the authority contained in sections 6364 and 7805 of the Internal Revenue Code of 1954 (86 Stat. 944, 26 U.S.C. 6364; and 68A Stat. 917, 26 U.S.C. 7805).

JEROME KURTZ,
Commissioner of
Internal Revenue.

Approved: December 4, 1978.

DONALD C. LUBICK,
Assistant Secretary
of the Treasury.

SUBCHAPTER A—INCOME TAX

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

Paragraph 1. So much of paragraph (a) of § 1.164-1 as follows subparagraph (5) thereof is amended to read as follows:

§ 1.164-1 Deduction for taxes.

(a) *In general.* * * *

(5) * * *

In addition, there shall be allowed as a deduction under this section State and local and foreign taxes not described in subparagraphs (1) through (5) of this paragraph which are paid or accrued within the taxable year in carrying on a trade or business or an activity described in section 212 (relating to expenses for production of income). For example, dealers or investors in securities and dealers or investors in real estate may deduct State stock transfer and real estate transfer taxes, respectively, under section 164, to the extent they are expenses incurred in carrying on a trade or business or an activity for the production of income. In general, taxes are deductible only by the person upon whom they are imposed. However, see § 1.164-5 in the case of certain taxes paid by the consumer. Also, in the case of a qualified State individual income tax (as defined in section 6362 and the regulations thereunder) which is determined by reference to a percentage of the Federal income tax (pursuant to section 6362 (c)), an accrual method taxpayer shall use the cash receipts and disbursements method to compute the amount of his deduction therefor. Thus, the deduction under section 164 is in the amount actually paid with respect to the qualified tax, rather than the amount accrued with respect thereto, during the taxable year even though the taxpayer uses the accrual method of accounting for other purposes. In addition, see paragraph (f)(1) of § 301.6361-1 of this chapter (Regulations on Procedure and Administration) with respect to rules relating to

allocation and reallocation of amounts collected on account of the Federal income tax and qualified taxes.

PAR. 2. Section 1.451-1 is amended by adding at the end thereof a new paragraph (e), to read as follows:

§ 1.451-1 General rule for taxable year of inclusion.

(e) *Special rule for inclusion of qualified tax refund effected by allocation.* For rules relating to the inclusion in income of an amount paid by a taxpayer in respect of his liability for a qualified State individual income tax and allocated or reallocated in such a manner as to apply it toward the taxpayer's liability for the Federal income tax, see paragraph (f)(1) of § 301.6361-1 of this chapter (Regulations on Procedure and Administration).

PAR. 3. Paragraphs (a) and (d) of § 1.6001-1 are amended to read as follows:

§ 1.6001-1 Records.

(a) *In general.* Except as provided in paragraph (b) of this section, any person subject to tax under subtitle A of the Code (including a qualified State individual income tax which is treated pursuant to section 6361(a) as if it were imposed by chapter 1 of subtitle A), or any person required to file a return of information with respect to income, shall keep such permanent books of account or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information.

(d) *Notice by district director requiring returns, statements, or the keeping of records.* The district director may require any person, by notice served upon him, to make such returns, render such statements, or keep such specific records as will enable the district director to determine whether or not such person is liable for tax under subtitle A of the Code, including qualified State individual income taxes, which are treated pursuant to section 6361(a) as if they were imposed by chapter 1 of subtitle A.

PAR. 4. There is inserted immediately after § 1.6001-1 the following new section:

§ 1.6001-2 Returns.

For rules relating to returns required to be made by every individual, estate, or trust which is liable for one

or more qualified State individual income taxes, as defined in section 6362, for a taxable year, see paragraph (b) of § 301.6361-1 of this chapter (Regulations on procedure and Administration).

PAR. 5. Paragraph (a)(2) of § 1.6012-1 is amended by adding at the end thereof a new subdivision (vi), to read as follows:

§ 1.6012-1 Individuals required to make returns of income.

(a) *Individual citizen or resident.*

(2) *Special rules. * * **

(vi) For rules relating to returns required to be made by every individual who is liable for one or more qualified State individual income taxes, as defined in section 6362, for a taxable year, see paragraph (b) of § 301.6361-1 of this chapter (Regulations on Procedure and Administration).

PAR. 6. Paragraph (a) of § 1.6012-3 is amended by adding at the end thereof a new subparagraph (8), to read as follows:

§ 1.6012-3 Returns by fiduciaries.

(a) *For estate and trusts. * * **

(8) *Estates and trusts liable for qualified tax.* In the case of an estate or trust which is liable for one or more qualified State individual income taxes, as defined in section 6362, for a taxable year, see paragraph (b) of § 301.6361-1 of this chapter (Regulations on Procedure and Administration) for rules relating to returns required to be made.

PAR. 7. Section 1.6015(c)-1 is amended to read as follows:

§ 1.6015(c)-1 Definition of estimated tax.

(a) *In general.* In the case of an individual, the term "estimated tax" means—

(1) The amount which the individual estimates as the amount of the income tax imposed by chapter 1 (other than the tax imposed by section 56 or for taxable years ending before September 30, 1968, the tax surcharge imposed by section 51) for the taxable year (and including the amount which he estimates as the amount of any qualified State individual income taxes which are treated pursuant to section 6361(a) as if they were imposed by chapter 1 for the taxable year), plus

(2) For taxable years beginning after December 31, 1966, the amount which the individual estimates as the amount of the self-employment tax imposed by chapter 2 for the taxable year, minus

(3) The amount which the individual estimates as the sum of any credits against tax provided by part IV of subchapter A of chapter 1. These credits

are those provided by section 31 (relating to tax withheld on wages), section 32 (relating to tax withheld at source on nonresident aliens and foreign corporations and on tax-free covenant bonds), section 33 (relating to foreign taxes), section 34 (relating to the credit for dividends received on or before December 31, 1964), section 35 (relating to partially tax-exempt interest), section 37 (relating to the elderly), section 38 (relating to the investment credit), section 39 (relating to certain uses of gasoline, special fuels, and lubricating oil), section 40 (relating to expenses of work incentive programs), section 41 (relating to contributions to candidates), section 42 (relating to general tax credit), section 43 (relating to earned income), section 44 (relating to purchase of new principal residence), section 44A (relating to expenses for household and dependent care services necessary for gainful employment), section 44B (relating to credit for employment of certain new employees), and section 45 (relating to overpayments of tax), and also minus

(4) In the case of an individual who is subject to one or more qualified State individual income taxes, the amount which he estimates as the sum of the credits allowed against such taxes pursuant to section 6362(b)(2) (B) or (C) or section 6362(c)(4) and paragraph (c) of § 301.6362-4 of this chapter (Regulations on Procedure and Administration) (relating to the credit for income taxes of other States or political subdivisions thereof) and paragraph (c) (2) of § 301.6361-1 (relating to the credit for tax withheld from wages on account of qualified State individual income taxes).

(b) *Example. A,* a self-employed individual not subject to any qualified State individual income tax, estimates that his liabilities for income tax and self-employment tax for 1973 will be \$1,600 and \$400, respectively. A is required to declare and pay an estimated tax of \$2,000 for that year.

PAR. 8. The following new section is inserted immediately after § 1.6302-2:

§ 1.6361-1 Collection and administration of qualified State individual income taxes.

Except as otherwise provided in §§ 301.6361-1 to 301.6365-2, inclusive, of this chapter (Regulations on Procedure and Administration), the provisions of this part under subtitle F of the Internal Revenue Code of 1954 relating to the collection and administration of the taxes imposed by chapter 1 of such Code on the incomes of individuals (or relating to civil or criminal sanctions with respect to such collection and administration) shall apply to the collection and administration of qualified State individual income taxes (as defined in section

6362 of such Code and the regulations thereunder) as if such taxes were imposed by chapter 1.

PAR. 9. Section 1.6654-1 is amended by revising paragraph (a) (1) and (4) to read as follows:

§ 1.6654-1 Addition to the tax in the case of an individual.

(a) *In general.* (1) Section 6654 imposes an addition to the taxes under chapters 1 and 2 of the Code in the case of any underpayment of estimated tax by an individual (with certain exceptions described in section 6654(d)), including any underpayment of estimated qualified State individual income taxes which are treated pursuant to section 6361(a) as if they were imposed by chapter 1. This addition to the tax is in addition to any applicable criminal penalties and is imposed whether or not there was reasonable cause for the underpayment. The amount of the underpayment for any installment date is the excess of—

(i) The following percentages of the tax shown on the return for the taxable year or, if no return was filed, of the tax for such year, divided by the number of installment dates prescribed for such taxable year:

(A) 80 percent in the case of taxable years beginning after December 31, 1966, of individuals not referred to in section 6073(b) (relating to income from farming or fishing);

(B) 70 percent in the case of taxable years beginning before January 1, 1967, of such individuals; and

(C) 66½ percent in the case of individuals referred to in section 6073(b); over

(ii) The amount, if any, of the installment paid on or before the last day prescribed for such payment.

(4) The term "tax" when used in subparagraph (1)(i) of this paragraph shall mean—

(i) The tax imposed by chapter 1 of the Code (other than by section 56 or, for taxable years ending before September 30, 1968, the tax surcharge imposed by section 51), including any qualified State individual income taxes which are treated pursuant to section 6361(a) as if they were imposed by chapter 1, plus

(ii) For taxable years beginning after December 31, 1966, the tax imposed by chapter 2 of the Code, minus

(iii) All credits allowed by part IV, subchapter A of chapter 1, except the credit provided by section 31, relating to tax withheld at source on wages, and also minus

(iv) In the case of an individual who is subject to one or more qualified State individual income taxes, the sum of the credits allowed against such taxes pursuant to section

6362(b)(2) (B) or (C) or section 6362(c)(4) and paragraph (c) of § 301.6362-4 of this chapter (Regulations on Procedure and Administration) (relating to the credit for income taxes of other States or political subdivisions thereof) and paragraph (c)(2) of § 301.6361-1 relating to the credit for tax withheld from wages on account of qualified State individual income taxes).

PAR. 10. Paragraph (b)(1) of section 1.6654-2 is amended to read as follows:

§ 1.6654-2 Exceptions to imposition of the addition to the tax in the case of individuals.

(b) *Meaning of terms.* * * *

(1) The term "tax" means—

(i) The tax imposed by chapter 1 of the Code (other than by section 56), including any qualified State individual income taxes which are treated pursuant to section 6361 (a) as if they were imposed by chapter 1, plus

(ii) For taxable years beginning after December 31, 1966, the tax imposed by chapter 2 of the Code, minus

(iii) The credits against tax allowed by part iv, subchapter A, chapter 1 of the Code, other than the credit against tax provided by section 31 (relating to tax withheld on wages), and without reduction for any payments of estimated tax, and also minus

(iv) In the case of an individual who is subject to one or more qualified State individual income taxes, the sum of the credits allowed against such taxes pursuant to section 6262(b)(2) (B) or (C) or section 6262(c)(4) and paragraph (c) of § 301.6362-4 of this chapter (Regulations on Procedure and Administration) (relating to the credit for income taxes of other States or political subdivisions thereof) and paragraph (c)(2) of § 301.6361-1 (relating to the credit for tax withheld from wages on account of qualified State individual income taxes).

SUBCHAPTER C—EMPLOYMENT TAXES

PART 31—EMPLOYMENT TAXES; APPLICABLE ON OR AFTER JANUARY 1, 1955

PAR. 11. Section 31.3402(f)(2)-1 is amended by adding at the end thereof a new paragraph (e), to read as follows:

§ 31.3402(f)(2)-1 Withholding exemption certificates.

(e) *Applicability of withholding exemption certificate to qualified State individual income taxes.* The withholding exemption certificate shall be

used for purposes of withholding with respect to qualified State individual income taxes as well as Federal tax. For provisions relating to the withholding exemption certificate with respect to such State taxes, see paragraph (d)(3)(i) of § 301.6361-1 of this chapter (Regulation on Procedure and Administration).

PAR. 12. So much of § 31.3402(n)-1 as follows paragraph (b) and precedes example (1) is amended to read as follows:

§ 31.3402(n)-1 Employees incurring no income tax liability.

For purposes of section 3402(n) and this section, an employee is not considered to incur liability for income tax imposed under subtitle A if the amount of such tax is equal to or less than the total amount of credits against such tax which are allowable to him under part iv of subchapter A of chapter 1 of the Code, other than those allowable under section 31 or 39. For purposes of section 3402(n) and this section, "liability for income tax imposed under subtitle A" shall include liability for a qualified State individual income tax which is treated pursuant to section 6361(a) as if it were imposed by chapter 1 of the Code. An employee is not considered to incur liability for such a State income tax if the amount of such tax does not exceed the total amount of the credit against such tax which is allowable to him under section 6362(b)(2) (B) or (C) or section 6362(c)(4). For purposes of this section, an employee who files a joint return under section 6013 is considered to incur liability for any tax shown on such return. An employee who is entitled to file a joint return under such section shall not certify that he anticipates that he will incur no liability for income tax imposed by subtitle A for his current taxable year if such statement would not be true in the event that he files a joint return for such year, unless he filed a separate return for his preceding taxable year and anticipates that he will file a separate return for his current taxable year.

PAR. 13. Paragraph (b)(1)(ii) (c) of § 31.3402 (p)-1 is amended to read as follows:

§ 31.3402(p)-1 Voluntary withholding agreements.

(b) *Form and duration of agreement.*

- (1) * * *
- (ii) * * *

(c) A statement that the employee desires withholding of Federal income tax, and, if applicable, of qualified State individual income tax (see paragraph (d)(3)(i) of § 301.6361-1 of this chapter (Regulations on Procedures and Administration)), and

PAR. 14. Paragraph (a) of § 31.6011(a)-4 is amended to read as follows:

§ 31.6011(a)-1 Returns of income tax withheld from wages.

(a) *In general.* (1) Except as otherwise provided in subparagraph (3) of this paragraph and in § 31.6011(a)-5, every person required to make a return of income tax withheld from wages pursuant to section 1622 of the Internal Revenue Code of 1939 for the calendar quarter ended December 31, 1954, shall make a return for each subsequent calendar quarter (whether or not wages are paid therein) until he has filed a final return in accordance with § 31.6011(a)-6. Except as otherwise provided in subparagraph (3) of this paragraph and in § 31.6011(a)-5, every person not required to make a return for the calendar quarter ended December 31, 1954, shall make a return of income tax withheld from wages pursuant to section 3402 for the first calendar quarter thereafter in which he is required to deduct and withhold such tax and for each subsequent calendar quarter (whether or not wages are paid therein) until he has filed a final return in accordance with § 31.6011(a)-6. Except as otherwise provided in § 31.6011(a)-8 and in subparagraphs (2) and (3) of this paragraph, Form 941 is the form prescribed for making the return required under this paragraph. For the requirements relating to Form 941 with respect to qualified State individual income taxes, see paragraph (d)(3)(iv) of § 301.6361-1 of this chapter (Regulations on Procedure and Administration).

(2) Form 942 is the form prescribed for making the return required under subparagraph (1) of this paragraph with respect to income tax withheld, pursuant to an agreement under section 3402(p), from wages paid for domestic service in a private home of the employer not on a farm operated for profit. The preceding sentence shall not apply in the case of an employer who has elected under paragraph (a)(3) of § 31.6011(a)-1 to use Form 941 as his return with respect to such payments for purposes of the Federal Insurance Contributions Act. For the requirements relating to Form 942 with respect to qualified State individual income taxes, see paragraph (d)(3)(iv) of § 301.6361-1.

(3) Every person shall make a return of income tax withheld, pursuant to an agreement under section 3402 (p), from wages paid for agricultural labor for the first calendar year in which he is required (by reason of such agreement) to deduct and withhold such tax and for each subsequent calendar year (whether or not wages for agricultural labor are paid therein) until he has filed a final return in accordance with § 31.6011(a)-6. Form 943 is the form prescribed for making the return required under this subparagraph. For the requirements relating to Form 943 with respect to qualified State individual income taxes, see paragraph (d)(3)(iv) of § 301.6361-1.

PAR. 15. So much of paragraph (a)(1)(i) of § 31.6051-1 as follows (f) thereof is amended to read as follows:

§ 31.6051-1 Statements for employees.

(a) *Requirement if wages are subject to withholding of income tax*—(1) *General rule.* (i) * * *

(f) * * *
See paragraph (d) of this section for provisions relating to the time for furnishing the statement required by this subparagraph. See paragraph (f) of this section for an exception for employers filing composite returns from the requirement that statements for employees be on Form W-2. For the requirements relating to Form W-2 with respect to qualified State individual income taxes, see paragraph (d)(3)(ii) of § 301.6361-1 of this chapter (regulations on Procedure and Administration).

PAR. 16. Paragraph (a)(1)(iii) of § 31.6302(c)-1 is amended to read as follows:

§ 31.6302(c)-1 Use of Government depositaries in connection with taxes under Federal Insurance Contributions Act and income tax withheld.

(a) *Requirement*—(1) *In general.* * * *

(iii) As used in subdivisions (i) and (ii) of this subparagraph, the term "taxes" means—

(a) The employee tax withheld under section 3102,

(b) The employer tax under section 3111, and

(c) The income tax withheld under section 3402, including amounts withheld with respect to qualified State individual income taxes,

exclusive of taxes with respect to wages for domestic service in a private home of the employer or, if paid before April 1, 1971, wages for agricultural labor. In addition, with respect to wages paid after December 31, 1970,

and before April 1, 1971, for agricultural labor, any taxes described in subparagraph (2)(ii) of this paragraph which are not required under such subparagraph to be deposited, and any income tax (including qualified State individual income tax) withheld under section 3402 with respect to such wages, shall be deemed to be "taxes" on and after April 1, 1971. For the requirements relating to the deposit and payment of withheld tax with respect to qualified State individual income taxes, see paragraph (d)(3)(iii) of § 301.6361-1 of this chapter (Regulations on Procedure and Administration).

PAR. 17. The following new section is inserted immediately after § 31.6317:

§ 31.6361-1 Collection and administration of qualified State individual income taxes.

Except as otherwise provided in §§ 301.6361-1 to 301.6365-2, inclusive, of this chapter (Regulations on Procedure and Administration), the provisions of this part under subtitle F or chapter 24 of the Internal Revenue Code of 1954 relating to the collection and administration of the taxes imposed by chapter 1 of such Code on the incomes of individuals (or relating to civil or criminal sanctions with respect to such collection and administration) shall apply to the collection and administration of qualified State individual income taxes (as defined in section 6362 of such Code and the regulations thereunder) as if such taxes were imposed by chapter 1 or chapter 24.

PART 32—TEMPORARY EMPLOYMENT TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1969

PAR. 18. Paragraphs (b) and (f)(2) of § 32.1 are amended to read as follows:

§ 32.1 Extension of withholding of income tax at source on wages to annuity payments if requested by payee.

(b) *Manner of making request.* A payee who wishes a payer to deduct and withhold income tax from annuity payments shall file a request with the payer to deduct and withhold a specific whole dollar amount from each annuity payment. Such specific dollar amount requested shall be at least \$5 per month and shall not reduce the net amount of any annuity payment received by the payee below \$10. The request shall be made on Form W-4P (annuitant's withholding exemption certificate and request) in accordance

with the instructions applicable thereto, and shall set forth fully and clearly the data therein called for. In lieu of Form W-4P, payers may prepare and use a form the provisions of which are identical with those of Form W-4P. For the requirements relating to Form W-4P with respect to qualified State individual income taxes, see paragraph (d)(3)(i) of § 301.6361-1 of this chapter (Regulations on Procedure and Administration).

(f) *Returns of income tax withheld and statements for payees.* * * *

(2) Each statement on Form W-2P shall show the following:

(i) The gross amount of annuity payments made during the calendar year, whether or not income tax withholding under this section was in effect with respect to all such payments,

(ii) The total amount deducted and withheld as tax under section 3402 of this section, and

(iii) The information required to be shown by Form W-2P and the instructions applicable thereto.

For the requirements relating to Form W-2P with respect to qualified State individual income taxes, see paragraph (d)(3)(ii) of § 301.6361-1 of this chapter (Regulations on Procedure and Administration).

SUBCHAPTER F—PROCEDURE AND ADMINISTRATION

PART 301—PROCEDURE AND ADMINISTRATION

PAR. 19. Paragraph (c) of § 301.6212-1 is amended to read as follows:

§ 301.6212-1 Notice of deficiency.

(c) *Further deficiency letters restricted.* If the district director (or assistant regional commissioner, appellate) mails to the taxpayer notice of a deficiency, and the taxpayer files a petition with the Tax Court within the prescribed period, no additional deficiency may be determined with respect to income tax for the same taxable year, gift tax for the same calendar quarter (calendar year with respect to gifts made before January 1, 1971), or estate tax with respect to the taxable estate of the same decedent. This restriction shall not apply in the case of fraud, assertion of deficiencies with respect to any qualified tax (as defined in paragraph (b) of § 301.6361-4) in respect of which no deficiency was asserted for the taxable year in the notice, assertion of deficiencies with

respect to the Federal tax when deficiencies with respect to only a qualified tax (and not the Federal tax) were asserted for the taxable year in the notice, assertion of greater deficiencies before the Tax Court as provided in section 6214(a), mathematical errors as provided in section 6213(b)(1), or jeopardy assessments as provided in section 6861(c).

PAR. 20. Section 301.6321-1 is amended to read as follows:

§ 301.6321-1 Lien for taxes.

If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, tangible or intangible, belonging to such person. For purposes of section 6321 and this section, the term "any tax" shall include a State individual income tax which is a "qualified tax", as defined in paragraph (b) of § 301.6361-4. The lien attaches to all property and rights to property belonging to such person at any time during the period of the lien, including any property or rights to property acquired by such person after the lien arises. Solely for purposes of sections 6321 and 6331, any interest in restricted land held in trust by the United States for an individual noncompetent Indian (and not for a tribe) shall not be deemed to be property, or a right to property, belonging to such Indian. For the method of allocating amounts collected pursuant to a lien between the Federal Government and a State or States imposing a qualified tax with respect to which the lien attached, see paragraph (f) of § 301.6361-1. For the special lien for estate and gift taxes, see section 6324 and § 301.6324-1.

PAR. 21. The following new sections are inserted immediately after § 301.6344:

§ 301.6361-1 Collection and administration of qualified taxes.

(a) *In general.* In the case of any State which has in effect a State agreement (as defined in paragraph (a) of § 301.6361-4), the Commissioner of Internal Revenue shall collect and administer each qualified tax (as defined in paragraph (b) of § 301.6361-4) of such State. No fee or other charge shall be imposed upon any State for the collection or administration of any qualified tax of such State or any other State. In any such case of collection and administration of qualified taxes, the provisions of subtitle F (relating to procedure and administration), subtitle G (relating to the Joint

Committee on Taxation), and chapter 24 (relating to the collection of income tax at source on wages), and the provisions of regulations thereunder, insofar as such provisions relate to the collection and administration of the taxes imposed on the income of individuals by chapter 1 (and the civil and criminal sanctions provided by subtitle F, or by title 18 of the United States Code (relating to crimes and criminal procedure), with respect to such collection and administration) shall apply to the collection and administration of qualified taxes as if such taxes were imposed by chapter 1, except to the extent that the application of such provisions (and sanctions) are modified by regulations issued under subchapter E (as defined in paragraph (d) of § 301.6361-4). Any extension of time which is granted for the making of a payment, or for the filing of any return, which relates to any Federal tax imposed by subtitle A (or by subtitle C with respect to filing a return) shall constitute automatically an extension of the same amount of time for the making of the corresponding payment or for the filing of the corresponding return relating to any qualified tax.

(b) *Returns of qualified taxes.* Every individual, estate, or trust which has liability for one or more qualified taxes for a taxable year—

(1) Shall file a Federal income tax return at the time prescribed pursuant to section 6072(a) (whether or not such return is required by section 6012), and shall file therewith on the prescribed form a return under penalties of perjury for each tax which is—

(i) A qualified resident tax imposed by a State of which the taxpayer was a resident, as defined in § 301.6362-6, for any part of the taxable year;

(ii) A qualified nonresident tax imposed by a State within which was located the source or sources from which the taxpayer derived, while not a resident of such State and while not exempt from liability for the tax by reason of a reciprocal agreement between such State and the State of which he is a resident, 25 percent or more of his aggregate wage and other business income, as defined in paragraph (c) of § 301.6362-5, for the taxable year; or

(iii) A qualified resident or nonresident tax with respect to which any amount was currently collected from the taxpayer's income (including collection by withholding on wages or by payment of estimated income tax), as provided in paragraph (f) of § 301.6362-6, for any part of the taxable year; and

(2) Shall declare (in addition to the declaration required with respect to the return of the Federal income tax and in the place and manner pre-

scribed by form or instructions thereto) under penalties of perjury that, to the best of the knowledge and belief of the taxpayer (or, in the case of an estate or trust, of the fiduciary who executes the Federal income tax return), he has no liability for any qualified tax for the taxable year other than any such liabilities returned with the Federal income tax return (pursuant to subparagraph (1) of this paragraph). Such declaration shall constitute a return indicating no liability with respect to each qualified tax other than any such tax for which liability is so returned. A Federal income tax return form which is filed but which does not contain such declaration shall constitute a Federal income tax return only if the taxpayer in fact has no liability for any qualified State tax for the taxable year.

(c) *Credits.—(1) Credit for tax of another State or political subdivision.—*

(i) *In general.* A credit allowable under a qualified tax law against the tax imposed by such law for a taxpayer's tax liability to another State or a political subdivision of another State shall be allowed if the requirements of subdivision (ii) of this subparagraph are met, and if the credit meets the requirements of paragraph (c) of § 301.6362-4. Such credit shall be allowed without regard to whether the tax imposed by the other State or subdivision thereof is a qualified tax, and without regard to whether such tax has been paid.

(ii) *Substantiation of tax liability for which a credit is allowed.* If the liability which gives rise to a credit of the type described in subdivision (i) of this subparagraph is with respect to a qualified tax, then the fact of such liability shall be substantiated by filing the return on which such liability is reported. If such liability is not with respect to a qualified tax, then the Commissioner may require a taxpayer who claims entitlement to such a credit to complete a form to be submitted with his return of the qualified tax against which the credit is claimed. On such form the taxpayer shall identify each of the other States (the liabilities to which were not substantiated as provided in the first sentence of this subdivision) or political subdivisions to which the taxpayer reported a liability for a tax giving rise to the credit, furnish the name or description of each such tax, state the amount of the liability so reported with respect to each such tax and the beginning and ending dates of the taxable period for which such liability was reported, and provide such other information as is requested in the form or in the instructions thereto. In addition, the taxpayer shall agree on such form to notify the Commissioner in the event that the amount of any tax liability (or portion thereof) which

is claimed as giving rise to a credit of the type described in subdivision (i) of this subparagraph is changed or adjusted, whether as a result of an amended return filed by the taxpayer, a determination by the jurisdiction imposing the tax, or in any other manner.

(2) *Credit or withheld qualified tax.* An individual from whose wages an amount is withheld on account of a qualified tax shall receive a credit for such amount against his aggregate liability for all such qualified taxes and the Federal income tax for the taxable year, whether or not such tax has been paid over to the Federal Government by the employer. The credit shall operate in the manner provided by section 31(a) of the Code and the regulations thereunder with respect to Federal income tax withholding.

(d) *Collection of qualified taxes at source on wages.*—(1) *In general.* Except as otherwise provided in subparagraph (2) of this paragraph, every employer making payment of wages to an employee described in such subparagraph shall deduct and withhold upon such wages the amount prescribed with respect to the qualified tax designated in such subparagraph. The amounts prescribed for withholding with respect to each such qualified tax shall be published in Circular E (Employer's Tax Guide) or other appropriate Internal Revenue Service publications. See paragraph (f)(1) of § 301.6362-7 with respect to civil and criminal penalties to which an employer shall be subject with respect to his responsibilities relating to qualified taxes.

(2) *Specific withholding requirements.* An employer shall deduct and withhold upon an employee's wages the amount prescribed with respect to a qualified tax with respect to which such employee is subject to the current collection provisions pursuant to paragraph (f) of § 301.6362-6, unless:

(i) In the case of a qualified resident tax, the employee's services giving rise to the wages are performed in another State, and such other State or a political subdivision thereof imposes a non-resident tax on such employee with respect to which the withholding amount exceeds the prescribed withholding amount with respect to such qualified resident tax, and the State imposing such qualified resident tax grants a credit against it for such non-resident tax.

(ii) In the case of a qualified non-resident tax; either:

(A) Residents of the State in which the employee resides are exempt from liability for the qualified nonresident tax imposed by the State from sources within which his wage income is derived, by reason of an interstate com-

pact or agreement to which the two States are parties, or

(B) The State in which the employee resides imposes a qualified resident tax on such employee with respect to which the prescribed withholding amounts exceed the prescribed withholding amounts with respect to the qualified nonresident tax imposed by the State from sources within which his wage income is derived, and the State in which he resides grants a credit against its qualified resident tax for such qualified nonresident tax.

If the nonresident tax described in subdivision (i) of this subparagraph is a qualified nonresident tax imposed by a State, then the reference in such subdivision to the State in which the services are performed shall be construed as a reference to the State from sources within which the wage income is derived, within the meaning of paragraph (d)(1) of § 301.6362-5.

(3) *Forms, procedures, and returns relating to withholding with respect to qualified taxes.*—(i) *Forms W-4 and W-4P.* Forms W-4 (Employee's Withholding Allowance Certificate) and W-4P (Annuitant's Request for Income Tax Withholding), shall include information as to the State in which the employee resides, and shall be used for purposes of withholding with respect to both Federal and qualified taxes. An employee shall show on his Form W-4 the State in which he resides for purposes of this paragraph, and shall file a new Form W-4 within 10 days after he changes his State of residence. An employee who fails to meet either of the requirements set forth in the preceding sentence, with the intent to evade the withholding tax imposed with respect to a qualified tax, shall be subject to the penalty provided in section 7205 of the Code. An employer shall be responsible for determining the State within which are located the sources from which the employee's wage income is derived for purposes of this paragraph; and, if the employee does not file a Form W-4, the employer shall assume for such purposes that the employee resides in that State. When an employer and an employee enter into a voluntary withholding agreement pursuant to § 31.3402(p)-1, the employer shall withhold the amount prescribed with respect to the qualified resident tax imposed by the State in which the employee resides, as indicated on Form W-4. Similarly, if an annuitant requests withholding with respect to his annuity payments pursuant to section 3402 (o)(1)(B) of the Code, the payer shall withhold the whole dollar amount specified by the annuitant with respect to a qualified resident tax, provided that the combined withholding with respect to Federal and qualified taxes on each annuity pay-

ment shall be a whole dollar amount not less than \$5, and that the net amount of any annuity payment received by the payee shall not be reduced to less than \$10.

(ii) *Forms W-2 and W-2P.* Forms W-2 (Wage and Tax Statement) and W-2P (the corresponding form for annuities) shall show:

(A) The total amount withheld with respect to the Federal income tax;

(B) The total amount withheld with respect to qualified taxes;

(C) The name of each State imposing a qualified tax in which the employee (or annuitant) resided during the taxable year, as shown on Form W-4 (or W-4P);

(D) The name of each State imposing a qualified nonresident tax within which were located sources from which the employee's wage income was derived during a period of the taxable year in which he was not shown as a resident of such State on Form W-4, and the amount of the employee's wage income so derived; and

(E) The name of each State or locality that imposes an income tax which is not a qualified tax and with respect to which the employer withheld on the employee's wage income for the taxable year, and the amount of wage income with respect to which the employer so withheld.

(iii) *Requirements relating to deposit and payment of withheld tax.* Rules relating to the deposit and remittance of withheld Federal income and FICA taxes, including those prescribed in section 6302 of the Code and the regulations thereunder, shall apply also to amounts withheld with respect to qualified taxes. Thus, an employer's liability with respect to the deposit and payment of withheld taxes shall be for the combined amount of withholding with respect to Federal and qualified taxes. The Federal Tax Deposit form shall separately indicate:

(A) The combined total amount of Federal income, FICA, and qualified taxes withheld;

(B) The combined total amount of qualified taxes withheld; and

(C) The total amount of qualified taxes withheld with respect to each electing State.

Data indicating the total amount of tax deposits processed by the Internal Revenue Service with respect to the qualified taxes of an electing State will be available to that State upon request on as frequent as a weekly basis. These data will be available no later than 10 working days after the end of the calendar week in which the deposits were processed by the Service.

(iv) *Employment tax returns.* Forms 941 (Employer's Quarterly Federal Tax Return), 941-E (Quarterly Return of Withheld Income Tax), 941-M (Employer's Monthly Federal Tax

Return), 942 (Employer's Quarterly Tax Return for Household Employees), and 943 (Employer's Annual Tax Return for Agricultural Employees), shall indicate the total amount withheld with respect to each qualified tax, as directed by such forms or their instructions.

(e) *Criminal penalties.* A criminal offense committed with respect to a qualified tax shall be treated as a separate offense from a similar offense committed with respect to the Federal tax. Thus, for example, if a taxpayer willfully attempts to evade both the Federal tax and a qualified tax by failing to report a portion of his income, he shall be considered as having committed two criminal offenses, each subject to a separate penalty under section 7201. See also § 301.6362-7(f) with respect to criminal penalties.

(f) *Allocation of amounts collected with respect to tax and criminal fines—(1) In general.* The aggregate amount that has been collected from a taxpayer (including amounts collected by withholding) in respect of liability for both one or more qualified taxes and the Federal income tax for a taxable year shall be allocated among the Federal Government and the States imposing qualified taxes for which the taxpayer is liable in the proportion which the taxpayer's liability for each such tax bears to his aggregate liability for such year to all of such taxing jurisdictions with respect to such taxes. A reallocation shall be made either when an amount is collected from the taxpayer or his employer or is credited or refunded to the taxpayer, subsequent to the making of the initial allocation, or when a determination is made by the Commissioner that an error was made with respect to a previous allocation. However, any such allocation or reallocation shall not affect the amount of a taxpayer's or employer's liability to either jurisdiction, or the amount of the assessment and collection which may be made with respect to a taxpayer or employer. Accordingly, such allocations and reallocations shall not be taken into consideration for purposes of the application of statutes of limitation or provisions relating to interest, additions to tax, penalties, and criminal sanctions. See example (4) in subparagraph (4) of this paragraph. In addition, any such allocation or reallocation shall not affect the amount of the deduction to which a taxpayer is entitled under section 164 for a year in which he made payment (including payments made by withholding) of an amount which was designated as being in respect of his liability for a qualified tax. However, to the extent that an amount which was paid by a taxpayer and designated as being in respect of his liability for a qualified tax

is allocated or reallocated in such a manner as to apply it toward the taxpayer's liability for the Federal income tax, such allocation or reallocation shall be treated as a refund to the taxpayer of an amount paid in respect of a State income tax, and shall be included in the gross income of the taxpayer to the extent appropriate under section 111 and the regulations thereunder in the year in which the allocation or reallocation is made. See section 451 and the regulations thereunder. Similarly, to the extent that an amount which was paid by a taxpayer and designated as being in respect of his Federal income tax liability is allocated or reallocated in such a manner as to apply it toward his liability for a qualified tax, such allocation or reallocation shall be treated as a payment made by the taxpayer in respect of a State income tax, and shall be deductible under section 164 in the year in which the allocation or reallocation is made. The Internal Revenue Service shall notify the taxpayer in writing of any allocation or reallocation of tax liabilities in a proportion other than that of the respective tax liabilities shown on the taxpayer's returns.

(2) *Amounts of collections and liabilities.* For purposes of this paragraph the aggregate amount that has been collected from a taxpayer or his employer in respect of tax liability shall include the amounts of interest provided in chapter 67, and additions to tax and assessable penalties provided in chapter 68, which are collected with respect to such tax; but shall not include criminal fines provided in chapter 75, or in title 18 of the United States Code, which are collected with respect to offenses relating to such tax. (See subparagraph (3) of this paragraph with respect to the treatment of such criminal fines.) However, for purposes of this paragraph, the amount of the taxpayer's liability for each tax shall exclude his liability for such interest additions to tax, and assessable penalties with respect to such tax, and his liability for criminal fines imposed with respect to offenses relating to such tax. For purposes of this paragraph, the amount of the taxpayer's liability for each tax shall be computed by taking credits into account, except that there shall be no reduction for any amounts paid on account of such liability, whether by means of withholding, estimated tax payment, or otherwise.

(3) *Special rules relating to criminal fines.* (i) Except as otherwise provided in subdivision (ii) of this subparagraph, when a criminal charge is brought against a taxpayer with respect to a taxable year pursuant to chapter 75, or to title 18 of the United States Code, or to a corresponding provision of a qualified tax law, alleging

that an offense was committed against the United States with respect to the Federal income tax or against a State with respect to a qualified tax, and an amount of money is collected by the Federal Government as a fine as a result of such charge, then the Federal Government shall remit an amount to each State, if any, which is an affected jurisdiction. The amount remitted to each such State shall bear the same proportion to the total amount collected as a fine as the taxpayer's liability with respect to the qualified taxes of that State bears to the aggregate of the taxpayer's income tax liabilities to all affected jurisdictions for the taxable year, as determined under subparagraphs (1) and (2) of this paragraph. For purposes of this subparagraph, an affected jurisdiction is (A) a jurisdiction with respect to the tax of which a criminal charge described in the preceding sentence was brought for the taxable year, or (B) a jurisdiction with respect to the Federal income tax or the qualified tax of which the acts or omissions alleged in such a criminal charge would constitute the basis for the bringing of a criminal charge for the same taxable year. However, in no case shall the amount received by an affected State, or the amount of the excess of the amount received by the Federal Government over the amount of its remissions to States, with respect to a fine exceed the maximum fine prescribed by statute for the offense against that jurisdiction with respect to which a criminal charge was brought, or with respect to which the bringing of a criminal charge could have been supported on the basis of the acts or omissions alleged in a criminal charge brought. For purposes of this subparagraph, the amount collected as a fine as a result of a criminal charge shall include amounts paid in settlement of an actual or potential liability for a fine, amounts paid pursuant to a conviction and amounts paid pursuant to a plea of guilty or *nolo contendere*.

(ii) If a criminal charge described in the first sentence of subdivision (i) of this subparagraph is actually brought with respect to the income tax of every affected jurisdiction with respect to the taxable year, and if a Court adjudicates on the merits the taxpayer's liability for a fine to each such jurisdiction, and includes in its decree a direction of the amount, if any, to be paid as a fine to each such jurisdiction, then that decree shall govern the allocation of the amount of money collected by the Federal Government as a fine with respect to the taxable year.

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

Example (1). The total combined amount of State X qualified tax and Federal income tax collected from A, a resident of State X, for the taxable year is \$5,100. The amounts of A's liabilities for such taxes for that year are \$800 to State X and \$4,000 to the Federal Government. Since A's tax liability to State X is one-sixth of the combined tax liability (\$4,800), one-sixth (\$50) of the amount to be refunded to A (\$300) is chargeable against State X's account, and five-sixths (\$250) is chargeable against the Federal Government's account.

Example (2). Assume the same facts as in example (1) except that the total amount collected from A is \$4,500. Since A's liabilities for the State X tax and the Federal tax are one-sixth and five-sixths, respectively, of the combined tax liability, the Federal Government shall pay over to State X one-sixth (\$750) of the amount actually collected from A, and the Federal Government shall retain five-sixths (\$3,750).

Example (3). The total amount of State X qualified tax, State Y qualified tax, and Federal income tax collected from B, a resident of State X who is employed in State Y, for the taxable year is \$5,500. The amounts of B's liabilities for such taxes for that year are: \$250 for the State X tax (after allowance of a credit for State Y's qualified tax), \$750 for the State Y tax, and \$4,000 for the Federal tax. Since B's liability for the State X tax (\$250) is 5 percent of the combined tax liability (\$5,000), his liability for the State Y tax (\$750) is 15 percent of such combined liability, and his liability for the Federal tax (\$4,000) is 80 percent of such combined liability, the total amount to be refunded to B (\$500) shall be chargeable in the following manner: 5 percent (\$25) against State X's account, 15 percent (\$75) against State Y's account, and 80 percent (\$400) against the Federal Government's account.

Example (4). C is liable for \$2,000 in Federal income tax and \$500 in State X qualified tax (a resident tax) for the taxable year. However, on his Federal income tax return for such year, C erroneously described himself as a resident of State Y (which does not have a qualified tax), and he filed with such return his declaration to the effect that he had no qualified tax liability for the year. Accordingly, C paid only \$2,000 for his Federal tax liability, and such amount was retained in the account of the Federal Government. Subsequently, C's error is discovered. The amount collected by the Federal Government from C for such year must be allocated between the Federal Government and State X in proportion to C's tax liability to both. Accordingly, the Federal Government must pay over to State X the amount of \$400 (which is $\frac{1}{2}$ (\$500/\$2,500) of the \$2,000 collected). If the Federal Government collects from C the additional \$500 owed, it will retain \$400 of such amount and pay the remaining \$100 to State X. Similarly, if the Fed-

eral Government collects from C any interest, or any additions to tax or assessable penalties under chapter 68, $\frac{1}{2}$ of the amount of such collections shall be retained by the Federal Government and $\frac{1}{2}$ of such amount shall be paid over to State X. However, notwithstanding the allocation of the funds between the taxing jurisdictions, C's liability for the \$500 retains its character as a liability for State X tax. Therefore, any interest, additions to tax, or assessable penalties imposed with respect to the State X tax shall be imposed with respect to C's full \$500 liability for such tax, notwithstanding the fact that amounts collected with respect to such items shall be allocated $\frac{1}{2}$ to the Federal Government.

Example (5). A criminal charge is brought against D pursuant to chapter 75, alleging that he willfully evaded the payment of Federal income tax by failing to report interest income derived from obligations of the United States. D enters a plea of *non contendere* to the charge and pays \$2,500 as a fine to the Federal Government. The act alleged in the criminal charge would not support the bringing of a criminal charge under a State law corresponding to chapter 75, or to title 18 of the United States Code, with respect to the qualified tax of any State; accordingly, the United States is the only affected jurisdiction, and no remittances shall be made to any State with respect to the amount collected by the Federal Government as a fine.

Example (6). A criminal charge is brought against E pursuant to chapter 75, alleging that he willfully attempted to evade the assessment of liability for both Federal income tax and the qualified tax of State X by filing false and fraudulent income tax returns. E's case is settled upon the condition that he pay a fine in the amount of \$5,000. As determined pursuant to subparagraph (2) of this paragraph, E's liabilities for the taxable year are in the amounts of \$7,200 to the Federal Government and \$800 to State X. Accordingly, after the Federal Government collects the fine, \$500 (\$5,000 + \$800 × $\frac{1}{8}$), is remitted to State X.

Example (7). Assume the same facts as in example (6), except that E is tried and convicted on both charges, and pursuant to court decree he pays to the United States a fine of \$6,000 with respect to each charge, or a total of \$12,000. Because a criminal charge was brought with respect to each affected jurisdiction, and the allocation of the total amount paid as a fine was specifically imposed by a court decree, the direction of the Court shall govern the allocation. Accordingly, after the Federal Government collects the fines it pays over \$6,000 to the account of State X.

§ 301.6361-2 Judicial and administrative proceedings; Federal representation of State interests.

(a) *Civil proceedings*—(1) *General rule.* Any person shall have the same right to bring or contest a civil action, and to obtain a review thereof, with respect to a qualified tax (including the current collection thereof) in the

same court or courts which would be available to him, and pursuant to the same requirements and procedures to which he would be subject, under chapter 76 (relating to judicial proceedings), and under title 28 of the United States Code (relating to the judiciary and judicial procedure), if the tax were imposed by section 1 or chapter 24 of the Internal Revenue Code. For purposes of this section, the term "person" includes the Federal Government. Except as provided in subparagraph (2) of this paragraph, to the extent that the preceding sentence provides judicial procedures (including review procedures) with respect to any matter, such procedures shall replace civil judicial procedures under State law.

(2) *Exception.* The right or power of the courts of any State to pass on matters involving the constitution of such State is unaffected by any provision of this paragraph; however, the jurisdiction of a State court in such matters shall not extend beyond the issue of constitutionality. Thus, if in a case involving the validity of a qualified tax statute under the State constitution, the State court holds such statute constitutional, such court shall not proceed to decide the amount of the tax liability.

(b) *Criminal proceedings.* Only the Federal Government shall have the right to bring a criminal action with respect to a qualified tax (including the current collection thereof). Such an action shall be brought in the same court or courts which would be available to the Federal Government, and pursuant to the same requirements and procedures to which the Federal Government would be subject, if the tax were imposed by section 1 or chapter 24 of the Internal Revenue Code.

(c) *Administrative proceedings.* Any person shall have the same rights in administrative proceedings of the Internal Revenue Service with respect to a qualified tax (including the current collection thereof) which would be available to him, and shall be subject to the same administrative requirements and procedures to which he would be subject, if the tax were imposed by section 1 or chapter 24 of the Internal Revenue Code.

(d) *United States representation of State interests*—(1) *General rule.* Except as provided in subparagraphs (2) and (3) of this paragraph, the Federal Government shall appear on behalf of any State the qualified tax of which it collects (or did collect for the year in issue), and shall represent such State's interests in any administrative or judicial proceeding, either civil or criminal in nature, which relates to the administration and collection of such qualified tax, in the same manner as it represents the interests

of the United States in corresponding proceedings involving Federal income tax matters.

(2) *Exceptions.* The Federal Government shall not so represent a State's interests either—

(i) In proceedings in a State court involving the constitution of such State, to the extent of such constitutional issue, or

(ii) In proceedings in any court involving the relationship between the United States and the State, to the extent of the issue pertaining to such relationship, if either:

(A) The proceeding is one which is initiated by the United States against the State, or by the State against the United States, and no individual (except in his official capacity as a governmental official) is an original party to the proceeding, or

(B) The proceeding is not one described in (A), but the State elects to represent its own interests to the extent permissible under this subdivision.

(3) *Finality of Federal administrative determinations.* State and local government officials and employees may not review Federal administrative determinations concerning tax liabilities of, refunds owed to, or criminal prosecutions of, individuals with respect to qualified taxes. See, however, § 301.6363-3 relating to State administration of a qualified tax with respect to transition years. If requested by an electing State, the Commissioner or his delegate may, under terms and conditions set forth in an agreement with such State, permit such State to carry on operations supplementary to the Federal administration of the State's qualified tax (including supplemental audits or examinations of tax returns by State audit personnel), but all administrative determinations shall be made by the Federal Government without review by the State. An agreement which permits supplemental audits or examinations of tax returns by State audit personnel shall provide that the audits and examinations shall be conducted under the supervision and control of the Commissioner or his delegate, who shall have the authority to determine which returns shall be audited and when the audits shall occur. Also, such agreements shall provide that the results of any such supplemental audit shall be referred to the Commissioner or his delegate for final administrative determination. The Commissioner or his delegate shall, to the extent permitted by law, allow an electing State reasonable access to tax returns and other appropriate records and information relating to its qualified tax for the purpose of conducting any such supplemental operations. In addition, the Secretary or his delegate shall permit an electing

State to inspect the workpapers which are compiled in the course of verification by the Treasury Department of the correctness of the accounting by which the amounts of the actual net collections attributable to the electing State's qualified taxes are determined.

§ 301.6361-3 Transfers to States.

(a) *Periodic transfers.* In general, amounts collected by the Federal Government which are allocable to qualified taxes (including criminal fines which are required to be paid to a State, as determined under paragraph (f)(3) of § 301.6361-1) shall be promptly transferred to each State imposing such a tax. Transfers of such amounts, based on percentages of estimated Federal collections, shall be made not less frequently than every third business day unless the State agrees to accept transfers at less frequent intervals.

(b) *Determination of amounts of transfers.* The amounts allocable to the qualified taxes of each State for purposes of periodic transfer shall be determined as a percentage of the estimated aggregate net individual income tax collections made by the Federal Government. For purposes of this paragraph, the "aggregate net individual income tax collections" shall include amounts collected on account of the Federal individual income tax and all qualified taxes by all means (including withholding, tax returns, and declarations of estimated tax), and shall be reduced to the extent of any liability to taxpayers for credits or refunds by reason of overpayments of such taxes. The percentage of the estimated amount of such collections which is allocated to each State shall be based on an estimate which is to be made by the Office of Tax Analysis prior to the beginning of each calendar year as to what portion of the estimated aggregate net individual income tax collections for the forthcoming year will be attributable to the qualified taxes of that State. Each State will be notified prior to the beginning of each calendar year of the amount which it is estimated that the State will receive by application of that percentage for the year. However, the Office of Tax Analysis shall, from time to time throughout the calendar year, revise the percentage estimates when such a revision is, in the opinion of that office necessary to conform such estimates to the actual receipts. When such a revision is made, the payments to the State will be adjusted accordingly.

(c) *Adjustment of difference between actual collections and periodic transfers.* At least once annually the Secretary or his delegate shall determine the difference between the aggregate amount of the actual net collections

made (taking into account credits, refunds, and amounts received by withholding with respect to which a tax return is not filed) which is attributable to each State's qualified taxes during the preceding year and the aggregate amount actually transferred to such State based on estimates during such year. The amount of such difference, as so determined, shall be a charge against, or an addition to, the amounts otherwise determined to be payable to the State.

(d) *Recipient of transferred funds.* All funds transferred pursuant to section 6361(c) and paragraph (a) of this section shall be transferred by the Federal Government to the State official designated by the Governor to receive such funds in the State agreement pursuant to paragraph (d)(5) of § 301.6363-1, unless the Governor notifies the Secretary or his delegate in writing of the designation of a different State official to receive the funds.

§ 301.6361-4 Definitions.

For purposes of the regulations in this part under subchapter E of chapter 64 of the Internal Revenue Code of 1954, relating to collection and administration of State individual income taxes—

(a) *State agreement.* The term "State agreement" means an agreement between a State and the Federal Government which was entered into pursuant to section 6363 and the regulations thereunder, and which provides for the Federal collection and administration of the qualified tax or taxes of that State.

(b) *Qualified tax.* The term "qualified tax" means a tax which is a "qualified State individual income tax", as defined in section 6362 (including subsection (f)(1) thereof, which requires that a State agreement be in effect) and the regulations thereunder.

(c) *Chapters and subtitles.* References in regulations in this part under subchapter E to chapters and subtitles are to chapters and subtitles of the Internal Revenue Code of 1954, unless otherwise indicated.

(d) *Subchapter E.* The term "subchapter E" means subchapter E of chapter 64 of the Internal Revenue Code of 1954, relating to collection and administration of State individual income taxes, as amended from time to time.

§ 301.6361-5 Effective date of section 6361.

Section 6361 shall take effect on the first January 1 which is more than 1 year after the first date on which at least one State has filed a notice of election with the Secretary or his delegate to enter into a State agreement. For purposes of this section, a notice of election shall be deemed to have

been filed by a State only if there is no defect in either the State's notice of election or the State's tax law of which the Secretary notified the Governor pursuant to paragraph (c) of § 301.6363-1, and which has not been retroactively cured under the provisions of such paragraph.

§ 301.6362-1 Types of qualified tax.

(a) *In general.* A qualified tax may be either a "qualified resident tax" within the meaning of paragraph (b) of this section, or a "qualified nonresident tax" within the meaning of paragraph (c) of this section.

(b) *Qualified resident tax.* A tax imposed by a State on the income of individuals, estates, and trusts which are residents of such State within the meaning of section 6362(e) and § 301.6362-6 shall be a "qualified resident tax" if it is either:

(1) A tax based on Federal taxable income which meets the requirements of section 6362 (b), (e), and (f), and of §§ 301.6362-2, 301.6362-6, and 301.6362-7; or

(2) A tax which is a percentage of the Federal tax and which meets the requirements of section 6362 (c), (e), and (f), and of §§ 301.6362-3, 301.6362-6, and 301.6362-7.

(c) *Qualified nonresident tax.* A tax imposed by a State on the wage and other business income of individuals who are not residents of such State within the meaning of section 6362(e)(1) and paragraph (b) of § 301.6362-6 shall be a "qualified nonresident tax" if it meets the requirements of section 6362 (d), (e), and (f), and of §§ 301.6362-5, 301.6362-6, and 301.6362-7.

§ 301.6362-2 Qualified resident tax based on taxable income.

(a) *In general.* A tax meets the requirements of section 6362(b) and this section only if it is imposed on the amount of the taxable income, as defined in section 63, of the individual, estate, or trust, adjusted—

(1) By subtracting an amount equal to the amount of the taxpayer's interest on obligations of the United States which was included in his gross income for the taxable year;

(2) By adding an amount equal to the amount of the taxpayer's net State income tax deduction, as defined in paragraph (a) of § 301.6362-4, for the taxable year;

(3) By adding an amount equal to the amount of the taxpayer's net tax-exempt income, as defined in paragraph (b) of § 301.6362-4, for the taxable year; and

(4) If a credit is allowed against the tax in accordance with paragraph (b)(3) of this section for sales tax imposed by the State or a political subdivision thereof, by adding an amount

equal to the amount of the taxpayer's deduction under section 164(a)(4) for such sales tax.

The tax may provide for either a single rate or multiple rates which vary with the amount of taxable income, as adjusted.

(b) *Permitted adjustments.* A tax which otherwise meets the requirements of paragraph (a) of this section shall not be deemed to fail to meet such requirements solely because it provides for one or more of the following adjustments:

(1) A credit meeting the requirements of paragraph (c) of § 301.6362-4 is allowed against the tax for the taxpayer's income tax liability to another State or a political subdivision thereof.

(2) A tax is imposed on the amount taxed under section 56 (relating to the minimum tax for tax preferences).

(3) A credit is allowed against the tax for all or a portion of any general sales tax imposed by the State or a political subdivision thereof with respect to sales either to the taxpayer or to one or more of his dependents.

(c) *Method of making mandatory adjustments.* The mandatory adjustments provided in paragraph (a) of this section shall be made directly to taxable income. Except as provided in paragraph (c)(2) of § 301.6362-4, no account shall be taken of any reduction or increase in the Federal adjusted gross income which would result from the exclusion from, or inclusion in, gross income of the items which are the subject of the adjustments. Thus, for example, when for purposes of the calculation the taxpayer's Federal taxable income is adjusted to reflect the exclusion from gross income of interest on obligations of the United States, no change shall be made in the amount of the taxpayer's deduction for medical expenses, or in the amount of his charitable contribution base, even though such amounts would ordinarily depend upon the amount of adjusted gross income.

§ 301.6362-3 Qualified resident tax which is a percentage of Federal tax.

(a) *In general.* A tax meets the requirements of section 6362(c) and this section only if:

(1) The tax is imposed as a single specified percentage of the excess of the taxes imposed by chapter 1 over the sum of the credits allowable under part IV of subchapter A of chapter 1 (other than the credits allowable under sections 31 and 39), and

(2) The amount of the tax is decreased by the amount of the decrease in such liability which would result from excluding from the taxpayer's gross income an amount equal to the amount of interest on obligations of the United States which was included

in his gross income for the taxable year.

(b) *Permitted adjustments.* A tax which otherwise meets the requirements of paragraph (a) of this section shall not be deemed to fail to meet such requirements solely because it provides for one or more of the following three adjustments:

(1) The amount of a taxpayer's liability for tax is increased by the amount of the increase in such liability which would result from including in such taxpayer's gross income all of the following:

(i) An amount equal to the amount of his net State income tax deduction, as defined in paragraph (a) of § 301.6362-4, for the taxable year,

(ii) An amount equal to the amount of his net tax-exempt income, as defined in paragraph (b) of § 301.6362-4, for the taxable year, and

(iii) If a credit is allowed against the tax under paragraph (b)(3) of this section for sales tax imposed by the State or a political subdivision thereof, an amount equal to the amount of his deduction under section 164(a)(4) for such sales tax.

(2) A credit meeting the requirements of paragraph (c) of § 301.6362-4 is allowed against the tax for the income tax of another State or a political subdivision thereof.

(3) A credit is allowed against the tax for all or a portion of any general sales tax imposed by the State or a political subdivision thereof with respect to sales either to the taxpayer or to one or more of his dependents.

(c) *Method of making adjustments.* Except as specifically provided in paragraphs (a)(2) and (b)(1) of this section and in paragraph (c)(2) of § 301.6362-4, no account shall be taken of any reduction or increase in the Federal adjusted gross income which would result from the exclusion from, or inclusion in, gross income of the items which are the subject of the adjustments provided in those paragraphs. Thus, for example, when for purposes of the calculation the taxpayer's Federal income tax liability is adjusted to reflect the exclusion from gross income of interest on obligations of the United States, no change shall be made in the amount of the taxpayer's deduction for medical expenses, or in the amount of his charitable contribution base, even though such amounts would ordinarily depend upon the amount of adjusted gross income. Also, when calculating the adjusted Federal tax liability to which the rate of the State tax is to be applied, no adjustment shall be made in the amount of any credit against Federal tax to which a taxpayer is entitled.

§ 301.6362-1 Rules for adjustments relating to qualified resident taxes.

(a) *Net State income tax deduction.* For purposes of section 6362 (b)(1)(B) and (c)(3)(B), and §§ 301.6362-2 and 301.6362-3, the "net State income tax deduction" shall be the excess (if any) of (1) the amount deducted from income under section 164(a)(3) as taxes paid to a State or to a political subdivision thereof, over (2) the amounts included in income as recoveries of prior income taxes which were paid to a State or to a political subdivision thereof and which had been deducted under section 164(a)(3).

(b) *Net tax-exempt income.* For purposes of section 6362 (b)(1)(C) and (c)(3)(A) and §§ 301.6362-2 and 301.6362-3, the "net tax-exempt income" shall be the excess (if any) of:

(1) The sum of (i) the interest on obligations described in section 103 (a)(1) other than obligations of the State imposing the tax and the political subdivisions thereof, and (ii) the interest on obligations described in such section of such State and the political subdivisions thereof which under the law of the State is subject to the tax; over

(2) The sum of (i) the amount of deductions allocable to the interest described in subparagraph (1) (i) or (ii) of this paragraph which is disallowed pursuant to section 265 and the regulations thereunder, and (ii) the amount of the adjustment to basis allocable to such obligations which is required to be made for the taxable year under section 1016(a) (5) or (6).

For purposes of subparagraph (1)(ii) of this paragraph, a State may, at its option, subject to the tax the interest from all, none, or some of its section 103(a)(1) obligations and those of its political subdivisions. For example, a State may subject to tax all of such obligations other than those which it or its political subdivisions issued prior to a specified date, which may be the date that subchapter E became applicable to the State.

(c) *Credits for taxes of other jurisdictions.*—(1) *In general.* A State tax law that provides for a credit, pursuant to section 6362(b)(2) (B) or (C) or section 6362(c)(4), and paragraph (b)(1) of § 301.6362-2 or paragraph (b)(2) of § 301.6362-3, for income tax of another State or a political subdivision thereof shall provide that, in the case of each taxpayer, the amount of the credit shall equal the amount of his liability with respect to such other jurisdiction's tax for the taxable year which runs concurrently with, or which ends in, the taxable year used by the taxpayer for purposes of the State tax which provides for the credit. Such a credit may be allowed with respect to every income tax (whether or not qualified) imposed on the taxpayer by another State or a political subdivision

thereof, or only with respect to certain of such taxes. However, for purposes of this paragraph, the amount which is treated as being the amount of the taxpayer's liability with respect to any such tax imposed by another jurisdiction shall not exceed the amount of liability for such tax which is both—

(A) Reported to the taxing authorities responsible for collecting such other jurisdiction's tax, and

(B) Substantiated pursuant to the requirements of paragraph (c)(1)(ii) of § 301.6361-1.

(2) *Limitation.* The amount of any credit allowed for the taxable year pursuant to this paragraph shall not exceed the product of the amount of the resident tax against which the credit is allowed, as computed without subtracting any such credit, multiplied by a fraction the numerator of which is the amount of income subject to tax by both the State imposing the resident tax against which the credit is allowed and the other jurisdiction whose tax is being credited, and the denominator of which is the amount of income subject to tax by the State imposing the resident tax against which the credit is allowed. For purposes of the preceding sentence, "income subject to tax" means the amount of the taxpayer's adjusted gross income which is taken into account for purposes of computing tax liability; in the case of a qualified resident tax, an appropriate modification shall be made to take into account any adjustments which are made pursuant to paragraph (a)(1) and (3) of § 301.6362-2, or pursuant to paragraph (a)(2) or (b)(1)(ii) of § 301.6362-3.

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

Example (1). (i) A, a calendar-year, cash-basis taxpayer, is a resident of State X throughout the taxable year. For such year, his adjusted gross income for Federal income tax purposes consists of \$24,000, consisting of \$3,000 derived from employment in State X, \$5,000 derived from employment in State Y, \$15,000 derived from employment in State Z, and \$1,000 in interest income from United States savings bonds. In addition, he received net tax-exempt income in the amount of \$2,000. For the taxable year, he incurs liabilities of \$200 for the State Y nonresident income tax, and \$1,400 for the State Z nonresident income tax. State X, which has in effect a State agreement for the taxable year, imposes a resident tax against which credits are allowed for the nonresident taxes imposed by States Y and Z. Without taking any such credits into account, however, the amount of A's liability for such resident tax would be \$1,500. A properly reports his nonresident income tax liabilities to States Y and Z at the same time that he files his return with respect to the State X tax, and he substantiates on such return his liabilities to States Y and Z.

(ii) The amount of A's income subject to tax in State X is \$25,000 (his adjusted gross

income of \$24,000, minus the United States savings bond income of \$1,000, plus the net tax-exempt income of \$2,000). The amount of the credit allowable against the State X resident tax for the amount of A's liability with respect to the State Y nonresident tax is calculated as follows: The maximum amount of credit is the actual amount of his liability to Y, or \$200. Under subparagraph (2) of this paragraph, the amount of the credit is limited to \$300 ($\$1,500 \times \$5,000 / \$25,000$). Thus, such limit has no effect, and the full \$200 is allowable as a credit against A's liability for the resident tax of State X. The amount of the credit allowable against the State X resident tax for the amount of A's liability with respect to the State Z nonresident tax is calculated as follows: The maximum amount of the credit is the actual amount of his liability to Z, or \$1,400. Under subparagraph (2) of this paragraph, the amount of the credit is limited to \$900 ($\$1,500 \times \$15,000 / \$25,000$). Thus, such limit has the effect of reducing to \$900 the amount of the credit allowable for tax of State Z against A's liability for the resident tax of State X.

Example (2). (i) B, a calendar-year, cash-basis taxpayer, is a resident of State X employed in State Y through March 14, 1977. On March 15, 1977, B becomes a resident of State Z and remains a resident of such State through the remainder of 1977. For 1977, the amount of B's adjusted gross income for Federal income tax purposes is \$20,000, consisting of \$6,000 derived from employment in State Y which B held during the period of his residence in State X, \$12,000 derived from employment in State Z which B held during the period of his residence in State Z, and \$2,000 in interest income from various bank accounts. During 1977, B has no interest income from United States obligations, and no tax-exempt income. For 1977, B incurs a liability of \$200 to State Y on account of its nonresident income tax imposed with respect to his \$6,000 of income derived from sources within that State. State Z, which has in effect a State agreement for 1977, imposes a resident income tax on B which, if B had been a resident of State Z for all 1977, would amount to \$1,200 prior to the allowance of any credits under this paragraph. However, by reason of paragraph (e)(1) of § 301.6362-6, B's liability for the resident tax of State Z, before taking into account credits allowed under this paragraph, is reduced to \$960 ($\$1,200 \times \frac{297}{365}$, or $\frac{3}{4}$). Furthermore, State Z allows a credit for the nonresident tax imposed by State Y.

(ii) The amount of the credit allowable against the State Z resident tax for the amount of B's liability with respect to the State Y nonresident tax is calculated as follows: The maximum amount of the credit is the amount of his actual liability to State Y, or \$200. Under subparagraph (2) of this paragraph, the amount of the credit is limited to \$288 ($\$960 \times \$6,000 / \$20,000$). Thus, such limit has no effect, and the full \$200 is allowable as a credit for tax of State Y against B's liability for the resident tax of State Z.

§ 301.6362-5 Qualified nonresident tax.

(a) *In general.* A tax meets the requirements of section 6362(d) and this section only if:

(1) The tax is imposed by a State which simultaneously imposes a resident tax meeting the requirements of

section 6362(b) and § 301.6362-2 or of section 6362(c) and § 301.6362-3;

(2) The tax is required to be computed in accordance with either the method prescribed in paragraph (b) of this section or another method of which the Secretary or his delegate approves upon submission by the State of the laws pertaining to the tax;

(3) The tax is imposed only on the wage and other business income derived from sources within such State (as defined in paragraph (d) of this section), of all individuals each of whom derives 25 percent or more of his aggregate wage and other business income for the taxable year from sources within such State while he is neither (i) a resident of such State within the meaning of section 6362(e) and § 301.6362-6, nor (ii) exempt from liability for the tax by reason of a reciprocal agreement between such State and the State of which he is a resident within the meaning of those provisions;

(4) The amount of the tax imposed with respect to any individual does not exceed the amount of tax for which such individual would be liable under the qualified resident tax imposed by such State if he were a resident of the State for the period during which he earned wage or other business income from sources within the State, and if his taxable income for such period were an amount equal to the sum of the zero bracket amount (within the meaning of section 63(d) and determined as if he had been a resident of the State for such period) and the excess of:

(i) The amount of his wage and other business income derived from sources within the State, over

(ii) That portion of the sum of the zero bracket amount and the nonbusiness deductions (i.e., all deductions from adjusted gross income allowable in computing taxable income) taken into account for purposes of the State's qualified resident tax which bears the same ratio to such sum as the amount described in subdivision (i) of this subparagraph bears to his total adjusted gross income for the year; and

(5) For purposes of the tax, wage or other business income is considered as being the income of the individual whose income it is for purposes of section 61.

(b) *Approved method of computing liability for qualified nonresident tax.* A tax satisfies the requirement of paragraph (a)(2) of this section if the amount of the tax is computed either as a percentage of the excess of the amount described in paragraph (a)(4)(i) of this section over the amount described in paragraph (a)(4)(ii) of this section, or by applica-

tion of progressive rates to such excess.

(c) *Definition of wage and other business income.* For purposes of section 6362(d) and this section, the term "wage and other business income" means the following types of income:

(1) Wages, as defined in section 3401(a) and the regulations thereunder, but for these purposes:

(i) The amount of wages shall exclude amounts which are treated as wages under section 3402 (o) or (p) (relating to supplemental unemployment compensation benefits, annuity payments, and voluntary withholding agreements), and amounts which are treated as disability payments to the extent that they are excluded from gross income for Federal income tax purposes, pursuant to section 105(d), and

(ii) The amount of wages shall be reduced by those expenses which are directly related to the earning of such wages and with respect to which deductions are properly claimed from gross income, in computing adjusted gross income;

(2) Net earnings from self-employment, as defined in section 1402(a); and

(3) The distributive share of income of any trade or business carried on by a trust, estate, or electing small business corporation (as defined in section 1371(a) and the regulations thereunder), to the extent that such share:

(i) Is includible in the gross income of the taxpayer for the taxable year, and

(ii) Would constitute net earnings from self-employment if the trade or business were carried on by a partnership.

For purposes of this subparagraph, "distributive share" includes the income of a trust or estate which is taxable to the taxpayer as a beneficiary under applicable Federal income tax rules, and the undistributed taxable income of an electing small business corporation which is taxable to the taxpayer as a shareholder under section 1373.

(d) *Income derived from sources within a State.*—(1) *Income attributable primarily to services.* Except as otherwise provided by Federal statute (see paragraphs (h), (i), and (j) of § 301.6362-7), wage income and other business income (net earnings from self-employment or distributive shares) which is attributable more to services performed by the taxpayer than to a capital investment of the taxpayer shall be considered to have been derived from sources within a State only if the services of the taxpayer which give rise to the income are performed in such State. If for a taxable year only a portion of the taxpayer's services giving rise to the

income from one employment, trade, or business is performed within a State, then it shall be presumed that the amount of income from such employment, trade, or business which is derived from sources within that State equals that portion of the total income derived from such employment, trade, or business for the year which the amount of time spent by the taxpayer for such year performing services with respect to that employment, trade, or business in that State bears to the aggregate amount of time spent by the taxpayer for such year performing all of such services. However, the presumption stated in the preceding sentence may be rebutted in the event that the taxpayer proves, by use of detailed records, that the correct allocation of his income is otherwise.

(2) *Income attributable primarily to investment.* Except as otherwise provided by Federal statute (see paragraph (j) of § 301.6362-7), business income (net earnings from self-employment or distributive shares) which is attributable more to a capital investment of the taxpayer than to services performed by the taxpayer shall be considered to have been derived from sources within the State, if any, in which the significant activities of the trade or business are conducted. If for the taxable year only a portion of the significant activities conducted with respect to one trade or business is conducted within a certain State, then the portion of the taxpayer's total income for the year from such trade or business which is considered to be derived from sources within that State shall be computed as follows:

(i) *Allocation by records.* The portion of the taxpayer's total income from the trade or business which is considered to be derived from sources within the State shall be the portion which is allocable to such sources according to the records of the taxpayer or of the partnership, trust, estate, or electing small business corporation from which his income is derived, provided that the taxpayer establishes to the satisfaction of the district director, when requested to do so, that those records fairly and equitably reflect the income which is allocable to sources within the State. An allocation made pursuant to this subdivision shall be based on the location of the significant activities of the trade or business, and not on the location at which the taxpayer's personal services are performed.

(ii) *Allocation by formula.* If the taxpayer (or the trade or business) does not keep records meeting the requirements of subdivision (i) of this subparagraph, or if the taxpayer fails to meet the burden of proof set forth therein, then the amount of the taxpayer's income from the trade or busi-

ness which is considered to be derived from sources within the State shall be determined by multiplying the total of his income (as defined in paragraphs (c) (2) and (3) of this section) from the trade or business for the taxable year by the percentage which is the average of these three percentages:

(A) *Property percentage.* The percentage computed by dividing the average of the value, at the beginning and end of the taxable year, of real and tangible personal property connected with the taxpayer's trade or business and located within the State, by the average of the value, at the beginning and end of the taxable year, of all such property located both within and without the State. For this purpose, real property shall include real property rented to the taxpayer in connection with the trade or business, or rented to the trade or business.

(B) *Payroll percentage.* The percentage computed by dividing the total wages, salaries, and other compensation for personal services which is paid or incurred during the taxable year to employees in connection with the taxpayer's trade or business, and which would be treated as derived by such employees from sources within the State pursuant to subparagraph (1) of this paragraph, by the total of all such wages, salaries, and other compensation for personal services which is so paid or incurred without regard to whether such payments would be treated as derived by the employees from sources within the State. For purposes of this subdivision (ii), no amount paid as deferred compensation pursuant to a retirement plan to a former employee shall be taken into consideration.

(C) *Gross income percentage.* The percentage computed by dividing the gross sales or charges for services performed by or through an agency located within the State by the total of all gross sales or charges for services performed both within and without the State. The sales or charges to be allocated to the State shall include all sales which are negotiated, and charges which are for services performed, by an employee, agent, agency, or independent contractor chiefly situated at, or working principally out of an office located within, the State.

(3) *Income attributable to real estate investment.* Notwithstanding subparagraph (2) of this paragraph, income and deductions from the rental of real property, and gain and loss from the sale, exchange, or other disposition of real property, shall not be subject to allocation under subparagraph (2), but shall be considered as entirely derived from sources located within the State in which such property is located.

(4) *Treatment of losses.* A loss attributable to the taxpayer's employment, or to his conduct of, participation in, or investment in a trade or business, shall be allocated in the same manner as the income attributable to such employment or trade or business would be allocated pursuant to this paragraph.

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

Example (1). A, an employee who earns \$10,000 in wage income attributable to services, and who has no other wage or other business income, spends 60 percent of his working time performing services for his employer in State X, 30 percent in State Y, and 10 percent in State Z. In the absence of the requisite proof to the contrary, A's wage income is considered to have been derived 60 percent from sources located within State X, 30 percent within State Y, and 10 percent within State Z. Assuming that A is a nonresident with respect to all three States, and that they all impose qualified nonresident taxes, then the qualified nonresident tax of State X is imposed on \$6,000, the qualified nonresident tax of State Y is imposed on \$3,000, and the qualified nonresident tax of State Z is not imposed on any of the income because A did not derive at least 25 percent of his wage and other business income from sources located within State Z.

Example (2). B, who earns no wage income but who has a total of \$10,000 of other business income for the taxable year, all of which is net income from self-employment attributable primarily to services, spends 45 percent of his working time performing services in State X, 30 percent in State Y, and 25 percent in State Z. However, the rates that B is able to charge for his services and the business expenses which he incurs vary in the different States, and he is able to prove by detailed records that his net income from self-employment was in fact derived 50 percent from sources located within State X, 35 percent from sources located within State Y, and 15 percent from sources located within State Z. Assuming that B is a nonresident with respect to all three States, and that they all impose qualified nonresident taxes, then the qualified nonresident tax of State X is imposed on \$5,000, the qualified nonresident tax of State Y is imposed on \$3,500, and the qualified nonresident tax of State Z is not imposed on any of the income because B did not derive at least 25 percent of his wage and other business income from sources located within State Z.

Example (3). C is a partner in a profitable business concern, in which he has a substantial capital investment. His net earnings from self-employment attributable to his partnership interest are \$75,000 for the taxable year. The fair market value of the services which C performs for the partnership during the taxable year is \$30,000. C's income is therefore attributable primarily to his capital investment. The partnership business is carried on partially within and partially without State X. Neither C nor the partnership maintains records from which the portion of C's \$75,000 income which is considered to be derived from sources within State X can be satisfactorily proven. As determined under subparagraph (2) of this paragraph, the partnership's "property

percentage" in State X is 70, its "payroll percentage" therein is 60, and its "gross income percentage" therein is 56. The amount of C's partnership income considered to be derived from sources within State X is \$46,500 (\$75,000 x 62 percent). This result would obtain even if C's services for the partnership are performed entirely within State X.

Example (4). Assume the same facts as in (3), except that the records of the partnership of which C is a member indicate that the net profits of the partnership are derived 40 percent from business activities conducted in State X, and 60 percent from business activities conducted in State Y. C is requested to prove that those records fairly and equitably reflect the income which is allocable to sources within State X. The documentary evidence which he adduces in support of the allocation made by the records shows how such allocation results from a careful step-by-step tracing of the profitability of each phase and aspect of the partnership's operations, and shows the State in which each such phase and aspect of the operations is conducted. C's proof is satisfactory to show that the percentage allocation, and the amount of his partnership income considered to be derived from sources within State X is \$30,000, or \$75,000 multiplied by 40 percent. This result would obtain even if B's services for the partnership are performed entirely within State X.

§ 301.6362-6 Requirements relating to residence.

(a) *In general.* A tax imposed by a State meets the requirements of section 6362(e) and this section if in effect it provides that:

(1) The State of residence of an individual, estate, or trust is determined according to paragraph (1), (2), or (3) respectively, of section 6362(e), and according to paragraph (b), (c), or (d), respectively, of this section.

(2) The liability for a resident tax imposed by such State upon an individual or trust which changes residence to another State in the taxable year is determined according to section 6362(e)(4) and paragraph (e) of this section.

(3) The rules relating to current collection of tax apply as provided in section 6362(e)(5) and paragraph (f) of this section.

(b) *Residence of an individual.*—(1) *In general.* Except as otherwise provided in subparagraph (5) of this paragraph, an individual is treated as a resident of a State with respect to a taxable year only if:

(i) His principal place of residence (as defined in subparagraph (2) of this paragraph) is within such State for a period of at least 135 consecutive days, at least 30 days of which are in such taxable year; or

(ii) In the case of a citizen or resident of the United States who is not a resident of any State (determined as provided in subdivision (i) of this subparagraph) with respect to such taxable year, his domicile (as defined in subparagraph (3) of this paragraph) is

in such State for at least 30 days during such taxable year.

With respect to an individual who is a resident (determined as provided in subdivision (i) of this subparagraph) of more than one State during a taxable year, see paragraph (e) of this section.

(2) *Principal place of residence*—(i) *Definition*.—For purposes of subparagraph (1)(i) of this paragraph and paragraph (d)(4) of this section, the term "principal place of residence" shall mean the place which is an individual's primary home. An individual's temporary absence from his primary home shall not effect a change with respect thereto. On the other hand, if an individual moves to another State, other than as a mere transient or sojourner, he shall be treated as having changed the location of his primary home.

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

Example (1). A has a city home and a country home. He resides in the city home for 7 months of the year and uses the address of that home as his legal residence for purposes of driver's license, automobile registration, and voter registration. He resides in the country home 5 months of the year. His city home is considered his principal place of residence.

Example (2). During the taxable year, B, a construction worker, is employed at several different locations in different States. The duration of each job on which he is employed ranges from a few weeks to several months, and he knows when he accepts a job what its approximate duration will be. He owns a house in State X which he uses as his legal residence for purposes of driver's license, automobile registration, and voter registration. In addition, his family lives there during the entire year, and B lives there during periods between jobs. However, the duration of the jobs and the distance between the job-sites and his house require him to live in the localities of the respective job-sites during the period of his employment, although occasionally he returns to his house in State X on weekends. B's house in State X is his principal place of residence during all of the taxable year.

Example (3). C, a dependent of his parents who are residents of State X, is a full-time student in a 4-year degree program at a college in State Y. During the 9-month academic year, C lives on the college campus, but he returns to his parents' home in State X for the summer recess. C gives the State Y as his residence for purposes of his driver's license and voter registration, but lists the address of his parents' home in State X as his "permanent address" on the records of the college which he attends. Although C's domicile remains at his parents' home in State X, his presence in State Y cannot be regarded as that of a mere transient or sojourner; accordingly, C's principal place of residence is in State Y for that portion of the taxable year during which he attends college.

Example (4). D loses his job in State X, where he lived and worked for many years. After a series of unsuccessful attempts to

find other employment in State X, he accepts a job in State Y. D gives up his apartment in State X and moves to State Y upon commencing his new job; however, he intends to continue to explore available employment opportunities in State X so that he may return there as soon as an opportunity to do so arises. D changes his principal place of residence when he moves to State Y.

(3) *Domicile defined*. For purposes of subparagraph (1)(ii) of this paragraph and paragraph (d)(4) of this section, the term "domicile" shall mean an individual's fixed or permanent home. An individual acquires a domicile in a place by living there; even for a brief period of time, with no definite present intention of later removing therefrom. Residence without the requisite intention to remain indefinitely will not suffice to change domicile, nor will intention to change domicile effect such a change until accompanied by actual removal. A domicile, once acquired, is maintained until a new domicile is acquired.

(4) *Period of residence*—(i) *General rule*. An individual who becomes a resident of a State pursuant to subparagraph (1) of this paragraph, or who is at the beginning of a taxable year a resident of a State pursuant to such provision, shall be treated as continuing to be a resident of such State through the end of the taxable year, unless, prior thereto, such individual becomes a resident, under the principles of subparagraph (1), of another State or a possession or foreign country. In the event that the individual becomes a resident of such another jurisdiction prior to the end of the taxable year, his residence in such State shall be treated as ending on the day prior to the day on which he becomes a resident of such other jurisdiction pursuant to subparagraph (1).

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

Example (1). A, a calendar-year taxpayer, has his principal place of residence in State X from the beginning of 1976 through August 1, 1976, when he gives up permanently such principal place of residence. He spends the remainder of 1976 traveling outside of the United States, but does not become a resident of any other country. A is considered to be a resident of State X for the entire year 1976.

Example (2). Assume the same facts as in example (1), except that A ceases his traveling and establishes his principal place of residence in State Y on November 15, 1976. Assume, also, that A maintains that principal place of residence for more than 135 consecutive days. Under these circumstances, for his taxable year 1976, A is considered to be a resident of State X from January 1 through November 14, and a resident of State Y from November 15 through December 31.

(5) *Special rules*. (i) No provision of subchapter E or the regulations there-

under shall be construed to require or authorize the treatment of a Senator, Representative, Delegate, or Resident Commissioner as a resident of a State other than the State which he represents in Congress.

(ii) For special rules relating to members of the Armed Forces, see paragraph (h) of § 301.6362-7.

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

Example (1). A, a calendar-year taxpayer, maintains his principal place of residence in State X from December 1, 1976, through April 15, 1977. Assuming that A was not a resident of any other jurisdiction at any time during 1976, A is treated as a resident of State X for the entire year 1976. Such result would obtain even if A was absent from State X on vacation for some portion of December 1976. Moreover, such result would obtain even if it is assumed that A was a domiciliary of State Y from January 1, 1976, through April 15, 1977, because an individual's domicile does not determine his residence so long as residence in one State for the taxable year can be determined from the general rule stated in the first sentence of paragraph (b)(1) of this section.

Example (2). Assume the same facts as in example (1) (including the fact of A's domicile in State Y), except that A maintained his principal place of residence in State Z from September 15, 1975, through January 31, 1976, inclusive. With respect to the year 1976, A is treated as a resident of State Z from January 1 through November 30, and as a resident of State X from December 1 through December 31. A's liability for the qualified taxes of the respective States for 1976 shall be determined pursuant to the provisions in paragraph (e) of this section.

(c) *Residence of an estate*. An estate of an individual is treated as a resident of the last State of which such individual was a resident, as determined under the rules of paragraph (b) of this section, prior to his death. However, the estate of an individual who was not a resident of any State (as determined without regard to the 30-day requirement in paragraph (b)(1) of this section) immediately prior to his death, and who was not a resident of any State at any time during the 3-year period ending on the date of his death, is not treated as a resident of any State. For purposes of determining the decedent's last State of residence, the rules of paragraph (b) shall be applied irrespective of whether subchapter E was in effect at the time the period of 135 consecutive days of residence began, or whether the decedent's last State of residence is a State electing to enter into an agreement pursuant to subchapter E. The determination of the State of residence of an estate pursuant to this paragraph shall not be governed by any determination under State law as to which State is treated as the residence or domicile of the decedent for purposes other than its individual income tax (such as liability for State inheritance

tax or jurisdiction of probate proceedings).

(d) *Residence of a trust*—(1) *In general.* (i) The State of residence of a trust shall be determined by reference to the circumstances of the individual who, by either an inter-vivos transfer or a testamentary transfer, is deemed to be the "principal contributor" to the trust under the provisions of subdivision (ii) of this subparagraph.

(ii) If only one individual has ever contributed assets to the trust, including the assets which were transferred to the trust at its inception, then such individual is the principal contributor to the trust. However, if on any day subsequent to the initial creation of the trust, such trust receives assets having a value greater than the aggregate value of all assets theretofore contributed to it, then the trust shall be deemed (for the limited purpose of determining the State of residence) to have been "created" anew, and the individual who on the day of such creation contributed more (in value) than any other individual contributed on that day shall become the principal contributor to the trust. When a trust is created anew, all references in this paragraph to the creation of the trust shall be construed as referring to the most recent creation. For purposes of this paragraph, the value of any asset shall be its fair market value on the day that it was contributed to the trust; any subsequent appreciation or depreciation in the value of the asset shall be disregarded.

(2) *Testamentary trust.* A trust with respect to which a deceased individual is the principal contributor by reason of property passing on his death is treated as a resident of the last State of which such individual was a resident, as determined under the rules of paragraph (b) of this section, before his death. However, if such deceased individual was not a resident of any State (as determined without regard to the 30-day requirement in paragraph (b)(1) of this section) immediately prior to his death, and was not a resident of any State at any time during the 3-year period ending on the date of his death, then a testamentary trust of which he is the principal contributor by reason of property passing on his death is not treated as a resident of any State. All property passing on the transferor's death is treated for this purpose as a contribution made to the trust on the date of death, regardless of when the property is actually paid over to the trust.

(3) *Nontestamentary trust.* A trust which is not a trust described in subparagraph (2) of this paragraph is treated as a resident of the State in which the principal contributor to the trust, during the 3-year period ending on the date of the creation of the

trust, had his principal place of residence for an aggregate number of days longer than the aggregate number of days he had his principal place of residence in any other State. However, if the principal contributor to such a trust was not a resident of any State at any time during such 3-year period, then the trust is not treated as a resident of any State.

(4) *Special rules.* If the application of the provisions of the foregoing subparagraphs of this paragraph results in a determination of more than one State of residence for a trust, or does not provide a rule by which the residence or nonresidence of the trust can be determined, then the determination of the State of residence of such trust shall be made according to the rules of the applicable subdivision of this subparagraph.

(i) If, at the time of creation of the trust, 50 percent or more in value of the trust corpus consists of real property, then the trust shall be treated as a resident of the State in which more of the real property (in value) which was in the trust at such time was located than any other State.

(ii) If, at the time of creation of the trust, less than 50 percent in value of the trust corpus consists of real property, then the trust shall be treated as a resident of the State in which, at such time, the trustee, if an individual, had his principal place of residence, or, if a corporation, had its principal place of business. If there were two or more trustees, then the foregoing sentence shall be applied by reference to the principal places of residence, or of business, of the majority of trustees who had authority to make investment and other management decisions for the trust.

(iii) If, after application of the provisions of subdivisions (i) and (ii) of this subparagraph, the State of residence of the trust still cannot be ascertained, then the Commissioner of Internal Revenue shall determine the State of residence of such trust for purposes of qualified taxes. Such determination shall be made by reference to the number of significant contacts each State had with the trust at the time of its creation. Significant contacts shall include the principal place of residence of the principal contributor or contributors to the trust, the principal place of residence or business of the trustee (or trustees), the situs of the assets of which the trust corpus was composed, and the location from which management decisions emanated with respect to the business and investment interests of the trusts.

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

Example (1). A created a trust in 1950 by transferring to it certain stock in a corpora-

tion. At the time of such transfer, the stock had a fair market value of \$1,000. A at all relevant times had his principal place of residence in State X, and accordingly the trust is treated as a resident of such State for qualified tax purposes. As of January 1, 1977, the stock originally contributed by A, which was at all times the only property in the trust, has a fair market value of \$3,000. On such date, B, who has had his principal place of residence in State Y for more than 3 years, contributes to the trust property having a fair market value of \$1,200. For purposes of determining the identity of the principal contributor to the trust and the State of residence of the trust, the stock contributed by A in 1950 continues to be valued for such purposes at \$1,000. Thus, the trust is treated as being created anew on January 1, 1977, with B as the principal contributor, and with State Y as its State of residence.

Example (2). C has his principal place of residence in State X continuously for many years, until August 1, 1978, when he establishes his principal place of residence in State Y. The change of residence is intended to be permanent, and C has no further contact with State X after such change. On January 1, 1980, C creates a nontestamentary trust. During the 3-year period ending on such date C had his principal place of residence in State X for 576 days, and in State Y for 519 days. Therefore, the trust is treated as a resident of State X.

(e) *Liability for tax on change of residence during taxable year*—(1) *In general.* If, under the principles contained in paragraph (b) or (d) of this section, an individual or trust becomes a resident, or ceases to be a resident, of a State, and is also a resident of another jurisdiction outside of such State during the same taxable year, the liability of such individual or trust for the resident tax of such State shall be determined by multiplying the amount which would be his or its liability for tax (computed after allowing the nonrefundable credits (i.e., credits not corresponding to the credits referred to in section 6401(b) available against the tax)) if he or it had been a resident of such State for the entire taxable year by a fraction, the numerator of which is the number of days he or it was a resident of such State during the taxable year, and the denominator of which is the total number of days in the taxable year. The preceding sentence shall not apply by reason of the fact that an individual is born or dies during the taxable year, or by reason of the fact that a trust comes into existence or ceases to exist during the taxable year.

(2) *Residence determined by domicile.* When an individual is treated as a resident of a State by reason of being domiciled in such State, pursuant to paragraph (b)(1)(ii) of this section, then the numerator of the fraction provided in subparagraph (1) of this paragraph shall be the number of days the individual was domiciled in the State during the taxable year.

(3) *Example.* The application of this paragraph may be illustrated by the following example:

Example. A, a calendar-year taxpayer, is a resident of State X continuously for many years prior to March 15, 1977. On such date, A retires and establishes a new principal place of residence in State Y. A earns \$6,000 in 1977 prior to March 15, but receives no taxable income for the remainder of such year. If A had been a resident of State X for the entire taxable year 1977, his liability with respect to the qualified tax of such State (computed after allowing the nonrefundable credits available against the tax) would be \$600. If he had been a resident of State Y for the entire taxable year 1977, his liability with respect to the qualified tax on that State (computed similarly) would be \$400. Pursuant to the provisions in paragraph (e) of this section, A's liabilities for State qualified taxes for 1977 are as follows:

Liability for State X tax = \$600 × 73/365 = \$120

Liability for State Y Tax = \$400 × 292/365 = \$320.

(f) *Current collection of tax.* The State tax laws shall contain provisions for methods of current collection with respect to individuals which correspond to the provisions of the Internal Revenue Code of 1954 with respect to such current collection, including chapter 24 (relating to the collection of income tax at source on wages) and sections 6015, 6073, 6153, and other provisions of the Code relating to declarations (and amendments thereto) and payments of estimated income tax. Except as otherwise provided by Federal statute (see paragraphs (h), (i), and (j) of § 301.6362-7), in applying such provisions of the State tax laws:

(1) In the case of a resident tax, an individual shall be subject to the current collection provisions if either—

(i) He is a resident of the State within the meaning of paragraph (b) of this section, or

(ii) He has his principal place of residence (as defined in paragraph (b)(2) of this section) within the State,

and it is reasonable to expect him to have it within the State for 30 days or more during the taxable year.

(2) In the case of a nonresident tax, an individual shall be subject to the current collection provisions if he does not meet either description relating to an individual in subparagraph (1) of this paragraph, if he is not exempt from liability for the tax by reason for a reciprocal agreement between the State of which he is a resident and the State imposing the tax, and if it is reasonable to expect him to receive wage or other business income derived from sources within the State imposing the tax (as defined in paragraph (d) of § 301.6362-5) for services performed on 30 days or more of the taxable year.

For additional rules relating to withholding see paragraph (d) of § 301.6361-1.

§ 301.6362-7 Additional requirements.

A State tax meets the additional requirements of section 6362(f) and this section only if:

(a) *State agreement must be in effect for period concerned.* A State agreement, as defined in paragraph (a) of § 301.6361-4, is in effect with respect to such tax for the taxable period in question.

(b) *State laws must contain certain provisions.* Under the laws of such State, the provisions of subchapter E and the regulations thereunder, as in effect from time to time, are applicable for the entire period for which the State agreement is in effect. Any change made by the State in such tax (other than an adjustment in the State law which is made solely in order to comply with a change in the Federal Law or regulations) shall not apply to taxable years beginning in any calendar year for which the State agreement is in effect unless the change is enacted before November 1 of such year.

(c) *State individual income tax laws can be only of certain kinds.* Such State does not impose any tax on the income of individuals other than (1) a qualified resident tax, and (2) either or both a qualified nonresident tax and a separate tax on income which is not wage and other business income as defined in paragraph (c) of § 301.6362-5 and which is received or accrued by individuals who are domiciled in the State, but who are not residents of the State (as defined in paragraph (b) of § 301.6362-6). For purposes of this paragraph, a tax imposed on the amount taxed under section 56 (as permitted under § 301.6362-2(b)(2)) shall be treated as an adjustment to and a part of the qualified resident tax. Also, tax laws which were in effect prior to the effective date of a State agreement and which are not repealed, but which are made inapplicable for the period during which the State agreement is in effect, shall be disregarded.

(d) *Taxable years must coincide.* The taxable years of all individuals, estates, and trusts under such tax are required to coincide with their taxable years used for purposes of the taxes imposed by chapter 1. Accordingly, when subchapter E begins to apply to a State, a taxpayer whose taxable year for purposes of the Federal income tax is different from his taxable year for purposes of the State income tax which precedes the qualified tax may have one short taxable year for purposes of such State income tax, so that thereafter his taxable years for purposes of the qualified tax will coincide with the Federal taxable year.

(e) *Married individuals.* Individuals who are married within the meaning of section 143 of the Code are prohibited from filing (1) a joint return for

purposes of such State tax if they file separate Federal income tax returns, or (2) separate returns for purposes for such State tax if they file a joint Federal income tax return.

(f) *Penalties; no double jeopardy.* Under the laws of such State:

(1) Civil and criminal sanctions identical to those provided by subtitle F, and by title 18 of the United States Code (relating to crimes and criminal procedures), with respect to the taxes imposed on the income of individuals by chapter 1 and on the wages of individuals by chapter 24, apply to individuals and their employers who are subject to such State tax (and the collection and administration thereof, including the corresponding withholding tax imposed to implement the current collection of such State tax) as if such tax were imposed by chapter 1 or chapter 24, in the case of the withholding tax, except to the extent that the application of such sanctions is modified by regulations issued under subchapter E; and

(2) No other sanctions or penalties apply with respect to any act or omission to act in respect of such State tax.

See also paragraph (e) of § 301.6361-1 with respect to criminal penalties.

(g) *Partnerships, trusts, subchapter S corporations, and other conduit entities.* Under the laws of such State, the State tax treatment of—

(1) Partnerships and partners,

(2) Trusts and their beneficiaries,

(3) Estate and their beneficiaries,

(4) Electing small business corporations (within the meaning of section 1371(a) and their shareholders, and

(5) Any other entity and the individuals having beneficial interests therein (such as a cooperative corporation and its shareholders), to the extent that such entity is treated as a conduit for purposes of the taxes imposed by chapter 1.

corresponds to the tax treatment provided therefor with respect to the taxes imposed by chapter 1. For example, a subchapter S corporation shall not be subject to the State's corporate income tax on amounts which are includible in shareholders incomes which are subject to that State's individual income tax, except to the extent that the subchapter S corporation is subject to tax under Federal law. Similarly, a partnership shall not be subject to the State's unincorporated business income tax on amounts which are includible in partners' incomes which are subject to that State's individual income tax. However, the laws of the State which set forth the provisions of such State individual income tax shall authorize the Commissioner of Internal Revenue to require that the conduit entities described in this paragraph (or some of

them) supply information to the Federal Government with respect to the source of income, the State of residence, or the amount of income of a particular type, of an individual, estate, or trust holding a beneficial interest in such conduit entity.

(h) *Members of armed forces.* The relief provided to any member of the Armed Forces by section 514 of the Soldiers' and Sailors' Civil Relief Act (50 U.S.C. App. sec. 574) is in no way diminished. Accordingly, for purposes of such State tax, an individual shall not be considered to have become a resident of a State solely because of his absence from his original State of residence under military order. Moreover, compensation for military service shall not be considered as income derived from a source within a State of which the individual earning such compensation is not a resident, within the meaning of paragraph (d) of § 301.6362-5. The preceding sentence shall not apply to nonmilitary compensation. Thus, for example, if an individual who is serving in State X as a member of the Armed Forces, and who is regarded as a resident of State Y under the Soldiers' and Sailors' Civil Relief Act, earns nonmilitary income in State X from a part-time job, such nonmilitary income may be subject to a qualified nonresident tax imposed by State X.

(i) *Withholding on compensation of employees of railroads, motor carriers, airlines, and water carriers.* There is no contravention of the provisions of section 26, 226A, or 324 of the Interstate Commerce Act, or of section 1112 of the Federal Aviation Act of 1958, with respect to the withholding of compensation to which such sections apply for purposes of the nonresident tax.

(j) *Income derived from interstate commerce.* There is no contravention of the provisions of the Act of September 14, 1959 (73 Stat. 555), with respect to the taxation of income derived from interstate commerce to which such statute applies.

§ 301.6363-1 State agreements.

(a) *Notice of election.* If a State elects to enter into a State agreement it shall file notice of such election with the Secretary or his delegate. The notice of election shall include the following:

(1) *Statement by the Governor.* A written statement by the Governor of the electing State:

(i) Requesting that the Secretary enter into a State agreement, and

(ii) Binding the Governor and his successors in office to notify the Secretary or his delegate immediately of the enactment, between the time of the filing of the notice of election and the time of the execution of the State

agreement, of any law of that State which meets the description given in any of the subdivisions of subparagraph (2) of this paragraph, whether or not such law is intended to be administered by the United States pursuant to subchapter E.

(2) *Copy of State laws.* Certified copies of all laws of that State described in any of the following subdivisions of this subparagraph, and a specification of laws described in subdivision (i) of this subparagraph as "subchapter E laws", of laws described in subdivision (ii) as "other tax laws", of laws described in subdivision (iii) as "non-tax laws", and of laws described in subdivision (iv) as "interstate cooperation laws":

(i) All of the State individual income tax laws (including laws relating to the collection or administration of such taxes or to the prosecution of alleged civil or criminal violations with respect to such taxes) which the State would expect the United States to administer pursuant to subchapter E if the State agreement is executed as requested. In order to have a valid notice, the State must have a tax which would meet the requirements for qualification specified in section 6362 and the regulations thereunder if a State agreement were in effect with respect thereto, with no conditions attached to the effectiveness of such tax other than the execution of a State agreement. Such tax must be effective no later than the January 1 specified in the State's notice of election as the date as of which subchapter E is desired to become applicable to the electing State, except that such effective date shall be deferred to the date provided in the State agreement for the beginning of applicability of subchapter E to the State, if the latter date is different from the date specified in the notice of election.

(ii) All of the State income tax laws applicable to individuals (including laws relating to the collection or administration of such taxes or to the prosecution of alleged civil or criminal violations with respect to such taxes) which the State would not expect the United States to administer but which may be in effect simultaneously (for any period of time) with the State agreement.

(iii) All of the State laws other than individual income tax laws which provide for the making of any payments by the State based on one or more criteria which the State may desire to verify by reference to information contained in returns of qualified taxes.

(iv) All of the State laws which may be in effect simultaneously (for any period of time) with the State agreement and which provide for cooperation or reciprocal agreement between the electing State and another State

with respect to income taxes applicable to individuals.

(3) *Approval by legislature or authorization by constitutional amendment.* A certified copy of an Act or Resolution of the legislature of the electing State in which the legislature affirmatively expresses its approval of the State's entry into a State agreement, or a certified copy of an amendment to the constitution of such State by which the voters of the State affirmatively authorize such entry.

(4) *Opinion by State Attorney General or judgment of highest court.* A written statement by the State Attorney General to the effect that, in his opinion, no provision of the State's Constitution would be violated by the State law's incorporation by reference of the Federal individual income tax laws and regulations, as amended from time to time, by the Federal prosecution and trial of individuals who are alleged to have committed crimes with respect to the State's qualified tax (when it goes into effect as such), or by any other provision relating to such tax, considered as of the time it is being collected and administered by the Federal Government pursuant to subchapter E. However, if such a statement is not included in the notice of election, a judgment of the highest court of the State to the same effect may be submitted in its place.

(5) *Effective date.* A written specification of the January as of which subchapter E is desired to become applicable to the electing State.

(b) *Rules relating to time for filing notice of election.* An electing State must file its notice of election more than 6 months prior to the January 1 as of which the notice specifies that the provisions of subchapter E are desired to become applicable to such State. Thus, for example, if the date specified in the notice is January 1, 1979, the notice must be filed no later than June 30, 1978. However, because under the provisions of section 204(b) of the Federal-State Tax Collection Act of 1972 (86 Stat. 945), as amended by section 2116(a) of the Tax Reform Act of 1976 (90 Stat. 1910), the provisions of subchapter E will initially take effect on the first January 1 which is more than 1 year after the first date on which at least one State has filed a notice of its election (see § 301.6361-5), the notice of an election which causes subchapter E to initially take effect must be filed with the Secretary or his delegate more than 1 year prior to the January 1 as of which such notice specifies that the provisions of subchapter E are desired to become applicable to such State. Thus, for example, if such an initially electing State desires to elect subchapter E as of January 1, 1979, its notice must be filed no later than De-

ember 31, 1977. For purposes of this section, if the notice of election is sent by either registered or certified mail to the Secretary of the Treasury, Washington, D.C. 20220, then it shall be deemed to be filed on the date of mailing; otherwise, the notice of election shall be deemed to be filed when it is received by the Secretary or his delegate.

(c) *Procedures relating to defects in notice or tax laws.* If a State has filed a notice of election, then the Secretary shall, within 90 days after the notice is filed, notify the Governor of such State in writing of any defect in the notice of election which prevents it from being valid, and of any defect in the State's tax laws which causes the tax submitted to fail to meet the requirements for qualification specified in section 6362 and the regulations thereunder, other than the fact that no State agreement is in effect with respect thereto. Any such defect of which the Secretary does not notify the Governor within such 90-day period is waived. The Secretary or his delegate may, in his discretion, permit any of such defects of which the Governor is timely notified to be cured retroactively to the date of the filing of the notice of election, by amendment of the notice or the State law. Judicial review of the Secretary's determination that the notice of election or the tax laws, or both, contain defects, may be obtained as set forth in section 6363(d) and § 301.6363-4.

(d) *Execution and contents of State agreement.* If the Secretary does not timely notify the Governor of a defect in the notice of election or in the State's tax laws, as provided in paragraph (c) of this section, or if, as provided in such paragraph, all such defects have been cured retroactively, then the Secretary shall enter into a State agreement. The agreement shall include the following elements:

(1) *Effective date.* The agreement shall specify the January 1 as of which subchapter E will commence to be applicable to the State. Such date shall be the same as that specified in the notice of election pursuant to paragraph (a)(5) of this section, unless the parties agree to a different January 1, except that in no event shall a State agreement executed after November 1 specify the next January 1.

(2) *Obligation of Governor to notify the United States of changes in pertinent State laws.* The agreement shall require the Governor of the State, and his successors in office, to notify the Secretary or his delegate within 30 days of the enactment of any law of the State, after the execution of the agreement, of a type described in paragraph (a)(2) of this section.

(3) *Obligation of Governor to furnish to the United States information*

needed to administer State tax laws. The agreement shall require the Governor and his successors to furnish to the Secretary or his delegate any information needed by the Federal Government to administer the State tax laws. Such information shall include, for example, a list (which shall be maintained on a current basis) of those obligations of the State or its political subdivisions described in section 103(a)(1) from which the interest is not subject to the qualified taxes of the State.

(4) *Identification of State official to act as liaison with Federal Government.* The agreement shall include a designation by the Governor of the State official or officials with whom the Secretary or his delegate should coordinate in connection with any questions or problems which may arise during the period for which the State agreement is effective, including those which may result from changes or contemplated changes in pertinent State laws.

(5) *Identification of State official to receive transferred funds.* The agreement shall include a designation by the Governor of the State official who shall initially receive the funds on behalf of the State when they are transferred pursuant to section 6361(c) and § 301.6361-3.

(6) *Other obligations.* If the Secretary and the Governor both so agree, the agreement shall provide for additional obligations.

(e) *State agreement superseding certain other agreements.* For the period of its effectiveness, a State agreement shall supersede an otherwise effective agreement entered into by the State and the Secretary for the withholding of State income taxes from the compensation of Federal employees pursuant to 5 U.S.C. 5517 (or pursuant to 5 U.S.C. 5516, in the case of the District of Columbia).

§ 301.6363-2. Withdrawal from State agreements.

(a) *By notification.* If a State which has entered into a State agreement desires to withdraw from the agreement, its Governor shall file a notice of withdrawal with the Secretary or his delegate. A notice of withdrawal shall include the following documents:

(1) *Request by the Governor.* A request by the Governor of the State that the State agreement cease to be effective with respect to taxable years beginning on or after a specified January 1, except as provided in paragraph (b)(2) of § 301.6365-2 with respect to withholding in the case of fiscal year taxpayers.

(2) *Legislative approval of withdrawal.* A certified copy of an act or Resolution of the legislature of the State in which the legislature affirma-

tively expresses its approval of the State's withdrawal from the State agreement.

(3) *Identification of State official.* A written identification of the State official or officials with whom the Secretary or his delegate should coordinate in connection with the State's withdrawal from the State agreement.

(b) *By change in State law.* If any law of a State which has entered into a State agreement is enacted pertaining to individual income taxes (including the collection or administration of such taxes, and the prosecution of alleged civil or criminal violations with respect to such taxes), and if the Secretary or his delegate determines that as a result of such law the State no longer has a qualified tax, then such change in the State law shall be treated as a notification of withdrawal from the agreement. The Secretary shall notify the Governor in writing when a change is to be so treated. Such notification shall have the same effect as if, on the effective date of the disqualifying change in the law, the Governor had filed with the Secretary or his delegate a valid and sufficient notice of withdrawal requesting that the State agreement cease to be effective with respect to taxable years beginning on or after the first January 1 which is more than 6 months thereafter, subject to the exception with respect to withholding in the case of fiscal-year taxpayers. However, the cessation of effectiveness may be deferred to a subsequent January 1 if the Governor so requests and if the Secretary or his delegate in his discretion determines that the date of cessation provided in the preceding sentence would subject the State or its taxpayers to undue hardship. In addition, the Governor may request the Secretary or his delegate to permit the State's early withdrawal from the agreement, pursuant to paragraph (c)(2) of this section. Until the date of cessation of effectiveness of the State agreement, the change in State law which was treated as a notification of withdrawal, and any other such subsequent change that would be similarly treated, shall not be given effect for purposes of the Federal collection and administration of the State taxes. Similarly, such changes shall not be given effect for such purposes during the period of litigation if the State seeks judicial review of the action of the Secretary or his delegate pursuant to section 6363(d) or § 301.6363-4, even if such changes are ultimately found by the court not to disqualify the State's qualified tax. However, a change in State law which would be treated as a notice of withdrawal in the absence of this sentence shall not be so treated if, prior to the last November 1 preceding the January 1 on which the cessation

of effectiveness of the State agreement is to occur, either such change in State law is retroactively repealed, or the State law is retroactively modified and the Secretary or his delegate determines that with such modification the State has a qualified tax.

(c) *Rules relating to time of withdrawal*—(1) *General rule.* Except as provided in subparagraph (2) of this paragraph, a notice of withdrawal shall not be valid unless the January 1 specified therein is not earlier than the first January 1 which is more than 6 months subsequent to the date on which the notice is received by the Secretary or his delegate. Thus, for example, if the notice specifies January 1, 1980, for withdrawal, the notice must be received no later than June 30, 1979.

(2) *Early withdrawal.* The Secretary or his delegate may, in his discretion and upon written request by a Governor of a State who has filed a notice of withdrawal, waive the 6-months requirement of section 6363(b)(1) and subparagraph (1) of this paragraph if the Secretary determines that:

(i) The State will suffer a hardship if required to meet such requirement, and

(ii) The early withdrawal requested by the Governor would be practicable from the standpoint of orderly collection of the qualified tax and administration of the State law by the Federal Government.

§ 301.6363-3 Transition years.

The State may by law provide for the transition to or from a qualified tax to the extent necessary to prevent double taxation or other unintended hardships, or to prevent unintended benefits, under State law. Generally, such provisions shall be administered by the State; but, if requested to do so by the Governor of the State, the Secretary or his delegate may in his discretion, agree to administer such provisions either solely or jointly with the State.

§ 301.6363-4 Judicial review.

(a) *General rule.* If the Secretary or his delegate determines pursuant to paragraph (c) of § 301.6363-1 that a State did not file a valid notice of election or does not have a tax which would meet the requirements for qualification specified in section 6362 and the regulations thereunder if a State agreement were in effect with respect thereto, or if he determines pursuant to paragraph (b) of § 301.6363-2 that a participating State has enacted a law as a result of which the State no longer has a qualified tax, such State may, within 60 days after its Governor has received notification of such determination, file a petition for the review of such determi-

nation with either the United States Court of Appeals for the circuit in which the State is located or the United States Court of Appeals for the District of Columbia. If a State files such a petition, the clerk of the court shall forthwith transmit a copy of the petition to the Secretary or his delegate, who in turn shall thereupon file in the court the record of proceedings on which the determination adverse to the State was based, as provided in section 2112 of title 28, United States Code.

(b) *Court of Appeals' jurisdiction.* The court of Appeals may affirm or set aside, in whole or in part, the action of the Secretary or his delegate; and (subject to the rules delaying the effectiveness of the change in State law provided in paragraph (b) of § 301.6363-2) the court may issue such other orders as may be appropriate with respect to taxable years which include any part of the period of litigation.

(c) *Review of Court of Appeals' judgment.* The judgment of the Court of Appeals shall be subject to review by the Supreme Court of the United States upon certiorari or certification sought by either party as provided in section 1254 of title 28, United States Code.

(d) *Effect of final judgment.* If a final judgment, rendered with respect to litigation involving a State's petition to review a determination of the Secretary or his delegate to the effect that the State's individual income tax laws included in its notice of election would not meet the requirements for qualification specified in section 6362 and the regulations thereunder if a State agreement were in effect with respect thereto, includes a determination that the State's tax would in fact meet such requirements, then the provisions of subchapter E shall apply to the State with respect to taxable years beginning on or after the first January 1 which is more than 6 months after the date of such final judgment. If a final judgment, rendered with respect to litigation involving a State's petition to review a determination of the Secretary or his delegate to the effect that the State's previously-qualified tax ceases to qualify because of a change in the State's law, includes a determination that the State's tax does in fact cease to qualify, then the provisions of subchapter E (other than section 6363) shall cease to apply to the State with respect to taxable years beginning on or after the first January 1 which is more than 6 months after the date of such final judgment. See paragraph (b) of § 301.6365-2 for special rules with respect to withholding in the case of fiscal-year taxpayers.

(e) *Expedient treatment of judicial proceedings.* Under section 6363(d)(4),

any judicial proceedings to which a State and the United States are parties, and which are brought pursuant to section 6363, are entitled to receive a preference, and to be heard and determined as expeditiously as possible, upon request of the Secretary or the State.

§ 301.6365-1 Definitions.

(a) *State.* For purposes of subchapter E and the regulations thereunder, the term "State" shall include the District of Columbia, but shall not include the Commonwealth of Puerto Rico or any possession of the United States.

(b) *Governor.* For purposes of subchapter E and the regulations thereunder, the term "Governor" shall include the Mayor of the District of Columbia.

§ 301.6365-2 Commencement and cessation of applicability of subchapter E to individual taxpayers.

(a) *General rule.* Except for purposes of chapter 24 (relating to the collection of income tax at source on wages), whenever subchapter E begins or ceases to apply to any State (i.e., a State agreement begins or ceases to be effective) as of any January 1, such commencement or cessation of applicability shall apply to taxable years of individuals beginning on or after such date. For example, if subchapter E begins to apply to a particular State on January 1, 1980, it would become applicable for calendar year 1980 for calendar-year taxpayers in that State; but if a taxpayer in the State is using a fiscal year running from July 1 to June 30, the subchapter would begin to apply (except for purposes of chapter 24) to that taxpayer on July 1, 1980, for his taxable year ending June 30, 1981. Similarly, if the subchapter ceases to apply to such State on January 1, 1982, it would cease to apply to calendar-year taxpayers after the end of calendar year 1981; but it would cease to apply (except for purposes of chapter 24) to fiscal-year taxpayers at the end of their fiscal years which are in progress on January 1, 1982. The cessation of applicability of subchapter E to a State does not affect rights, duties, and liabilities with respect to any taxable year for which subchapter E does apply with respect to any taxpayer (or his employer).

(b) *Special rules pertaining to withholding*—(1) *Subchapter E beginning to apply.* The Federal withholding system provided in chapter 24 shall go into effect for State individual income tax purposes with respect to wages paid on or after the January 1 as of which subchapter E begins to apply to a State. If an employee is subject to a qualified tax imposed by the State, such withholding system shall apply

to his wages paid on or after that January 1, without regard to whether he is a calendar-year or fiscal-year taxpayer. See § 301.6363-3 with respect to transition-year rules.

(2) *Subchapter E ceasing to apply.* The Federal withholding system provided in chapter 24 shall cease to be effective for State tax purposes with respect to wages paid on or after the January 1 as of which subchapter E ceases to apply to the State, although fiscal-year taxpayers of that State continue to be subject to the other provisions of subchapter E for the remainder of their fiscal years then in progress. See § 301.6363-3 with respect to transition-year rules.

PAR. 22. Section 301.6405-1 is amended to read as follows:

§ 301.6405-1 Reports of refunds and credits.

Section 6405 requires that a report be made to the Joint Committee on Taxation of proposed refunds or credits in excess of \$100,000 of any income tax (including any qualified State individual income tax collected by the Federal Government), war profits tax, excess profits tax, estate tax, or gift tax. An exception is provided under which refunds and credits made after July 1, 1972, and attributable to an election under section 165(h) to deduct a disaster loss for the taxable year in which the disaster occurred, may be made prior to the submission of such report to the Joint Committee on Taxation.

[FR Doc. 78-35389 Filed 12-19-78; 8:45 am]

[4830-01-M]

[E.D. 7576]

PART 301—PROCEDURE AND ADMINISTRATION

Collection of Child Support Obligations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 6305 of the Internal Revenue Code of 1954, relating to the collection of child support obligations by the Internal Revenue Service. The addition of section 6305 to the Code was made by the Social Services Amendments of 1974.

DATE: These regulations are effective as of July 1, 1975, the date on which section 6305 of the Code was effective.

FOR FURTHER INFORMATION CONTACT:

Stephen J. Small of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue

Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. Attention: CC:LR:T, 202-566-3287, not a toll-free call.

SUPPLEMENTARY INFORMATION: On June 9, 1978, proposed amendments to the Regulations on Procedure and Administration (26 CFR Part 301) under section 6305 of the Internal Revenue Code of 1954 were published in the FEDERAL REGISTER (43 FR 25143). These amendments were proposed to conform the regulations to section 101(b)(1) of Part B of the Social Services Amendments of 1974 (88 Stat. 2358).

After consideration of all written comments received, the proposed regulation is adopted as herein revised. The only revision makes clear in § 301.6305-1(c)(1) that the regulation does not prohibit collection by the Internal Revenue Service of normal and reasonable costs incurred in the collection of certified amounts of delinquent court ordered child support payments. Most of the written comments were primarily concerned with the provisions of section 6305 of the Code and only secondarily with the proposed regulations.

The regulation will affect individuals only when an amount of overdue, judicially determined child support payments has been certified by the Department of Health, Education, and Welfare for collection by the Internal Revenue Service. The regulation states that the district director will be responsible for collection of a certified amount in the same manner and with the same powers exercised in the collection of an employment tax when collection would be jeopardized by delay, subject to the exceptions and restrictions specified in the regulation. Additionally, the regulation contemplates the establishment of a new revolving fund in the Department of the Treasury into which collected certified amounts are deposited from the general fund of the United States and from which withdrawals are made by the Department of Health, Education, and Welfare. The effectiveness of this regulation will be evaluated upon the basis of comments received from the public and the various offices of the Internal Revenue Service responsible for administration of the regulation and collection of certified amounts of overdue child support payments.

DRAFTING INFORMATION

The principal author of this regulation is Stephen J. Small of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in

developing the regulation, both on matters of substance and style.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

Accordingly, the amendments to the Regulations on Procedure and Administration (26 CFR Part 301), as proposed, are hereby adopted, subject to the revision of paragraph (c)(1) of § 301.6305-1 which is changed to read as follows:

§ 301.6305-1 *Assessment and collection of certain liability.*

(c) *Additional limitations and conditions—(1) Interest and penalties.* No interest, penalties, or additional amounts, other than normal and reasonable collection costs, may be assessed or collected in addition to the certified amount, other than the penalty imposed by section 6332 (c) (2) for failure to surrender property subject to levy and the penalty imposed by section 6657 for the tender of bad checks. Any such penalties and collection costs, if collected, will not be treated as part of the certified amount and will be retained by the United States as part of its general fund. No interest shall be allowed or paid on any overpayment of a certified amount.

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).

JEROME KURTZ,
Commissioner
of Internal Revenue.

Approved: December 4, 1978.

DONALD C. LUBICK,
Assistant Secretary
of the Treasury.

§ 301.6305-1 *Assessment and collection of certain liability.*

(a) *Scope.* Section 6305(a) requires the Secretary of the Treasury or his delegate to assess and collect amounts which have been certified by the Secretary of Health, Education, and Welfare as representing delinquent court ordered child support obligations of an individual. These amounts are to be collected in the same manner and with the same powers exercised by the Secretary of the Treasury or his delegate in the collection of an employment tax which would be jeopardized by delay. However, where the assessment is the first assessment against an individual for a delinquent amount of court ordered support for a particular individual or individuals, the collection is to be stayed for a period of 60 days following notice and demand. In addition, no interest or penalties (with the exception of the penalties imposed by sections 6332(c)(2) and 6657) shall be

assessed or collected on the amounts; paragraphs (4), (6), and (8) of section 6334(a) (relating to property exempt from levy) shall not apply; and, there shall be exempt from levy so much of the salary, wages, or other income of the individual which is subject to garnishment pursuant to a judgment entered by a court for the support of his minor children. Section 6305(b) provides that sole jurisdiction for any action brought to restrain or review assessment and collection of the certified amounts shall be in a State court or a State administrative agency.

(b) *Assessment and collection*—(1) *General rule.* Upon receipt of a certification (or recertification) from the Secretary of Health, Education, and Welfare or his delegate, under section 452(b) of Title IV of the Social Security Act as amended (relating to collection of child support obligations with respect to an individual), the district director or his delegate shall assess and collect the certified amount (or recertified amount). Except as provided in paragraph (c) of this section, the amount so certified shall be assessed and collected in the same manner, with the same powers, and subject to the same limitations as if the amount were an employment tax the collection of which would be jeopardized by delay. However, the provisions of subtitle F with respect to assessment and collection of taxes shall not apply with respect to assessment and collection of a certified amount where such provisions are clearly inappropriate to, and incompatible with, the collection of certified amounts generally. For example, section 6861(g) which allows the Secretary or his delegate to abate a jeopardy assessment if he finds a jeopardy does not exist will not apply.

(2) *Method of assessment.* An assessment officer appointed by the district director pursuant to § 301.6203-1 to make assessments of tax shall also make assessments of certified amounts. The assessment of a certified amount shall be made by the assessment officer signing the summary record of assessment. The date of assessment is the date the summary record is signed by the assessment officer. The summary record, through supporting records as necessary, shall provide—

- (i) The assessed amount;
- (ii) The name, social security number, and last known address of the individual owing the assessed amount;
- (iii) A designation of the assessed amount as a certified amount, together with the date on which the amount was certified and the name, position, and governmental address of the officer of the Department of Health, Education, and Welfare who certified the amount;

(iv) The period to which the child support obligation represented by the certified amount relates;

(v) The State in which was entered the court order giving rise to the child support obligation represented by the certified amount;

(vi) The name of the person or persons to whom the child support obligation represented by the certified amount is owed; and

(vii) The name of the child or children for whose benefit such child support obligation exists.

Upon request, the individual assessed shall be furnished a copy of pertinent parts of this assessment which set forth the information listed in subdivisions (i) through (vii) of this paragraph (b)(2).

(3) *Supplemental assessments and abatements.* If any assessment is incomplete or incorrect in any material respect, the district director or his delegate may make a supplemental assessment or abatement but only for the purpose of completing or correcting the original assessment. A supplemental assessment will not be used as a substitute for an additional assessment against an individual.

(4) *Method of collection.* (i) The district director or his delegate shall make notice and demand for immediate payment of certified amounts. Upon failure or refusal to pay such amounts, collection by levy shall be lawful without regard to the 10-day waiting period provided in section 6331(a). However, in the case of certain first assessments, paragraph (c)(4) of this section provides a rule for a stay of collection for 60 days. For purposes of collection, refunds of any internal revenue tax owed to the individual may be offset against a certified amount.

(ii) The district director or his delegate shall make diligent and reasonable efforts to collect certified amounts as if such amounts were taxes. He shall have no authority to compromise a proceeding by collection of only part of a certified amount in satisfaction of the full certified amount owing. However, he may arrange for payment of a certified amount by installments where advisable.

(5) *Credits or refunds.* In the case of any overpayment of a certified amount, the Secretary of the Treasury or his delegate, within the period of limitations for credit or refund of employment taxes, may credit the amount of the overpayment against any liability in respect of an internal revenue tax on the part of the individual who made the overpayment and shall refund any balance to the individual. However, the full amount of any overpayment collected by levy upon property described in paragraph

(c)(2) (i), (ii), or (iii) of this section shall be refunded to the individual. For purposes of applying this subparagraph, the rules of § 301.6402-2 apply where appropriate.

(6) *Disposition of certified amounts collected.* Any certified amount collected shall be deposited in the general fund of the United States, and the officer of the Department of Health, Education, and Welfare who certified the amount shall be promptly notified of its collection. There shall be established in the Treasury, pursuant to section 452 of Title IV of the Social Security Act as amended, a revolving fund which shall be available to the Secretary of Health, Education, and Welfare or his delegate, without fiscal year limitation, for distribution to the States in accordance with the provisions of section 457 of the Act. Section 452(c)(2) of the Act appropriates to such revolving fund out of any moneys not otherwise appropriated, amounts equal to the certified amounts collected under this paragraph reduced by the amounts credited or refunded as overpayments of the certified amounts so collected. The certified amounts deposited shall be transferred at least quarterly from the general fund of the Treasury to the revolving fund on the basis of estimates made by the Secretary of the Treasury or his delegate. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred. See, however, paragraph (c)(1) of this section for the special rule requiring retention in the general fund of certain penalties which may be collected.

(c) *Additional limitations and conditions*—(1) *Interest and penalties.* No interest, penalties or additional amounts, other than normal and reasonable collection costs, may be assessed or collected in addition to the certified amount, other than the penalty imposed by section 6332(c)(2) for failure to surrender property subject to levy and the penalty imposed by section 6657 for the tender of bad checks. Any such penalties and collection costs, if collected, will not be treated as part of the certified amount and will be retained by the United States as a part of its general fund. No interest shall be allowed or paid on any overpayment of a certified amount.

(2) *Property not exempt from levy.* In addition to property not exempt from levy under section 6334(c) and the regulations thereunder, the following property shall not be exempt from a levy to collect a certified amount:

- (i) Unemployment benefits described in section 6334(a)(4);

(ii) Certain annuities and pension payments described in section 6334(a)(6); or

(iii) Salary, wages, or other income described in section 6334(a)(8).

(3) *Property exempt from levy.* In addition to property exempt from levy under section 6334(a) and the regulations thereunder, other than property described in paragraph (c)(2) (i), (ii), or (iii) of this section, there shall be exempt from levy to collect a certified amount so much of the salary, wages, or other income of an individual as is withheld therefrom in garnishment pursuant to judgment entered by a court of competent jurisdiction for the support of minor children of the individual.

(4) *First assessment.* In the case of a first assessment against an individual for a certified amount in whole or in part for the benefit of a particular child or children, the collection of the certified amount shall be stayed for the period of 60 days immediately following notice and demand as described in section 6303. However, no other stay of the collection of a certified amount may be granted. Thus, the provisions of section 6863(a), relating to bonds to stay collection of jeopardy assessments, shall not apply to the collection of certified amounts.

(5) *Priority of liens.* A lien for a certified amount shall be valid as against a lien for taxes imposed by section 6321 only if the date of assessment of the certified amount precedes the date of assessment of the taxes. However, no amount collected by levy upon property described in paragraph (c)(2) (i), (ii), or (iii) of this section may be applied other than in whole or partial satisfaction of certified amounts. In the case of two liens for certified amounts, the lien for the certified amount which is first assessed shall be valid as against the lien for the certified amount which is later assessed.

(6) *Statute of limitations on collections.* The periods of limitation on collection of taxes after assessment prescribed by section 6502 shall apply to the collection of certified (or recertified) amounts. Such periods of limitation with respect to a certified amount shall terminate upon recertification of the amount, and the period of limitation prescribed by section 6502 shall then apply and commence to run with respect to the recertified amount.

(d) *Review of assessments and collections—(1) Federal courts.* No court of the United States established under article I or article III of the Constitution has jurisdiction of any legal or equitable action to restrain or review the assessment or collection of certified amounts by the district director or his delegate. See, however, paragraph (d)(3) of this section for the rule that the prohibition of this para-

graph (d)(1) does not preclude courts established for the District of Columbia from exercising jurisdiction over certain actions.

(2) *Secretary of the Treasury.* Neither the Secretary of the Treasury nor his delegate may subject to review the assessment or collection of certified amounts in any legal, equitable, or administrative proceeding.

(3) *State courts.* This paragraph (d) does not preclude a State court or appropriate State agency, as the case may be, from exercising jurisdiction over a legal, equitable, or administrative action against the State by an individual to determine his liability for any certified amount assessed against him and collected, or to recover any such certified amount collected, under section 6305 and this section. For purposes of the preceding sentence, the term "State" includes the District of Columbia.

(e) *Internal Revenue regional service centers.* For purposes of this section, the terms "district director or his delegate" and "district director" include the director of the Internal Revenue service center or his delegate, as the case may be.

[FR Doc. 78-35388 Filed 12-19-78; 8:45 am]

[6820-29-M]

Title 32A—National Defense Appendix

CHAPTER I—FEDERAL PREPARED- NESS AGENCY, GENERAL SERVICES ADMINISTRATION

PART 151—STABILIZATION REGULA- TIONS FOR PRICES, RENTS, WAGES, AND SALARIES (ES REG. 1)

Deletion of Part

AGENCY: Federal Preparedness Agency, General Services Administration.

ACTION: Final rule.

SUMMARY: The Economic Stabilization Act of 1970, which provided the authority for issuance of Part 151, has expired. Therefore, Part 151 is deleted from 32A CFR.

EFFECTIVE DATE: December 20, 1978.

FOR FURTHER INFORMATION CONTACT:

Dorinda Lowery, Chief, Management Services Division (202-566-1975).

(Sec. 206, P.L. 91-379, 84 Stat. 799).

32A CFR Part 151 is deleted from the Code of Federal Regulations.

Dated: December 7, 1978.

JAY SOLOMON,
Administrator of
General Services.

[FR Doc. 78-35322 Filed 12-19-78; 8:45 am]

[1410-03-M]

Title 37—Patents, Trademarks, and Copyrights

CHAPTER II—COPYRIGHT OFFICE, LIBRARY OF CONGRESS

[Docket 77-4B]

PART 201—GENERAL PROVISIONS

Recordation and Certification of Coin-Operated Phonorecord Play- ers (Renewal)

AGENCY: Library of Congress, Copy-
right Office.

ACTION: Final regulations.

SUMMARY: This notice is issued to inform the public that the Copyright Office of the Library of Congress is adopting an amendment to § 201.16 of our regulations. The effect of the amendment is to establish a renewal system for the issuance of jukebox licenses. The system is to be used by jukebox operators who received certificates for their coin-operated phonorecord players during a particular year, and who are required to apply during January of the next succeeding year, for licenses covering that next succeeding year.

DATE: The amendments are effective on December 20, 1978.

FOR FURTHER INFORMATION CONTACT:

Susan Aramayo, Chief, Licensing Division, U.S. Copyright Office, Library of Congress, Washington, D.C. 20557, (703) 557-1397.

SUPPLEMENTARY INFORMATION: 17 U.S.C. 116 establishes conditions under which operators of coin-operated phonorecord players—commonly referred to as "jukeboxes"—may obtain a compulsory license for the performance of nondramatic musical works.

A compulsory license permits the use of a copyrighted work without the consent of the copyright owner, if certain conditions are met and royalties paid. Section 116 establishes general rules governing the conditions of the compulsory license for coin-operated phonorecord players, and requires the Register of Copyrights to prescribe regulations governing compulsory license applications and the certificates to be affixed to licensed phonorecord players.

Section 116 also sets forth certain time limitations in connection with applications for recordation of jukeboxes: for jukeboxes already in use on January 1, 1978, the application was to be submitted between January 1, 1978, and January 31, 1978; for jukeboxes put into use after January 1, 1978; the application must be submitted before or within one month after the date performances are first made available on that player; and for jukeboxes recorded in the Copyright Office during 1978 the application must be submitted between January 1 and January 31 of 1979, if the machine is still in use.

On March 30, 1977, we published in the FEDERAL REGISTER (42 FR 16838) an advance notice of proposed rule-making in this matter. After considering the comments received in response to the advance notice, on October 11, 1977, we published a proposed regulation (42 FR 54840) and, on October 25, 1977, we held a public hearing on the proposal. After considering the comments made at the hearing and in supplemental filings, on December 20, 1977, we published (42 FR 63779) final regulations implementing section 116. On August 23, 1978, we adopted interim amendments to the regulations (43 FR 37451). After public comment, those amendments were made final on October 31, 1978 (43 FR 50678).

This year represents the Copyright Office's first experience in licensing jukeboxes. During recent months, we have considered ways to facilitate the application procedure in 1979 and later years, and we have decided to establish a "renewal" system. Under this system, operators who received license certificates during 1978 will be sent a "renewal application" that may be used during January 1979, to apply for recordation of their machines for 1979. The renewal application will include a computer print-out of the coin-operated phonorecord players licensed by the operator during 1978, and will direct the operator to: (1) delete from the print-out any phonorecord players not to be licensed during 1979; and (ii) list any additional players to be licensed for the year. The application is to be returned to the Copyright Office during January, 1979, with the appropriate fee. After receiving the proper application and fee, the Copyright Office will issue 1979 license certificates for the jukeboxes included in the application.

This system offers significant advantages to both jukebox operators and copyright owners. It serves to remind operators of the need to license both old and new machines for 1979. Moreover, by using a print-out of our records as part of the renewal application, operators having a number of machines will be saved a considerable amount of paperwork. The system also

allows the Copyright Office to avoid the administrative expense of re-entering a large body of data in our automated records; this expense would otherwise have to be deducted from royalties available for distribution, so the renewal system should have considerable advantages for copyright owners.

The purpose of the amendment adopted in this notice is to reflect this renewal system in our regulations. The amendment makes clear that this system is essentially a service offered by the Copyright Office. It does not relieve jukebox operators, who for any reason might not receive a renewal application, from their obligation under the statute to see that their machines are properly licensed for 1979.

The renewal system involves only a partial redesign and reformatting of our application forms. Since the system does not change any of the information required to be given by jukebox operators under the existing regulations, it is adopted as final with this notice. Pursuant to 17 U.S.C. 116(b)(1)(A) we have advised the Copyright Royalty Tribunal of the amendment; the Tribunal has advised us that it has no objection.

REGULATIONS

Part 201 of 37 CFR Chapter II is amended by adding a new paragraph (6) to § 201.16(b) to read as follows:

§ 201.16 Recordation and certification of coin-operated phonorecord players.

(b) * * *

(6)(i) Where an operator has recorded one or more players in the Copyright Office during a particular year, the Copyright Office will, during the month of December of that year, send to the operator, at the operator's last address shown in the records of the Licensing Division, a "Renewal Application for Recordation of Coin-Operated Phonorecord Players (Form JB/R)". The renewal application will be accompanied by a list of the players recorded by the operator in the Copyright Office earlier during that year; such list will contain the information provided by the operator in its earlier application or applications, and will be based on the assumption that such players were properly identified in the earlier application or applications. The renewal application may be used during the month of January of the immediately succeeding year, in lieu of an application on Form JB, to apply for a compulsory license to cover: (A) players recorded during the previous year, and (B) any other players operated by the applicant. A renewal application on Form JB/R shall comply with paragraphs (b)(1) through (b)(4)

of this section and the instructions accompanying the form; however, a renewal application on Form JB/R may not be used for players covered by a \$4 fee.

(ii) Nothing in this paragraph (b)(6) shall be considered to relieve an operator from its obligation to file an application for a compulsory license in compliance with, and within the time periods set forth in, section 116 of title 17 of the United States Code. In particular, and without limiting the foregoing: (A) the receipt of a renewal application form by an operator does not relieve the operator from its obligation to complete and file the application in the Copyright Office; (B) failure to receive a renewal application form from the Copyright Office or the late arrival of such form does not relieve the operator from its obligation to file an application in the Copyright Office within the statutory time periods; (C) neither the receipt of a renewal application form nor the filing of a renewal application shall relieve the operator from its obligation to identify its players fully and accurately in compliance with this section; and (D) the filing of a renewal application does not relieve the operator from its obligation to file an application to cover any players not included in the renewal application as filed.²

(17 U.S.C. 116, 702).

Dated: December 12, 1978.

BARBARA RINGER,
Register of Copyrights.

Approved:

DANIEL J. BOORSTIN,
The Librarian
of Congress.

[FR Doc. 78-35369 Filed 12-19-78; 8:45 am]

¹If an operator does not receive a renewal application form (Form JB/R) in time to file it within the statutory time periods, an "Application for Recordation of Coin-Operated Phonorecord Players" shall be filed on Form JB in compliance with paragraphs (b)(1) through (b)(5) of this section.

²Application for recordation of players not included on the renewal application as filed shall be made on Form JB ("Application for Recordation of Coin-Operated Phonorecord Players") in compliance with paragraphs (b)(1) through (b)(5) of this section.

[4110-35-M]

Title 42—Public Health

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Collection and Compromise of Medicare Overpayment Claims from Providers, Physicians, and Other Suppliers of Services

AGENCY: Health Care Financing Administration, HEW.

ACTION: Final rule.

SUMMARY: These regulations authorize the Health Care Financing Administration to compromise claims or to suspend or terminate collection activities on claims arising from Medicare overpayments to providers, physicians, or other suppliers of services. They are authorized under provisions of the Federal Claims Collection Act of 1966.

Currently, carriers and intermediaries under the Medicare program are required to attempt recovery of Medicare overpayments by requesting refunds and offsetting the claims against payments due or against future payments. These attempts have often resulted in lengthy and costly collection action and are not always successful. The regulations will aid in speeding up settlement of those overpayment claims where compromise, or suspension or termination of collection activities, is in the best interest of the Government.

EFFECTIVE DATE: These regulations are effective on January 19, 1979.

FOR FURTHER INFORMATION CONTACT:

Albert Raim, Medicare Bureau, Health Care Financing Administration, Room E-2, Gwynn Oak Building, 1710 Gwynn Oak Avenue, Baltimore, Maryland 21235, (301) 594-3340.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Federal Claims Collection Act of 1966 (31 U.S.C. 951-953) authorizes the Secretary of Health, Education, and Welfare, under regulations issued by him, to compromise, or to suspend or terminate collection activities on, certain claims under the programs of the Department. The claim must not exceed \$20,000, exclusive of interest,

and there must be no indications of fraud in connection with the claim.

Current regulations for the collection and compromise of Medicare overpayments apply only to claims against beneficiaries (20 CFR 404.515(a)). They do not apply to Medicare overpayment claims against providers, physicians, or other suppliers of services. Medicare overpayment claims may arise against physicians or other suppliers of services when they have received an assignment of an individual's claim for Medicare benefits.

Carriers and fiscal intermediaries under the Medicare program are required to collect overpayments from providers, physicians, and other suppliers of services by requesting refunds and, if necessary, offsetting overpayments against payments due or against future claims when possible. However, attempts to recover these overpayments sometimes are more time consuming and costly than is justified by the circumstances. In some instances recovery attempts do not result in successful collection.

PROVISIONS OF THE REGULATIONS

These regulations specify an alternative to costly and time consuming collection activities and referrals to other Government agencies for additional collection efforts. They allow the Health Care Financing Administration (HCFA), under authority delegated by the Secretary, to negotiate a compromise settlement, or to suspend or terminate collection activities, when this is in the Government's best interest. When appropriate, compromise, suspension, or termination will avoid the expense of court proceedings for both the Government and the provider, physician, or other supplier. The regulations also will reduce administrative handling, provide greater flexibility to recovery efforts, and aid in timely settlement of outstanding overpayment claims. The regulations conform with the Federal Claims Collection Standards issued jointly by the Attorney General and Comptroller General of the United States under the Federal Claims Collection Act of 1966. These joint standards are codified at 4 CFR 101 *et seq.*

The regulations specify the conditions under which a compromise may be made or collection action may be suspended or terminated. These include, principally:

(1) The inability of the debtor to pay the full amount of the claim within a reasonable period of time; or

(2) A determination that the cost of collection action or litigation will exceed the likely amount of recovery (termination), or would not justify enforced collection of the full amount (compromise).

The factors that HCFA will consider in determining the Government's inability to enforce collection of the entire claim include the debtor's age, health, assets, present and potential income, and possible concealment or improper transfer of assets. If the debtor is deceased, the available assets of the estate will be considered, taking into account any liens or superior claims.

An action taken under these regulations is not an intermediary's or carrier's "initial determination" or an "intermediary determination" for purposes of Medicare appeals procedures (42 CFR 405.705, 405.803, 405.1801). There is no right to any formal appeal of a action taken under these regulations. Conforming changes have been made to the regulations on review and hearings under the Hospital Insurance Program at 42 CFR Part 405, Subpart G, the Supplementary Medical Insurance Program at 42 CFR Part 405, Subpart H, and to the regulations on Medicare provider reimbursement determinations and appeals at 42 CFR Part 405, Subpart R.

Compromise under these regulations shall be final and conclusive on the debtor and the United States in the absence of fraud, misrepresentation, or mutual mistake of fact. Failure of HCFA to comply with any provision of these regulations shall not be available as a defense to any debtor. These regulations do not create a right to have any claim compromised, or collection activities concerning any claim terminated or suspended.

NOTICE OF PROPOSED RULEMAKING

The notice of proposed rulemaking for these regulations published in the FEDERAL REGISTER on September 6, 1977 (42 FR 44558) gave interested parties 45 days to submit their views and comments.

Four comments were received—two from health associations, and one each from a State agency and a university hospital.

One commenter agreed with the proposal.

Another suggested that the provisions under sections 405.374(b)(1) and 405.374(b)(2) be combined into one section. These paragraphs have been rewritten to improve readability and are now coded under § 405.374(c) *Basic Conditions*.

One association expressed concern that the proposed rule did not include a provision relating to overpayments made as a result of errors in the administration of the Medicaid program. The regulations concern Medicare (title XVIII) overpayments only. The Association's recommendation will be considered in future revisions of Medicaid (title XIX) regulations.

The fourth commenter had three specific recommendations:

1. That a provider acting in good faith should not be liable for an overpayment resulting from a retroactive denial of eligibility;

2. That all claims be processed for payment to providers with instructions that they certify refunds of overpayments to the beneficiaries within 30 days of receipt of Medicare payment; and

3. That offset of future payments due a provider should not be made unless the provider fails to respond to the refund request.

These suggestions have not been adopted because they are beyond the scope of these regulations. It is not the intent of these regulations to adopt administrative procedures for determining overpayment liability or collection procedures governing demands for repayment. The purpose of the regulations is to specify authority for compromise, suspension, and termination of overpayment claims against providers, physicians, and other suppliers of services.

The notice of proposed rulemaking included a proposal to correct an erroneous cross-reference in section 405.315b, Establishment of program review teams. Correction of this cross-reference is no longer appropriate. Section 13 of the Medicare-Medicaid Anti-Fraud and Abuse Amendments of 1977 abolished these review teams. A notice of proposed rulemaking was issued on June 8, 1978 (43 FR 24988), which proposes to revoke section 405.315b.

The notice of proposed rulemaking also included a proposal to offer debtors the opportunity to request administrative review of actions taken under these regulations. We have not included that provision in the final regulations. Because actions taken under these regulations will necessarily involve extensive discussions with debtors, and essentially involve a judgment on our part as to the extent to which collection should be pursued, we do not believe a formal administrative review is necessary or warranted.

Substantial editorial changes have also been made to enhance clarity and readability.

1. Subpart C is amended by adding a new § 405.374 and revising the table of contents to read as follows:

Subpart C—Exclusions, Recovery of Overpayment, Liability of a Certifying Officer and Suspension of Payment

- Sec.
405.301 Scope of subpart.
405.310 Types of expenses not covered.

- Sec.
405.311 Nonreimbursable expenses; individual has no legal obligation to pay for items or services.
405.312 Nonreimbursable expenses; items or services paid for by governmental entity.
405.313 Nonreimbursable expenses; items or services not provided in the United States.
405.314 Nonreimbursable expenses; items or services required as a result of war.
405.315 Nonreimbursable expenses; charges imposed by immediate relatives or members of beneficiaries' household.
405.315a Nonreimbursable expenses; items or services furnished by excluded provider or other person.
405.315b Establishment of program review teams.
405.316 Nonreimbursable expenses; payment for services made under workmen's compensation law.
405.317 Effect of workmen's compensation payment.
405.318 Responsibility of the individual concerning workmen's compensation payment.
405.319 Responsibility of intermediary where there is a possibility of workmen's compensation coverage.
405.320 Effect of lump-sum settlement and final release.
405.321 Apportionment of a lump-sum compromise settlement of a workmen's compensation claim.
405.330 Payment for certain nonreimbursable expenses.
405.331 Liability for certain noncovered items or services.
405.332 Criteria for determining that there was knowledge that certain services were nonreimbursable.
405.350 Individual's liability for payments made to providers and other persons for items and services furnished the individual.
405.351 Incorrect payments for which the individual is not liable.
405.352 Adjustment of title XVIII incorrect payments.
405.353 Certification of amount that will be adjusted against individual title II or railroad retirement benefits.
405.354 Procedures for adjustment or recovery—title II beneficiary.
405.355 Waiver of adjustment or recovery.
405.356 Principles applied in waiver of adjustment or recovery.
405.359 Liability of certifying or disbursing officer.
405.370 Suspension of payments to providers of services and other suppliers of services.
405.371 Proceeding for suspension.
405.372 Submission of evidence and notification of administrative determination to suspend.
405.373 Subsequent action by intermediary or carrier.
405.374 Collection and compromise of claims for overpayments.
§ 405.374 Collection and compromise of claims for overpayments.
(a) *Scope.* This section contains requirements and procedures for the compromise of, or suspension or termination of collection action on, claims for overpayments against a provider, physician, or other supplier of services under the Medicare program. It is

adopted pursuant to the Federal Claims Collection Act (31 U.S.C. 951-953). Collection and compromise of claims against Medicare beneficiaries is explained at 20 CFR 404.515.

(b) *Definitions.* As used in this section, "debtor" means a provider of services or a physician or other supplier of services that has been overpaid under title XVIII of the Social Security Act. It includes an individual, partnership, corporation, estate, trust, or other legal entity.

(c) *Basic conditions.* A claim for recovery of Medicare overpayments against a debtor may be compromised, or collection action on it may be suspended or terminated, by the Health Care Financing Administration (HCFA) if:

- (1) the claim does not exceed \$20,000, exclusive of interest; and
- (2) there is no indication of fraud, the filing of a false claim, or misrepresentation on the part of the debtor or any director, partner, manager, or other party having an interest in the claim.

(d) *Basis for compromise.* A claim may be compromised for one or more of the following reasons:

- (1) The debtor, or the estate of a deceased debtor, does not have the present or prospective ability to pay the full amount within a reasonable time;
- (2) The debtor refuses to pay the claim in full and the United States is unable to collect the full amount within a reasonable time by legal proceedings;
- (3) There is real doubt the United States can prove its case in court; or
- (4) The cost of collecting the claim does not justify enforced collection of the full amount.

(e) *Basis for termination.* Collection action may be terminated for one or more of the following reasons:

- (1) The United States cannot enforce collection of any significant sum;
- (2) The debtor cannot be located, there is no security to be liquidated, the statute of limitations has run, and the prospects of collecting by offset are too remote to justify retention of the claim;
- (3) The cost of further collection action is likely to exceed any recovery;
- (4) It is determined the claim is without merit; or
- (5) Evidence to substantiate the claim is no longer available.

(f) *Basis for suspension.* Collection action may be suspended for either of the following reasons if future collection action is justified based on potential productivity, including foreseeable ability to pay, and size of claim:

- (1) The debtor cannot be located; or
- (2) The debtor is unable to make payments on the claim or to fulfill an acceptable compromise.

(g) *Factors considered.* In determining whether a claim will be compromised, or collection action terminated or suspended, HCFA will consider the following factors:

(1) Age and health of the debtor, present and potential income, inheritance prospects, possible concealment or fraudulent transfer of assets, and the availability of assets which may be reached by enforced collection proceedings, for compromise under paragraph (d)(1) of this section, termination under paragraph (e)(1) of this section, and suspension under paragraph (f)(2) of this section;

(2) Applicable exemptions available to a debtor and uncertainty concerning the price of the property in a forced sale, for compromise under paragraph (d)(2) of this section and termination under paragraph (e)(1) of this section; and

(3) The probability of proving the claim in court, the probability of full or partial recovery, the availability of necessary evidence, and related pragmatic considerations, for compromise under paragraph (d)(3) of this section.

(h) *Amount of compromise.* The amount accepted in compromise will be reasonable in relation to the amount that can be recovered by enforced collection proceedings.

Consideration shall be given to the following:

(1) The exemptions available to the debtor under State or Federal law;

(2) The time necessary to collect the overpayment;

(3) The litigative probabilities involved; and

(4) The administrative and litigative costs of collection where the cost of collecting the claim is a basis for compromise.

(1) *Payment of compromise.* (1) *Time and manner.* Payment of the amount that HCFA has agreed to accept as a compromise in full settlement of a Medicare overpayment claim must be made within the time and in the manner prescribed by HCFA. An overpayment claim is not compromised or settled until the full payment of the compromised amount has been made within the time and in the manner prescribed by HCFA.

(2) *Failure to pay compromised amount.* Failure of the debtor or the estate to make payment as provided by the compromise reinstates the full amount of the overpayment claim, less any amounts paid prior to the default.

(j) *Effect of compromise, or suspension, or termination of collection action.* Any action taken by HCFA under this section regarding the compromise of an overpayment claim, or termination or suspension of collection action on an overpayment claim, is not an initial determination for purposes

of the appeal procedures under Subparts G, H, and R of this part.

2. Section 405.705 is amended by adding a new paragraph (f) to read as follows:

§ 405.705 Actions which are not initial determinations.

(f) The action by the Health Care Financing Administration under § 405.374 regarding compromise of a Medicare overpayment claim, or termination or suspension of collection action on an overpayment claim, against a provider or physician or other supplier.

3. Section 405.803 is amended by revising paragraph (c) to read as follows:

§ 405.803 Initial determination.

(c) Carriers (or hearing officers where a claim is not acted upon with reasonable promptness (see section 405.801)) do not make determinations with respect to the following, which are not initial determinations for purposes of this subpart:

(1) Any issue or factor for which the Social Security Administration or the Health Care Financing Administration has sole responsibility (for example, whether or not an individual is entitled to coverage under the supplementary medical insurance plan; whether an independent laboratory meets the conditions for coverage of services; whether a Medicare overpayment claim should be compromised, or collection action terminated or suspended); or

(2) Any issue or factor which relates to hospital insurance benefits under Part A of title XVIII of the Act.

4. Section 405.1801 is amended by revising paragraph (a)(1) to read as follows:

§ 405.1801 Introduction.

(a) *Definitions.* As used in this subpart:

(1) "Intermediary determination" (see § 405.1803) means, with respect to a provider of services which has filed a cost report in accordance with §§ 405.406 and 405.453(f), a determination as to the amount of total program reimbursement due the provider for items and services furnished to individuals for which payment may be made under title XVIII of the Social Security Act for the period covered by such report. For purposes of appeal to the Provider Reimbursement Review Board, the term "intermediary determination" shall be synonymous with the term "intermediary's final determination" as that latter term, is used in section 1878(a) of the Act. It does not include an action taken by the

Health Care Financing Administration under § 405.374 regarding compromise of a Medicare overpayment claim, or termination or suspension of collection action on an overpayment claim, against a provider or physician or other supplier.

(Section 1102, 1815, 1870, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395gg, and 1395hh); and Section 3 of the Federal Claims Collection Act (31 U.S.C. 952).)

(Catalog of Federal and Domestic Assistance Program No. 13.773, Medicare—Health Insurance and No. 13.774, Medicare—Supplementary Medicare Insurance.)

Dated: October 27, 1978.

WILLIAM D. FULLERTON,
Acting Administrator, Health
Care Financing Administration.

Approved: December 11, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 78-35293 Filed 12-19-78; 8:45 am]

[6712-01-M]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 21039]

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

Reflecting the Availability of Land Mobile Channels in the 470-513 MHz Band in 13 Urbanized Areas of the United States; Correction

ERRATUM

AGENCY: Federal Communications Commission.

ACTION: Correction to final rule.

SUMMARY: This document corrects certain typographical errors that occurred in FR Doc. 78-29584, which was published in the FEDERAL REGISTER on October 25, 1978. That document amended Part 21 of the rules to reflect the availability of Land Mobile Channels in the 470-512 MHz Band in 13 urbanized areas of the United States. This correction is made to the table of available radio frequencies for the Pittsburgh area.

EFFECTIVE DATE: December 26, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Patrick Donovan, Common Carrier Bureau, (202) 632-6450. (202) 632-6450.

SUPPLEMENTARY INFORMATION:

Released: December 13, 1978.

In the matter of amendment of Part 21 of the Rules to reflect the availability of Land mobile channels in the 470-512 MHz band in 13 urbanized areas of the United States; Erratum.

On October 16, 1978, the Commission released a Memorandum Opinion and Order (FCC 78-713, published in the FEDERAL REGISTER on October 25, 1978, 43 FR 49794) in the above-captioned proceeding. On page 9 of Appendix C of the Memorandum Opinion and Order, the Commission listed frequencies available for assignment to stations in the Domestic Public Land Mobile Radio Service operated by Miscellaneous Common Carriers in the urbanized area of Pittsburgh, Pennsylvania. It now appears that the mobile, dispatch and auxiliary test frequencies in Group 2 were incorrectly specified. More particularly, these frequencies should have appeared as discrete fractions of 497 MHz instead of 494 MHz. Accordingly, page 9 referred to above is corrected to read as in the attachment to this Erratum.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

PITTSBURGH

Base station frequencies (MHz)	Mobile, dispatch and auxiliary test frequencies (MHz)
Channel 14	Channel 18
GROUP 1	
470.0125.....	494.0125
470.0375.....	494.0375
470.0625.....	494.0625
470.0875.....	494.0875
470.1125.....	494.1125
470.1375.....	494.1375
470.1625.....	494.1625
470.1875.....	494.1875
470.2125.....	494.2125
470.2375.....	494.2375
470.2625.....	494.2625
470.2875.....	494.2875
GROUP 2	
473.0125.....	497.0125
473.0375.....	497.0375
473.0625.....	497.0625
473.0875.....	497.0875
473.1125.....	497.1125
473.1375.....	497.1375
473.1625.....	497.1625
473.1875.....	497.1875
473.2125.....	497.2125
473.2375.....	497.2375
473.2625.....	497.2625
473.2875.....	497.2875

[FR Doc. 78-35393 Filed 12-15-78; 8:45 am]

[6712-01-M]

[BC Docket No. 78-162; RM-3080]

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Station in Tehachapi, Calif., Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and Order.

SUMMARY: Action taken herein assigns Channel 276A to Tehachapi, California, as that community's first FM assignment in response to a petition filed by Dorothy Collings. The proposed station would render a first full-time local aural broadcast service to Tehachapi.

EFFECTIVE DATE: January 25, 1979.

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

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau (202-632-7792).

SUPPLEMENTARY INFORMATION:

REPORT AND ORDER—(PROCEEDING TERMINATED)

Adopted: December 12, 1978.

Released: December 15, 1978.

In the matter of amendment of § 73.202(b), *Table of assignments*, FM Broadcast Stations. (Tehachapi, California), BC Docket No. 78-162, RM-3080.

1. The Commission herein considers the *Notice of Proposed Rule Making*, 43 FR 24862, in the above-captioned proceeding instituted in response to a petition filed by Dorothy Collings ("petitioner"). The petition proposed the assignment of Channel 276A to Tehachapi, California, as a first FM channel to that community. No oppositions to the proposal were received. Petitioner reaffirmed her interest to file an application for the proposed channel, if assigned.

2. Tehachapi (pop. 4,211), in Kern County (pop. 329,162),¹ is located approximately 121 kilometers (75 miles) north of Los Angeles and 58 kilometers (36 miles) southeast of Bakersfield, California. Channel 276A could be assigned to Tehachapi in compliance with the minimum distance separation requirements.

3. In support of her proposal, petitioner has submitted information about Tehachapi which is persuasive as to its needs for a first FM channel assignment.

¹Population figures are taken from the 1970 U.S. Census.

4. We believe the public interest would be served by the assignment of channel 276A to Tehachapi, California. An interest has been shown for its use, and such an assignment would provide the community with an FM station which could render a first full-time local aural broadcast service.

5. The Mexican Government has given its concurrence to the assignment of Channel 276A to Tehachapi, California.

6. Authority for the adoption of the amendment contained herein appears in Sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules and regulations.

7. Accordingly, it is ordered, That effective January 25, 1979 § 73.202(b) of the Commission's rules, the FM Table of Assignments is amended as it pertains to the community listed below:

City	Channel No.
Tehachapi, California.....	276A

8. It is further ordered, That this proceeding is terminated.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; (47 U.S.C. 154, 303, 307).)

FEDERAL COMMUNICATIONS COMMISSION,
Wallace E. Johnson,
Chief, Broadcast Bureau.

[FR Doc. 78-35326 Filed 12-19-78; 8:45 am]

[7035-01-M]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Amendment No. 3 to Service Order No. 1321]

PART 1033—CAR SERVICE

Lenawee County Railroad Co., Inc., Authorized To Operate Over Tracks of Consolidated Rail Corporation

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order Amendment No. 3 to Service Order No. 1321.

SUMMARY: The Lenawee County Railroad operates two separate lines of railroad in the vicinity of Grosvenor, Michigan. Service Order No. 1321 authorizes the Lenawee County Railroad to operate over 3.6 miles of a line of the Consolidated Rail Corporation between Lenawee Junction, Michigan, and Grosvenor, Michigan, which permits their single locomotive to serve both line segments. The order is print-

ed in full in the FEDERAL REGISTER Volume 43 at page 16341. The amendment extends this order until December 31, 1978.

DATES: Effective 11:59 p.m., December 15, 1978. Expires 11:59 p.m., December 31, 1978.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

Decided: December 14, 1978.

Upon further consideration of Service Order No. 1321 (43 FR 16341, 34150 and 45866), and good cause appearing therefor:

It is ordered, § 1033.1321 Lenawee County Railroad Company, Inc., authorized to operate over tracks of consolidated Rail Corporation: Service Order No. 1321 is amended by substituting the following paragraph (d) for paragraph (d) thereof:

(d) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., December 31, 1978, unless otherwise modified, changed or suspended by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., December 15, 1978.

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

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

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. HOMME, JR.,
Secretary.

[FR Doc. 78-35377 Filed 12-19-78; 8:45 am]

[7035-01-M]

[Ex Parte No. MC-109]

PART 1062—REGULATIONS GOVERNING SPECIAL APPLICATION PROCEEDINGS FOR FOR-HIRE MOTOR CARRIERS

Applications Seeking Substitution of Single-Line Service for Existing Joint-Line Operations

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: These regulations govern application proceedings for operating rights where the applicant is a motor common carrier seeking authority to conduct a single-line service in lieu of an existing joint-line service. The special procedures enumerated in these regulations will facilitate the processing of such applications.

EFFECTIVE DATE: April 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Michael Erenberg, Phone: 202-275-7292.

SUPPLEMENTARY INFORMATION: The special rules adopted in this rulemaking proceeding are an outgrowth of Recommendation No. 11 contained in a Staff Task Force report issued July 6, 1977.

In the notice of proposed rulemaking, published at 42 FR 55239 we indicated that the type of application involved is one which normally is or should be granted. The Commission noted several benefits which would ordinarily accrue to the applicant, supporting shipper, and, ultimately, the public as a consequence of such a grant. The rules we proposed would preclude the opposition of any carrier based upon the issue of public need, other than carriers participating with the applicant in the joint-line service which the applicant sought to supplant with single-line service. The Commission would consider the impact of a grant upon such "participating carriers" since it is traffic they are, or have been, handling which would be subject to diversion as a result of a grant. If, however, an applicant filed an application under the special rules, and no opposition was offered by participating carriers, the proposal would be granted. Since the applicant is clearly an existing competitor for the traffic involved, and a grant of its proposal would merely allow it to continue handling the supporting shipper's traffic, the effect on existing motor carriers would be minimal or non-existent. Any carrier could, however, protest an application under

the rules with respect to the issue of the applicant's fitness. A total of 84 comments have been received concerning the proposed regulations.

PRELIMINARY MATTER

A motion for oral hearing in this proceeding has been filed by Groendyke Transport, Inc. A similar request is embraced in the comment filed by Motor Transport Company. A vast record has been compiled in this proceeding, and there is sufficient evidence available upon which to make a rational determination of the issues raised. In addition, many persons have offered their comments orally on this concept at our nationwide field hearings and those comments have been considered in our deliberations on this case. Accordingly, the motion and request are each denied.

DISCUSSION AND CONCLUSIONS

I. Lawfulness and Feasibility of the Regulations: A number of participants challenge the Commission's authority to adopt rules in this proceeding which would in any way preclude motor carriers from opposing an application filed pursuant to the proposed special procedures based upon the issue of need. These commenters argue, essentially, that we must employ the adjudication process (i.e. resolve all issues on a case-by-case basis), in order to insure that no carrier seeking to oppose an application is deprived of its due process rights.

Under section 10321 [formerly 204(a)(6)] of the Interstate Commerce Act, this Commission is empowered to administer, execute, and enforce all of the provisions of the Act, to make all necessary orders, and to prescribe rules, regulations and procedures for such administration. While ordinarily the Commission performs its licensing functions on a case-by-case basis, it perceives the appropriate exercise of its rulemaking authority as a vital means of efficiently carrying out its statutory mandate. The United States Supreme Court has recognized the propriety of rulemaking by a regulatory agency charged with licensing duties as a necessary alternative to the case-by-case adjudication method where the litigation of certain issues would only be time-wasteful and where the comprehensive treatment of these issues through the rulemaking process may be required to afford expeditious, effective relief in the public interest.¹

An excellent discussion of the distinction between rulemaking and adjudication is presented in *Chemical*

¹See *Weinberger v. Hynson, Westcott & Dunning*, 412 U.S. 609 (1973), *U.S. v. Storer Broadcasting Co.*, 351 U.S. 192 (1955), and *Federal Power Comm'n. v. Texaco*, 377 U.S. 33 (1964).

Leaman Tank Lines, Inc., v. United States, 368 F. Supp. 925 (D. Del. 1973), which upheld the right of this Commission to adopt rules for the declaration of prospective licensing criteria governing later licensing applications. The District Court indicated that such rules reflect policy based upon the general characteristics of an industry, and are designed to eliminate the needless, time-wasteful adjudication of issues not in dispute. Any rules adopted must be of universal application to the affected class of carriers, and while the effect of the rules may be to alter somewhat the existing competitive situation, no particular carrier "can be singled out for economic injury as a result of its status or past conduct." (See discussion at pages 933-35.)

The rules adopted in this proceeding, as those which were adopted by the Commission in Ex Parte No. MC-85 and reviewed by the District Court in *Chemical Leaman, supra*, have been formulated in light of factors generally applicable to application proceedings of a particular kind. These rules do not allow for automatic licensing, but rather set forth general criteria which will aid the Commission in determining whether a certificate of public convenience and necessity will be issued.

In the notice of proposed rulemaking we discussed many public benefits which would stem from the implementation of the rules in this proceeding. We stated that these benefits would flow to (1) applicants, which may have invested substantial capital in terminal facilities and equipment in conjunction with the operations they have performed in joint-line service for the supporting shipper; (2) shippers which have come to rely upon the service provided by the applicant; and (3) the consuming public which ultimately must bear the cost of any transportation service. It was noted that the substitution of single-line for joint-line service often engenders significant savings in mileage, fuel, time, and paperwork and that, as a consequence, many shippers which have relied on joint-line service have argued that they are at a competitive disadvantage. Additionally, where a joint-line operation entails the physical interchange of traffic, there is obviously a greater risk of freight damage and loss.

Virtually all of the shippers which offered comments, as well as many motor carriers, adopted these statements, and suggested that the potential for savings nationwide (time, fuel, and operating costs) as a consequence of the adoption of these rules could be enormous in view of their individual potentials for savings.² It was also

²See, for example, the statement of CRST, Inc., a motor common carrier which

pointed out that damage claims could be more easily processed where one carrier, as opposed to several, has the responsibility for shipments in transit, and that communications between shipper and carrier would be facilitated.

Conversely, a number of participants, particularly short-haul carriers, contend that it is clearly erroneous to assume that in every instance joint-line operations are inferior to single-line. To the contrary, they argue that joint-line services today are often, far more efficient than competitive single-line services. Finally, they contend that the adoption of the proposed rules could result in severely damaging a significant segment of the Nation's transportation network.

We agree that the availability of joint-line services to the shipping public is an essential aspect of our transportation structure. Additionally, we recognize that joint-line services are often more efficient than alternative services. For this reason our policies and regulations, now as before, are geared towards making joint-line service available to the public wherever and whenever the need for such services is shown to be in the public interest. The proposed regulations were not intended to constitute a retreat from this position. Rather, as indicated in the notice, these regulations are designed to facilitate and expedite the issuance of authority to an applicant which has previously participated in joint-line operations but is suddenly faced with the loss of its joint-line connections. The regulations would provide a streamlined procedure for allowing the applicant to continue providing service on behalf of its supporting shipper and the consuming public which has come to rely upon its service. The effect of granting such applications may not in every case engender fuel or cost savings. However, it is probable that this will often be the case, while it is certain that the replacement of the joint-line movement by single-line service will not increase the distance traversed between an origin and destination point. We do not accept the view expressed in several representations that the special rules would favor long-haul carriers more than short-haulers, since any carrier irrespective of the size of the joint-line segment over which it operates can file for single-line service if it qualifies under the rules.

is extensively engaged in both single-line and joint-line operations. CRST computed that during the month of October, 1977, it traveled nearly 41,000 circuitous miles in hauling 1,167 shipments in joint-line service. This added mileage cost CRST approximately \$33,000, and required an additional 7,713 gallons of fuel consumption. Finally, the additional mileage impeded CRST from providing the expeditious service required by some of its shippers.

Many participants, including some who support the purpose and nature of the proposed regulations, contend that the rules are drafted too broadly and therefore, the potential for abuse is great. For example, they note that under the proposed regulations an applicant need not demonstrate that it has been a participant in a joint-line service to any measurable extent, or that the deterioration of the joint-line service sought to be replaced has occurred through no fault of its own. We agree that the proposed regulations must be modified to insure that the Commission has a sufficient factual basis for reaching an appropriate determination as to whether the service sought is required by the public convenience and necessity.

Under the proposed regulations, for example, two carriers could conspire to initiate a short-term joint-line service with the understanding that thereafter each would file for single-line service between the points served under these special rules free of each other's opposition. The proposed rules, while precluding all other carriers from opposing such applications on the issue of public need, do not in any way require an applicant to demonstrate through the presentation of appropriate evidence that the joint-line operations previously conducted have been bona-fide operations. The result of such filings on a wide-scale basis, and many participants believe this is far from unlikely, would be an abundance of new single-line services operating between points throughout the Nation. The effect could be destructive upon the existing competitive structure, damaging to existing joint-line and single-line services alike.

Accordingly, to insure that the Commission's intention is carried out in this proceeding rather than subverted, applicants filing under these procedures will be required to demonstrate, as pertinent, that the joint-line service sought to be replaced had been in existence prior to the filing of the application; secondly, to identify the carrier or carriers, with which it has been providing the involved joint-line service, and thirdly, the reason for the deterioration or cancellation of the joint-line service, and that it is not responsible for such deterioration or cancellation.

This information, standing alone, will enable the Commission to ascertain the substantiality of the joint-line service sought to be replaced by applicant, and to determine whether in fact a bona-fide joint-line service has been performed. Any carrier which has participated with the applicant in the joint-line service involved during the one-year period immediately preceding the filing of the application will be permitted to oppose the application on the issue of public convenience and ne-

cessity. As noted in the notice of proposed rulemaking the Commission would consider the opposing evidence of such carriers and weigh the effect of a grant upon them since it is the traffic which they have been handling in conjunction with applicant which would be subject to diversion. Thus, the rules as modified will insure that if any application is granted, (1) the joint-line operations replaced were bonafide and (2) the deterioration or cancellation of the joint-line did not come about through applicant's fault. Although existing carriers other than those which are or have been participating in the involved joint-line service will be precluded from opposing an application filed under these rules, respecting the issue of need, such carriers will be afforded the opportunity not only to challenge an applicant's fitness, but to oppose the application for the purpose of disputing the issue of whether applicant has been engaged in a bona-fide joint-line service.

A number of participants contend also that the proposed rules could give rise to a kind of "domino effect," whereby a carrier repeatedly establishes and then eliminates, through the substitution process, joint-line connections. They argue, therefore, that any service authorized pursuant to these special rules must be restricted to the transportation of traffic originating at the involved origin point(s) and destined to the involved destination point(s). In this fashion, an applicant would be enabled to provide the service required by its shipper, but at the same time could not wrongfully manipulate the application process as a continuing means of acquiring additional single-line service authorizations.

In light of the modifications to the proposed rules discussed above, and for several additional reasons, we do not believe that the imposition of such territorial restrictions is necessary or proper. The imposition of such restrictions, unless for good cause shown, is frowned upon by the Commission since it is inconsistent with the concept of common carriage. Moreover, to impose such a restriction would mean precluding the possibility of applicant's engaging in joint-line concurrences and would, therefore, run contrary to the Congress' and the Commission's intention to encourage the same. What is essential to the development of these rules is insuring that the joint-line service sought to be replaced is bona-fide, and therefore, that the authorization of the single-line service is necessary. The rules adopted provide a sufficient basis for making this determination. If upon reviewing any given proposal, it appears that the evidence only warrants a service authorization from or to a shipper's

facilities, or that a given territorial or commodity restriction is appropriate, the authority will be limited accordingly.

II. Effect Upon Existing Carriers: Having already determined that many benefits will flow to the applicant, shipper, and public, as a consequence of granting an application under the particular circumstances under consideration in this proceeding, the question that still must be answered is whether existing carriers, other than those which are or have been participating in the joint-line concurrences with applicant, must be afforded the opportunity to oppose such an application based upon the issue of need on a case-by-case basis. We believe not.

It is well-established that the Commission is not precluded from granting new authority even where the services of existing carriers appear to be adequate for the present or future. *United States v. Dixie Highway Express*, 389 U.S. 409, 411 (1967). Moreover, it is important to note that "the primary consideration is the interest of the Public—not the relative economic advantages of competing carriers." *Central Motor Lines, Inc. v. United States*, 309 F. Supp. 336, 339 (W.D.N.C. 1969).

Intrinsic to the Commission's proposal in this proceeding is the fact that the applicant is not a new competitor for the supporting shipper's traffic, but rather is an established competitor seeking to preserve its interest in the same traffic. The special rules are designed to streamline the certification process in this particular field of service, in the public interest, and yet to protect the public and existing carriers from unwarranted competition. The traffic which would be transported by the applicant in single-line service is that which it previously handled in joint-line operations. Conceivably a shipper might tender applicant more of its traffic in the single-line service but we do not believe the possible increased participation by applicant could have a substantial destructive effect on the competitive posture of the affected marketplace. Even those carriers which also may have been serving the shipper, and competing with applicant's prior joint-line service, were always subject to applicant's competition and the risk that shipper would tender a greater portion of its traffic to the applicant. Clearly existing services are not intended to be immune from competition, and here, where an applicant is already demonstrably a significant competitor for the involved traffic, and where the public would reap obvious benefits from its continued participation in this traffic, no valid purpose would be served by reviewing the opposing evidence of existing carrier on a case-by-

case basis with respect to the issue of public need for the service. To the contrary, under the circumstances involved, such a case-by-case analysis of possible harm to existing carriers would only constitute a wasteful exercise on this Commission's part.

Although opposition to an application filed under the special rules will be limited with respect to the issue of determining public convenience and necessity, there are other matters which may be the subject of substantial factual dispute. As stated in the notice of proposed rulemaking in this proceeding, any carrier may seek intervention³ on the issue of applicant's fitness to provide the service sought. An applicant is, of course, required to show that it is financially capable of providing a sought service, and that its operations are conducted in a lawful manner. An additional issue of paramount importance in an application proceeding, under the proposed rules concerns whether the joint-line operations applicant is seeking to replace have been bona fide. Accordingly, petitions seeking leave to intervene on the issue of fitness, in addition to raising matters ordinarily considered, may be expanded to include challenges by any carrier regarding the veracity of the statements filed by an applicant in support of its proposal.

It should be noted that opposing interveners to these proceedings will be required to submit verified statements in opposition in lieu of petitions to intervene. If such verified statements contain only unsupported accusations regarding fitness or the bona fides of an operation, they will be rejected.

III. Exceptions to the Rules: Several participants suggest that the special rules should not be made applicable to certain types of transportation services. These include the transportation of passengers, household goods, bulk commodities, and shipments moving over regular routes. We do not believe that these comments, which are self-serving in nature, warrant any exemptions from the special rules. The public benefit stemming from the rules should not be narrowed merely because joint-line service is more or less prevalent in a given area of transportation. If an applicant and its supporters can demonstrate the public need for single-line service as an alternative to previous joint-line operations, the service should be made available regardless of the nature of the commodities or routes involved. Moreover, this is wholly consistent with the Commission's obligation to insure that the transportation needs of the public are met in the most effi-

³The wording of the regulation has been rephrased to conform with the Commission's decision in Ex Parte No. 55 (Sub-No. 26), *Protest Standards*.

cient manner, whether it is dealing with cases involving the substitution of a single-line service for joint-line service, or otherwise.

We do believe that one necessary exception to the regulation must be made to preclude the filing of an application by a carrier which seeks to supplant a joint-line service performed in conjunction with a carrier with which it is under common control through management or ownership. This exception is warranted in order to preclude the uniquely strong possibility for collusion between an applicant and its affiliate in a situation where protests are otherwise limited. This measure will not preclude an affected carrier from seeking to substitute a single-line service for joint-line service pursuant to the Commission's ordinary application procedures.

IV. Environmental Impact: In the notice of proposed rulemaking in this proceeding we indicated that adoption of these special rules would not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. We adopt that statement now. While much of the commentary addressing this particular issue has been speculative in nature, the substantive comments have reinforced our position. Significantly, in every case where authority is granted, one single-line will replace one existing joint-line service, the transportation service otherwise remaining virtually identical (i.e., with respect to the commodities and points involved). In many instances operating economies should be enhanced and fuel and mileage savings engendered as a consequence of the authorized substitutions. Furthermore, we have the safeguard of being able to evaluate environmental affects in individual cases that are filed pursuant to the new rules.

V. Notice and Processing of Applications: Recently the Commission adopted rules in Ex Parte No. 55 (Sub-No. 25), published in the FEDERAL REGISTER on December 13, 1977, which revise OP-OR-9 application forms for permanent motor common carrier authority. The special rules adopted here will entail only minor modifications in the way operating rights are processed and reviewed under the procedures set forth in Ex Parte No. 55 (Sub-No. 25), which became effective on April 1, 1978.

An applicant, in addition to submitting the information otherwise required, will identify clearly its proposal as one seeking substitution of single-line service for its existing joint-line operations (adding a sentence to that effect to its FEDERAL REGISTER caption, and otherwise labeling the

OP-OR-9 application as one for "SUBSTITUTION" in the upper right-hand corner).

Additionally, the applicant will attach to its OP-OR-9 application a verified statement containing the following information:

(1) The time period over which it provided the joint-line operation sought to be replaced.

(2) The names of all carriers with which it has been engaged in the involved joint-line service during the one-year period preceding its filing of the application.

(3) An explanation of why the joint-line service has deteriorated or has been cancelled.

(4) A statement indicating whether applicant is under common control with any of the carriers named in (2) above, through ownership or management.

(5) A summary demonstrating the traffic moved between the points sought including the one year period immediately prior to the filing of the application. Applicants involved in interline operations for less than one year should submit a summary covering the tenure of their operations.⁴ A shipper's support statement is not required.

Applicant will be required to serve a copy of its entire application upon each of the carriers with which it has provided the involved joint-line service during the one-year period immediately preceding the filing of its application (i.e., those listed in (2) above). This requirement will insure that such carriers are alerted to the substitution proposal, and should be particularly helpful to smaller carriers which may not have sufficient personnel to scan the FEDERAL REGISTER constantly for new applications in conflict with their own operations.

Opposition filed in accordance with the considerations described in this report must be filed within 30 days of the FEDERAL REGISTER publication of the proposal, and will be in the form of verified statements. A verified reply statement by applicant must be filed within 20 days from the last due date for the filing of statements in opposition. If opposition statements are filed, the case will be submitted immediately to a review board for handling under the modified procedure upon receipt of all pleadings. If an application is unopposed, it will be processed in accordance with the pertinent procedures described in Ex Parte No. 55 (Sub-No. 25). Finally, as is usual, if an application is granted, the applicant, upon compliance with the pertinent

⁴We have determined that since these applications can only be filed in situations where bona fide operations have been conducted and are threatened through no fault of the applicant, a minimum time period is not necessary or desirable.

sections of the Act and Commission rules and regulations thereunder, will receive a certificate of public convenience and necessity.

VII. Redesignation of 49 CFR 1062: In accordance with the intention stated in the notice of proposed rulemaking, Part 1062 of Title 49 of the Code of Federal Regulations will be re-entitled "Regulations Governing Special Application Procedures for For-Hire Motor Carriers," and § 1062.2 will be added to this part to read as follows:

§ 1062.2 Special procedures governing applications in which applicants seek operating authority to provide a single-line service in lieu of their existing joint-line operations.

(a) *Scope.* These special rules govern the filing and handling of applications in which an applicant is seeking to acquire a certificate of public convenience and necessity authorizing it to provide a single-line service from and to points it has been serving in conjunction with connecting carriers in joint-line operations where the joint-line service has deteriorated or been cancelled. These rules shall not apply where the applicant has been providing the joint-line service involved, in conjunction with a carrier with which it is under common control through management or ownership.

(b) *Applications.* A motor common carrier seeking to acquire a certificate of public convenience and necessity under this section shall, in addition to submitting that information otherwise required under existing Commission rules and regulations, (i) include in its caption summary of the authority sought (prepared for publication in the FEDERAL REGISTER) a sentence indicating clearly that "the sole purpose of this application is to substitute single line for joint-line operations" in which it has been participating; (ii) include in bold print in the upper right-hand corner or page 1 of its application, the word SUBSTITUTION; and (iii) annex to its application, a verified statement containing the following information:

(A) The time period during which it has provided the joint-line operations it is seeking to replace with single-line service.

(B) The names of all carriers with which it has provided the joint-line service during the one-year period immediately preceding the filing of its application.

(C) An explanation of why the joint-line service has deteriorated or been cancelled and a certification that applicant is not at fault.

(D) A statement indicating whether applicant is under common control with any of the carriers named in (B)

above, through ownership or management.

(E) A summary demonstrating the traffic moved between the points sought including the one year period immediately prior to the filing of the application. Applicants involved in interline operations for less than one year should submit a summary covering the tenure of their operations. A shipper's support statement is not required.

(c) *Notice.* Notice of a proposed service shall be published in the FEDERAL REGISTER. This notice shall indicate applicant's intention to substitute a single-line service for its existing joint-line operations. Applicant is required to serve a copy of its entire application upon each of the carriers identified in its verified statement pursuant to (b)(1)(iii) of this section.

(d) *Petitions seeking intervention.* (1) Petitions for automatic intervention may be filed based upon the issue of the need for the proposed service only by those carriers which are, or have been, participating in the joint-line service for which applicant is seeking by its proposal to substitute single-line service, and then only if their participation has taken place within the one-year period immediately preceding the filing of the application.

(2) Petitions with leave may be filed by any carrier based upon applicant's fitness to provide the proposed service. Such Fitness opposition may include challenges of the veracity of applicant's statements filed in support of the application. Petitions with leave containing only unsupported and undocumented allegations will be rejected.

(d) All petitions for intervention filed pursuant to this Section shall be in the form of verified statements containing all of the information offered by the submitting party in opposition. All petitions for intervention shall be filed with the Commission and copies served on the applicant (or its authorized representative) within 30 calendar days after the date notice of the filing of the proposed service is published in the FEDERAL REGISTER.

(4) If any statements are filed in an application proceeding under this section, the applicant may file a reply statement within 20 calendar days from the last day upon which protest statements may be filed. Upon receipt of all statements filed in an opposed application proceeding, the case will be submitted to a review board for handling under the Commission's modified procedure.

These rules are promulgated under the authority contained in 49 U.S.C. 10321, and 5 U.S.C. 553 and 559.

Dated: November 29, 1978.

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

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 78-35376 Filed 12-19-78; 8:45 am]

[3510-22-M]

Title 50—Wildlife and Fisheries

CHAPTER VI—FISHERY CONSERVATION AND MANAGEMENT, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 652—SURF CLAM AND OCEAN QUAHOG FISHERIES

Closure of Surf Clam Fishery

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Notice of closure of surf clam fishery.

SUMMARY: This document provides notice that the Regional Director of the National Marine Fisheries Service has determined that the quarterly quota of surf clams for the fourth quarter of 1978 will be exceeded on or before midnight, December 21, 1978. Consequently, it shall be unlawful to fish for surf clams in the fishery conservation zone (FCZ) from 0001 hours, December 22, 1978, through 2400 hours, December 31, 1978. This notice, however, does not prohibit fishing for ocean quahogs in the FCZ.

EFFECTIVE DATE: 0001 hours, December 22, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. William G. Gordon, Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Massachusetts 01930, Telephone (617) 281-3600.

SUPPLEMENTARY INFORMATION: Regulations were published on February 17, 1978 (43 FR 6952) implementing the fishery management plan for the surf clam and ocean quahog fisheries (50 CFR Part 652). Section 652.6(c) of those regulations provides that, if the Regional Director determines, on the basis of specified information, that the quota of surf clams for any time period will be exceeded, the Assistant Administrator for Fisheries shall publish a closure notice in the FEDERAL REGISTER.

Accordingly, notice is hereby given that the Regional Director has determined, through an analysis of logbook reports received from vessel operators and surf clam processors, that the

quarterly quota (387,834 bushels) of surf clams for the fourth quarter of 1978 (October 1 through December 31) established by Section 652.6(a) of the regulations, as adjusted on October 30, 1978 (43 FR 50442), will be exceeded on or before midnight December 21, 1978. Therefore, the surf clam fishery in the FCZ shall be closed from 0001 hours, December 22, 1978, through 2400 hours, December 31, 1978. Consequently, no person shall fish for surf clams during the time specified in this notice of closure of the fishery. Fishing activities for surf clams in state territorial waters and fishing in the FCZ for ocean quahogs are not affected by this notice.

Signed at Washington, D.C. this 14th day of December, 1978.

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

WINFRED H. MEIBOHM,
Acting Executive Director,
National Marine Fisheries Service.

[FR Doc. 78-35340 Filed 12-19-78; 8:45 am]

[3510-22-M]

PART 652—SURF CLAM AND OCEAN QUAHOG FISHERIES

Allowable Level of Fishing During First Quarter of 1979

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Amendment to final regulations.

SUMMARY: This amendment specifies the amount of hours per week during which surf clams may be harvested from the fishery conservation zone (FCZ) in the first quarter (January 1 through March 31) of 1979. The Regional Director of the National Marine Fisheries Service has determined, through analysis of recent catch statistics and consultation with representatives of the surf clam industry, that a continuation of the current 24-hour weekly fishing period will permit fishermen to harvest surf clams throughout the entire first quarter without exceeding the quarterly quota.

EFFECTIVE DATE: 0001 hours, January 1, 1979, through 2400 hours, March 31, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. William G. Gordon, Regional Director, Northeast Region, National Marine Fisheries Services, 14 Elm Street, Gloucester, Massachusetts 01930, telephone (617) 281-3600.

SUPPLEMENTARY INFORMATION: Pursuant to section 302 of the Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801 *et seq.*, as amend-

ed (Act), a fishery management plan (FMP) for the surf clam and ocean quahog fisheries was prepared by the Mid-Atlantic Fishery Management Council. The FMP was approved in accordance with section 304 of the Act and published on November 25, 1977 (42 FR 60438). Regulations implementing the FMP were published on February 17, 1978 (43 FR 6952) and codified at 50 CFR Part 652.

Section 652.7 of the initial regulations implementing the FMP provides for a 4-day fishing week, Monday through Thursday, subject to adjustment by the Regional Director of the National Marine Fisheries Service, to permit the continued catch of surf clams throughout an entire quarter, and to protect the integrity of the quarterly quotas on the harvest of surf clams. Based upon determinations by the Regional Director § 652.7 was amended on February 21, 1978 (43 FR 7208), March 31, 1978 (43 FR 13581), May 5, 1978 (43 FR 19397), June 26, 1978 (43 FR 27549), October 5, 1978 (43 FR 46033), and October 30, 1978 (43 FR 50442). These amendments were necessary to prevent the quarterly quota from being exceeded, and to permit the continued harvest of surf clams throughout the entire quarter.

Section 652.7(a)(2) requires the Regional Director, prior to the beginning of each quarter, to determine the level of effort which will permit the continued harvest of surf clams throughout the entire quarter. In view of the increased level of fishing in the fourth quarter as a result of favorable weather conditions, which contributed to the reduction in allowable fishing time from 36 to 24 hours per week (43 FR 50442) and the early closure of the fishery 43 FR (—), it is anticipated that when the final catch statistics become available for the fourth quarter of 1978 (October 1 through December 31), the surf clam harvest for the quarter will exceed the quota. Any amount in excess of the fourth quarter quota will be subtracted from the 350,000 bushel quota for the first quarter of 1979, pursuant to 50 CFR § 652.6(a)(1). Therefore, in anticipation of a reduced quota in the first quarter, and in view of the demonstrated ability of the surf clam fleet to harvest a quota of 350,000 bushels or less under a 24-hour weekly fishing period, the Regional Director has determined that fishing during the first

quarter of 1979 will be restricted to a 24-hour weekly period. This level of effort is consistent with the advice of the surf clam industry representatives that a 24-hour weekly fishing period will permit surf clam fishermen to harvest the quarterly quota while reducing the possibility of a lengthy and disruptive closure.

NOTE.—The National Oceanic and Atmospheric Administration has determined that this action does not constitute a major federal action significantly affecting the quality of the human environment requiring the preparation of either an environmental impact statement or a regulatory impact analysis under Executive Order 12044.

Signed at Washington, D.C. this the 15th day of December, 1978.

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

WINFRED H. MEIBOHM,
Acting Executive Director,
National Marine Fisheries Service.

50 CFR 652.7(a)(1) is hereby revised as follows:

§ 652.7 Effort restrictions.

(a) *Surf clams.* (1) Fishing for surf clams shall be permitted during 4 days per week, from 12:01 a.m. (0001 hours) Monday to 12 midnight (2400 hours) Thursday. However, no fishing vessels shall engage in fishing for surf clams for more than 24 hours in any week. For the period from January 1, 1979 to March 31, 1979, inclusive, the authorized fishing periods for surf clams for each vessel shall be periods designated on the letter or authorization from the Regional Director. The letter shall be kept aboard the vessel at all times and shall state those periods in which the vessel is authorized to fish for surf clams. Such periods shall be 12 or 24 hours in duration and cumulatively cannot exceed 24 hours total in one week. No changes in authorized fishing periods will be permitted once a quarter has commenced. All requests for changes for subsequent quarters must be received by the Regional Director 15 days prior to the beginning of the next quarter. Fishing for any part of an authorized period will be counted as one period of fishing. In this paragraph "fishing" means the actual or attempted catching of fish, but not activities in preparation for fishing, such as traveling to or from the fishing grounds.

[FR Doc. 78-35341 Filed 12-19-78; 8:45 am]

proposed rules

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

[3410-02-M]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 1049]

[Docket No. Ao-319-A29]

MILK IN THE INDIANA MARKETING AREA

Hearing on Proposed Amendments to
Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing
Service, USDA.

ACTION: Public hearing on proposed
rulemaking.

SUMMARY: The hearing is being held to consider industry proposals to amend certain provisions of the Indiana milk marketing order. The proposals would increase the Class I differential 10 cents, limit the amount by which Class I and blend prices may be adjusted for plant location, and revise the payment provisions concerning cooperative associations.

DATE: January 9, 1979.

ADDRESS: Holiday Inn, Indianapolis,
Indiana, Airport.

FOR FURTHER INFORMATION CONTACT:

Martin J. Dunn, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-7311.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a public hearing to be held at the Holiday Inn, Indianapolis, Indiana, Airport beginning at 9:30 a.m., local time, on January 9, 1979, with respect to proposed amendments to the tentative marketing agreement and to the order, regulating the handling of milk in the Indiana marketing area.

The hearing is being called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, contained in this hearing notice, and

any appropriate modifications of them, to the tentative marketing agreement and to the order.

The proposed amendments, set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by the Associated Milk Producers, Inc., Mid-States Region:
Proposal No. 1

The order should be amended to "floor" adjustments that are made in the Class I and uniform prices for location so that any location adjustment made shall not result in a value less than the basic formula price for the current month.

Proposal No. 2

Revise § 1049.73(b) to read as follows:

§ 1049.73: Payments to producers and to cooperative associations.

(a) * * *

(b) Each handler shall make payment to the cooperative association for producer milk if such cooperative association is authorized to collect such payments for its members and exercises such authority, an amount equal to the sum of the individual payments otherwise payable for such producer milk as follows:

* * * * *

Proposal No. 3

Revise § 1049.50 to read as follows:

§ 1049.50 Class prices:

* * * * *

(a) *Class I price.* The Class I price shall be the basic formula price for the second preceding month plus \$1.57.

Proposed by the Dairy Division, Agricultural Marketing Service:

Proposal No. 4

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, M. C. Jenkins, 5130 North Brouse Avenue, P.O. Box 55527, Indianapolis, Indiana 46205, or from the Hearing Clerk, Room 1007, South Building, United States Department of Agriculture, Washington, D.C. 20250, or may be there inspected.

From the time that a hearing notice is issued and until the issuance of a

final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture.
Office of the Administrator, Agricultural Marketing Service.
Office of the General Counsel.
Dairy Division, Agricultural Marketing Service (Washington office only.)
Office of the Market Administrator, Indiana marketing area.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, D.C., on December 14, 1978.

WILLIAM T. MANLEY,
Deputy Administrator,
Marketing Program Operations.

[FR Doc. 78-35286 Filed 12-19-78; 8:45 am]

[6355-01-M]

CONSUMER PRODUCT SAFETY COMMISSION

[16 CFR Part 1404]

CELLULOSE INSULATION

Proposed Labeling Requirement

AGENCY: Consumer Product Safety
Commission.

ACTION: Proposed rule.

SUMMARY: The Commission proposes to require manufactures of cellulose insulation to give information to installers and consumers concerning the flammability hazard of improper installation of the product. The proposal would require the manufacturer to label containers of cellulose insulation to recommend installing the insulation away from recessed lighting fixtures and exhaust flues of heat producing devices or apparatus, such as furnaces, water heaters, and space heaters. The Commission is proposing this rule since the Commission believes that consumers and installers need this information to avoid the fire hazard associated with improperly installed cellulose insulation. The effect of this rule should be to reduce the likelihood of injuries from fires result-

ing from improper installation of cellulose insulation.

DATES: Under the proposal, cellulose insulation manufactured, imported, packaged, or sold by the manufacturer or importer after August 31, 1979 would have to comply with this labeling requirement. Written comments on this proposal must be submitted to the Commission on or before February 20, 1979.

ADDRESSES: Written comments, preferably in five copies, should be submitted to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207 and should be titled *Cellulose Insulation, Section 27(e) Proposal*.

All materials which the Commission has that are relevant to this proceeding, including any comments that may be received on this proposal, may be seen in, or copies obtained from, the Office of the Secretary, Third Floor, 1111 18th Street, NW., Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT:

Harry I. Cohen, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207, (301) 492-6453.

SUPPLEMENTARY INFORMATION:

A. BACKGROUND

On July 11, 1978, the "Emergency Interim Consumer Product Safety Standard Act of 1978," Pub. L. 95-319, became law. This legislation amended the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051 et seq.) by adding a new section (35) that required the Commission to issue an interim consumer product safety standard for cellulose insulation, based on requirements for flame resistance and corrosiveness in General Services Administration's (GSA) specification HH-I-515C, as effective February 1, 1978.

Pursuant to the statute, the Commission, on August 8, 1978, published the interim consumer product safety standard addressing the flammability and corrosiveness of cellulose insulation (43 FR 32540, corrected 43 FR 39564, September 6, 1978). All cellulose insulation manufactured after September 7, 1978 must comply with the interim standard.

The "Emergency Interim Consumer Product Safety Standard Act of 1978" also provides that until a final consumer product safety standard is in effect, the Commission must propose as an amendment to the interim standard each revision GSA issues that supersedes the requirements for flame resistance and corrosiveness in GSA specification HH-I-515C. The Commission may make appropriate changes in

the GSA revisions before proposing the amendment for public comment. The Commission must issue the amendment unless the Commission determines, after consulting with the Secretary of Energy, that the amendment is not necessary to protect consumers from the unreasonable risk of injury associated with flammable or corrosive cellulose insulation or that implementation of the amendment will create an undue burden on persons who are subject to the interim consumer product safety standard.

The General Services Administration has informed the Commission that, effective June 15, 1978, it has issued GSA specification HH-I-515D. Since this specification contains requirements for flame resistance and corrosiveness for cellulose insulation that supersede the requirements of GSA specification HH-I-515C, the Commission is required by Pub. L. 95-319 to publish these provisions of HH-I-515D as a proposed amendment to the interim standard. The Commission has extended for 150 days, from August 24, 1978, until January 22, 1979, the time in which it must publish the proposed amendment to the interim standard (43 FR 35238, August 8, 1978). The purpose of the extension is to provide the Commission with additional time to study the technical and scientific basis and the safety and economic consequences of the requirements of HH-I-515D. On September 6, 1978 the Commission published a notice of intent to propose HH-I-515D as an amendment to the interim standard (43 FR 39720). This notice requested comments on the proposed amendment and related issues.

The interim standard establishes performance requirements for cellulose insulation to address the unreasonable risk of injury from flammable or corrosive cellulose insulation. The interim standard also requires that a labeling statement be placed on containers of cellulose insulation to acknowledge that the interim standard is a minimum one and that the standard is based on laboratory tests only, which do not represent actual conditions which may occur in the home. However, the interim standard does not address hazards that may be caused by the improper installation of insulation. In the *Conference Report* the conferees stated that improper installation of cellulose insulation has been identified as a major cause of insulation fires. The conferees recognized that the Steiner tunnel test method of the present interim standard does not measure smoldering combustion resulting from an ignition source, such as a recessed lighting fixture. The conferees also stated their expectation that the Commission would issue a rule under section 27(e)

of the act to require manufacturers to provide safety information, on installation, to consumers (H.R. Rept. No. 95-1322, 95th Congress, 2d. Sess. 9 (1978)).

B. GROUNDS FOR PROPOSAL

Section 27(e) of the CPSA (15 U.S.C. 2076(e)) authorizes the Commission to require manufacturers of consumer products to provide the Commission with such performance and technical data related to performance and safety as may be required to carry out the purposes of the act. Section 27(e) also authorizes the Commission to require manufacturers of consumer products to give notification of such performance and technical data at the time of original purchase to prospective purchasers and to the first purchaser of such product for purposes other than resale, as it determines necessary to carry out the purposes of the act. As provided in section 2(b) of the CPSA (15 U.S.C. 2051(b)), one purpose of the act is to protect the public against unreasonable risks of injury associated with consumer products.

Fire incident information available to the Commission indicates that there is a serious risk of injury from fire associated with improperly installed cellulose insulation. The Commission has 43 in-depth investigation reports [through November 1978] which state the ignition source of fires involving cellulose installation. Twenty-eight of the reports identify recessed electrical light fixtures as the ignition source. The Commission has fifteen consumer complaints and news reports stating an ignition source for fires involving cellulose insulation. Eight of these complaints and reports identified recessed lighting fixtures as the ignition source. The other ignition sources in the fire incident data include furnaces (including attic furnaces), a vent pipe from a stove, a drop light, cigarettes, a fireplace, a ceiling exhaust fan, surface mounted lights, and damaged electrical wires. The in-depth investigations indicate that safety information is needed by professional installers of cellulose insulation as well as consumers who install their own insulation. Of thirty-eight investigations of incidents, where the installer was identified, thirty-six incidents involved professional installation and two involved home-owner installation.

A review of the available in-depth investigations reveals patterns that explain how consumers could be injured in a fire resulting from improperly installed cellulose insulation. The families in six reports were awakened by the smell of smoke, and, in one case, the house was filled with smoke. In three other incidents, the families were awakened by a passing policeman

or other person and alerted to the fact that their home was on fire. The intensity of four fires extensively damaged or destroyed the home. All of the members of these families faced the possibility of injury or death if someone has not noticed the fire and/or smoke.

The Commission has information showing that cellulose insulation is being installed improperly around recessed lighting fixtures. CPSC investigators have inspected the attics of sixteen homes with recessed light fixtures that had cellulose insulation installed after January 1, 1976. Although the sample is not statistically representative, preliminary results of the inspections revealed that six out of the sixteen homes had cellulose insulation completely covering the recessed light fixtures. One home had cellulose insulation over rockwool insulation that totally covered the fixture. Another home had a fixture that was covered only by fibrous glass insulation. Two additional homes had cellulose insulation completely covering fixtures that were presumably protected by being surrounded by non-flammable material. In another home cellulose insulation covered the light fixtures at installation, however, a utility inspector uncovered the fixture. The five remaining homes had light assemblies free of, or with only a small amount of insulation touching the fixture. In no home was the light fixture protected in such a way as to keep insulation permanently away from the light assembly.

In addition to the information concerning improper installation and fire incidents associated with improperly installed cellulose insulation, the Commission has the following technical information indicating that improperly installed cellulose insulation presents a serious risk of injury:

(1) *CPSC Insulation Recessed Light Report, July 1978 from D. Toms of the CPSC Engineering Laboratory to P. Armstrong, CPSC Directorate for Engineering Sciences.* This report, including video-taped experiments, concerns tests conducted by the CPSC laboratory involving 51 samples of cellulose insulation from 37 manufacturers and 23 recessed lights of various configurations. The laboratory results indicate that a fire may result when cellulose insulation that passes the radiant panel and smoldering combustion tests of GSA specification HH-I-515D is installed around and over certain incandescent recessed lighting fixtures when used with recommended wattage bulbs.

The Commission staff conducted smoldering combustion tests and flooring radiant panel tests specified in HH-I-5150D on 51 samples of cellulose insulation collected around the coun-

try by the Commission's field offices. The Commission staff selected 8 of the 51 samples of cellulose insulation. Six of these samples passed both the smoldering combustion test and radiant panel test. The printed labels on the bags of three of these eight samples claimed that the insulation had flame spread ratings under 25 as measured by the Steiner tunnel test referenced in HH-I-515C. The printed labels on the bags of five of the samples claimed that the insulation met all of the requirements of HH-I-515C. Each of the eight samples was placed one at a time in an attic mock-up section with a recessed electrical light fixture until smoldering combustion was evident. In two of the eight tests, the smoldering was allowed to continue until flaming was evident. The other tests were stopped before flaming was evident to prevent destruction of the test equipment. Flame was observed at the wood frame of the test box, and not from the insulation itself. One of the two flaming tests was recorded on video tape. In both of the flaming tests, electricity to the light fixture was shut off over 45 minutes before flaming combustion was evident.

In six laboratory tests the cellulose insulation started smoldering in less than eight hours. In two other tests, the open flame condition occurred within 11 hours. The report demonstrates that some recessed electrical lights reach temperatures in excess of that required to initiate smoldering combustion in some types of cellulose insulation.

(2) *NBS Tests Involving Recessed Light Fixtures.* NBS conducted tests involving eight recessed light fixtures similar to the tests later conducted by the Commission's laboratory. In these tests conducted at the National Bureau of Standards, cellulose insulation was placed around a recessed light fixture installed between simulated attic floor joists. A bulb exceeding the rated wattage of the fixture was used in these tests. These tests showed that fires could be initiated by insulation over these recessed light fixtures when light bulbs exceeding the rated wattage were used.

(3) *Tennessee Technological University Report, Department of Energy, Oak Ridge National Laboratory, Tennessee Technological University.* This draft report was developed under a Department of Energy contract to consider the safety of recessed lights and cellulose insulation. The report states it has been dramatically demonstrated that over-lamped recessed light fixtures improperly covered with cellulose insulation are fire hazards. The experimental work also indicates that the hazard can be reduced and possibly eliminated by requiring an

open top barrier to accompany the fixture.

(4) *July 25, 1977 Report by Bruce V. Etting of Technical Fire Investigation Services.* This report also states that it is possible to ignite some cellulose insulation with a recessed lighting fixture even where the cellulose insulation does not burn in a flame test.

(5) *Oklahoma City Fire Department Headquarters Report—July 27, 1978, Protective Cover for Recessed Light Fixtures.* In this report the Assistant Fire Chief of the Oklahoma City Fire Department states that attic fires result when enough insulation is placed directly on top of recessed light fixtures, regardless of the type of insulation. According to the Assistant Fire Chief, insulation holds the heat in, so that the temperature inside a recessed light fixture can build to as high as 800 degrees Fahrenheit when enough insulation is placed on top of the fixture. In cases involving non-flammable insulation, the fires are caused by the conductance of heat from the light fixtures along hangers and conduits to wood framing members in the attics. According to the Assistant Fire Chief the report was based on fire incident experience in Oklahoma City last winter, and tests of different kinds of recessed fixtures in a simulated attic with different kinds of insulation conducted by the Oklahoma City Fire Department and Tinker Air Force Base.

Although not all guard systems were evaluated, the report states that recessed light fixture housings that did not cause fires in the tests were those surrounded with heat sink guards made of 26 gauge metal.

(6) *Requirements of Building Codes and the National Electrical Code.* The Commission is aware that several building codes require spacing between exhaust flues and combustible materials. Also, the National Electrical Code requires spacing between insulation and certain electrical devices.

Based on available information, the Commission believes that cellulose insulation can come into contact with recessed lighting fixtures or exhaust flues by one of the following methods.

(1) Careless installation where the installer does not take preventive measures to keep blown-in or poured-in insulation from contacting heat sources.

(2) After the insulation has been installed, air currents in the attic could displace some of the insulation and bring it into contact with heat sources.

Cellulose insulation exposed to a source of heat, such as a recessed electrical light fixture, or an exhaust flue may ignite. The smoldering may continue to spread, causing ignition of other combustibles in the attic area, and may result in flaming combustion. When the cellulose insulation ignites

and a fire is started in a residence or dwelling, consumers in the residence or dwelling would be exposed to a risk of injury from burns or smoke inhalation. Once flaming combustion occurs, either directly from the cellulose or through ignition of other combustibles, the fire may spread rapidly and fully involve the attic. A fire of this magnitude produces large amounts of heat and smoke, and if not extinguished may eventually consume much of the structure. The most probable injury scenario involves initiation of smoldering during the late evening hours when lighting and, in proper season, heating are at maximum use, followed by full development of the fire in the early morning hours while the occupants are asleep. Since the smoke and flames of attic fires typically travel upwards to the roof, any smoke alarm device in the living area would not be sensitized until the fire was well advanced.

The Commission has considered the fire incident data and technical information discussed above concerning the potential for injury associated with improperly installed cellulose insulation. The Commission concludes that a serious risk of injury from fire is associated with cellulose insulation that is improperly installed too close to the sides and over the top of a recessed electrical light fixture or where cellulose insulation is installed too close to the exhaust flues from heat producing devices or apparatus such as furnaces, water heaters, and space heaters. Cellulose insulation that is improperly installed can ignite in a relatively short time as a result of the heat that is trapped by the insulation and builds up around the ignition source. The insulation may ignite even if the insulation complies with the interim standard or HH-1-515D and even if a recommended wattage bulb is used in the recessed electrical light fixture. The ignition of the insulation can lead to flaming combustion of the structure, exposing consumers to the risk of serious injury from fire. Also, according to the Oklahoma City Fire Department Headquarters Report, even when the insulation does not ignite, the excessive heat may cause ignition of other building materials.

The Commission, as discussed below, has also considered the potential economic impact of requiring labeling, as described in this proposal, to eliminate or reduce this risk of injury from fires associated with improperly installed cellulose insulation. The Commission concludes that the regulation would have a minimal impact on the cost, utility, and availability of the product, since the regulation would not require manufacturers to alter the product, aside from the label on the container. This conclusion is based on the belief

that the effective date would allow time to draw down or deplete inventories of bags with non-complying labels and, thereby, avoid the need for hand stick-on labels. This situation imposes virtually no burden on the industry because the one-time design and preparation cost for new printing plates is a negligible cost per product item.

The Commission does not believe that the regulation would have an adverse effect on the availability of the product by deterring purchasers from buying the product. The labeling requirement proposed here is not so explicit and shocking in its portrayal of the risk of injury as to constitute an unwarranted deterrent to the marketing and availability of cellulose insulation to consumers. Any deterrent effect that may be caused by the Commission's labeling requirement should be minimal. Many manufacturers of cellulose insulation are already labeling their bags with some type of warning concerning installation near recessed electrical lights. The Commission staff has recently conducted a survey of present labeling on 125 cellulose insulation bags. Out of the 125 bags, 109 were labeled with some type of warning concerning installation near recessed electrical lights.

The Commission believes that the proposed labeling requirement would benefit consumers and would significantly reduce the risk of injury from fire associated with improperly installed cellulose insulation. Available information concerning incidents associated with cellulose insulation indicates that many incidents have occurred where the insulation has been installed by professional installers. By requiring simple and explicit safety information concerning proper installation to be prominently and conspicuously placed on the insulation container, the Commission will have increased the likelihood that professionals and consumers will install the product in a safe manner. Persons who believe that the labeling requirement proposed here would unduly deter purchasers from buying cellulose insulation, or who believe that this requirement would not be effective in reducing the risk of injury from fire should comment on these issues and present any facts that are available to support their position.

As a result of the serious nature of the risk of injury from fire presented by improperly installed cellulose insulation and the minimal impact of the regulation on the cost, utility, and availability of the product, the Commission preliminarily finds that there is an unreasonable risk of injury associated with improperly installed cellulose insulation. This unreasonable risk of injury is due to fires that can result

where cellulose insulation is installed too close to the sides and over the top of a recessed electrical light fixture or where cellulose insulation is installed too close to the exhaust flues from heat-producing devices or apparatus.

Accordingly, the regulation proposed below requires manufacturers of cellulose insulation to label the insulation container with information concerning the flammability hazard associated with cellulose insulation that is improperly installed too close to recessed electrical light fixtures or exhaust flues from heat producing devices or apparatus such as furnaces, water heaters, and space heaters.

C. DESCRIPTION OF THE PROPOSAL

The proposed labeling requirement applies to cellulose insulation as provided in §1404.1(b). Although the Commission has received information alleging that other types of insulation may present a similar problem, the Commission has decided to confine this rule to cellulose insulation since most of the fire incident data presently available to the Commission involves cellulose insulation as opposed to other types of insulation and since Congress has indicated its intent that the Commission develop such a rule for cellulose insulation. The Commission has made no decision at this time concerning the need for a similar labeling requirement for other types of insulation. If the Commission decides in the future that a labeling requirement is needed for other types of insulation, the Commission will propose such a provision for public comment. In December 1977, the Commission staff and members of the mineral wool insulation industry met to discuss labeling practices for the safe installation of mineral wool insulation products. The mineral wool insulation manufacturers agreed in principle to address the following labeling concerns: clearance around heat sources, proper installation of insulation with flammable vapor barriers, avoidance of skin irritation, and measures for eye and lung protection.

The proposed regulation is limited to home or residential cellulose insulation since the reported incidents are primarily confined to residences, and since the technical analysis indicates that consumers are most likely to be injured as occupants of a residence, rather than other types of buildings.

At §1404.4(a), the proposed regulation would require manufacturers of cellulose insulation to provide prospective purchasers and the first purchaser for purposes other than resale (consumers), with performance and technical data by placing a label on containers of cellulose insulation. The label instructs persons to avoid the flammability hazard by not installing or main-

taining the product above and within three inches of the sides or writing compartments of recessed electrical light fixtures. This labeling is based upon a provision of the National Electrical Code (NEC) 1978 Edition, Article 410-66, page 259, published by the National Fire Protection Association, which states:

Thermal insulation shall not be installed within 3 inches of the recessed fixture, and shall not be so installed above the fixture as to entrap heat and prevent the free circulation of air unless the fixture is otherwise approved for the purpose.

In addition, a voluntary standard, UL 57, Standard for Safety, Electric Lighting Fixtures Bulletin, dated July 11, 1978, similarly states in paragraph 70.14 that:

An incandescent fixture that does not comply with paragraph 69.6A shall be marked in Form D-6 (see paragraph 29.4) WARNING—RISK OF FIRE Do not install insulation within 3 inches of fixture sides or wiring compartment nor above fixture in such a manner as to entrap heat, or an equivalent statement. The upper case letters shall be no less than 1/8 inch in height and the lower case letters shall be not less than 1/16 inch in height.

The Commission's proposed label suggests that persons installing the insulation use an open top barrier to keep the insulation away from the recessed electrical light fixture. The label advises that during the installation process, the open top barrier may be covered with a removable lid to keep the insulation away from the recessed electrical light fixture. However, after the installation process has been completed, the lid should be removed so that it does not contribute to heat buildup around the recessed electrical light fixture. The proposed labeling statement at § 1404.4(a) also cautions persons to avoid the flammability hazard by not installing or maintaining the product near exhaust flues from heat-producing devices and apparatus such as furnaces, water heaters, and space heaters.

The proposed label also requires manufacturers to include a request to installers to remove the label and give it to the consumer after the insulation has been installed. The Commission has included this request in the label since the label information would benefit consumers by informing them of the importance of keeping the insulation away from recessed light fixtures and heat producing devices.

As required by § 1404.4(b) the statement must appear prominently and conspicuously on the cellulose insulation container, in letters at least one-fourth inch in height, and enclosed within a rectangle formed by lines at least one-sixteenth inch in width. The required statement must be printed

legibly in a color which contrasts with the background.

Section 1404.4(c) provides that manufacturers may use any type of label, including one which is pressure-sensitive or glued-on, to meet the requirement as proposed in this notice provided the label will remain attached to the container for the expected time interval between the manufacture of the product and its installation.

The label requirement proposed in this section is in addition to the label requirement presently required by § 1209.9 of the Commission's interim standard for cellulose insulation (16 CFR Part 1209, 43 FR 35240, August 8, 1978) and would be in addition to any labeling that would be required if the Commission issues an amendment to the interim standard based on GSA specification HH-I-515D.

D. ACTIVITIES BY OTHER FEDERAL REGULATORY AGENCIES CONCERNING CELLULOSE INSULATION

Several other federal regulatory agencies have either already adopted, or are considering adopting, provisions for cellulose insulation. The CPSC staff has been involved in interagency meetings and has commented and provided advice to other agencies to ensure cooperation and minimize the possibility of conflicting or duplicative requirements.

The Federal Trade Commission (FTC) has proposed and held hearings on a trade regulation rule concerning the labeling and advertising of home insulation (42 FR 59678, November 18, 1977). The FTC staff has submitted a recommended trade regulation rule for consideration by the Commissioners of the FTC. The recommended trade regulation rule would, among other things, require manufacturers of cellulose insulation to label their products with certain types of information concerning the R-value (or thermal efficiency) of insulation, and also require manufacturers to provide installers and consumers with fact sheets containing R-value information. The recommended rule would also require installers to give customers a fact sheet and leave an attic card in each house where the insulation is installed. Since the FTC recommended rule does not include information concerning the proper installation of cellulose insulation to avoid a fire hazard, the CPSC believes that the information in the rule proposed here by the CPSC is necessary.

The Department of Commerce (DOC) has proposed a specification for labeling thermal insulation (43 FR 23488, May 30, 1978). The proposed DOC voluntary specification does not include specific installation instructions such as those contained in this proposed rule.

The Department of Energy (DOE) is preparing recommended criteria and installation practices for materials and products that are suitable for use in retrofitting residences in accordance with the energy conservation goals of the National Energy Plan. Although the draft criteria would cover fire hazards associated with cellulose insulation, the DOE draft criteria do not require labeling for the insulation container and are not intended to apply to consumers or persons who do not participate in the residential conservation service program.

The Department of Housing and Urban Development (HUD) has published a notice and requested comments on its proposed use of materials bulletin for spray applied cellulosic thermal insulation (43 FR 43566, September 26, 1978). The proposed HUD use of materials bulletin does not contain specific information concerning the safe installation of cellulose insulation, such as that in this CPSC proposed rule.

E. ENVIRONMENTAL CONSIDERATIONS

Based on its consideration of the potential environmental impact of the proposal set forth below, the Commission concludes that the environmental will not be significantly affected and that an environmental impact statement is not necessary. The Commission's regulations for environmental review (16 CFR, Part 1021, § 1021.5) provide that labeling rules are normally non-major actions with little or no potential for affecting the environment, so that an environmental review is not normally required. The Commission does not foresee that this labeling rule will become a major action anticipated to affect the environment.

F. ECONOMIC IMPACT

The Commission estimates that the regulation would have a minimal impact on the cost, utility, and availability of the product, since the regulation would not require manufacturers to alter the product, aside from the label on the container and would not unduly deter purchasers from buying the product. The Commission believes that the effective date would allow time to draw down or deplete inventories of bags with non-complying labels and, thereby, avoid the need for hand stick-on labels. This situation imposes virtually no burden on the industry because the one-time design and preparation cost for new printing plates is a negligible cost per product item. Cellulose insulation containers cost manufacturers approximately 20 cents per container. The alternative to the destruction of expensive inventory is hand stick-on labels, which involve a second printing cost per production units of approximately 1 or 2 1/2 cents

per bag of insulation as well as an application cost. Application costs vary considerably with each plant. However, at worst an additional temporary employee would be needed to apply the labels, adding roughly 4 cents per bag during the limited production period. The impact of the regulation on the price of the product would be minimal because the potential labeling costs are negligible. The regulation would not affect the utility or availability of the product because manufacturers are not required to alter the product aside from the label on the container. A draft economic assessment dated October 13, 1978 is available in the Office of the Secretary of the Commission.

G. EFFECTIVE DATE

The Commission proposes that Part 1404 apply to products manufactured or imported, or packaged or sold by the manufacturer or importer after August 31, 1979. The Commission believes that this date would allow manufacturers ample time to deplete inventories before the fall peak purchasing season. The Commission anticipates that a final rule could be issued near the middle of May, 1979. The fourteen weeks provided by this interval between publication of the final rule and its effective date should be sufficient time in which to order and develop new labels, to introduce them into production, and to bring manufacturers' inventory into compliance.

H. PENALTIES

If the Commission issues a final rule requiring labeling information, manufacturers, including importers, of cellulose insulation must comply with the requirements of the rule on the effective date. Failure to comply with the rule is a prohibited act, as specified in section 19(a)(9) of the CPSA, and could lead to civil and criminal penalties under sections 20 and 21 of the CPSA. In addition, section 22 of the act authorizes the Commission to obtain an injunction from a United States district court to restrain a violation of the labeling requirement.

I. CONCLUSION AND PROPOSAL

On the basis of the information discussed above, the Commission concludes that a rule, applicable to cellulose insulation, that would require manufacturers of cellulose insulation to give information to prospective purchasers and to the first purchaser for purposes other than resale concerning the flammability hazard associated with improperly installed cellulose insulation is necessary to help protect the public against the unreasonable risk of injury associated with such products.

Therefore, under provisions of the Consumer Product Safety Act (sec. 27(e), Pub. L. 92-573, 86 Stat. 1228; 15 U.S.C. 2076(e)), the Commission proposes that Title 16 Chapter II of the Code of Federal Regulations be amended by adding to Subchapter B a new Part 1404 as follows:

PART 1404—CELLULOSE INSULATION

Sec.

1404.1 Scope, application, and effective date.

1404.2 Background.

1404.3 Definitions.

1404.4 Requirement to provide performance and technical data by labeling—Notice to purchasers.

AUTHORITY: Sec. 2, 27, 35, Pub. L. 92-573, Pub. L. 95-319; 86 Stat. 1207, 1228; 92 Stat. 386 (15 U.S.C. 2051, 2076, 2082).

§ 1404.1 Scope, application, and effective date.

(a) *Scope.* This Part 1404 establishes a requirement for manufacturers of cellulose insulation to notify (1) prospective purchasers of such products at the time of original purchase and (2) the first purchasers of such products for purposes other than resale (installers and consumers) of ways to avoid the flammability hazard which exists where cellulose insulation is installed too close to the sides or over the top of a recessed electrical light fixture or where cellulose insulation is installed too close to the exhaust flues from heat-producing devices or apparatus such as furnaces, water heaters, and space heaters. The notification consists of warning labels on the containers of cellulose insulation.

(b) *Application and effective date.* This rule applies to cellulose insulation that is for sale to consumers for installation in households or residences; as well as insulation that is produced or distributed for installation by professionals in households or residences. Cellulose insulation that is labeled as, marketed, and sold solely for nonresidential installation is not included within the scope of this proceeding. The rule applies to all products manufactured or imported, or packaged or sold by the manufacturer or importer after August 31, 1979.

§ 1404.2 Background.

Based on available fire incident information, engineering analysis of the probable fire scenarios, and laboratory tests, the Consumer Product Safety Commission has determined that fires are likely to occur where cellulose insulation is improperly installed too close to the sides and over the top of recessed electrical light fixtures, or installed too close to the exhaust flues from heat producing devices or apparatus such as furnaces, water heaters, and space heaters. These fires may

result in serious injuries or deaths. Presently available information indicates that fires may occur where cellulose insulation is improperly installed even though the cellulose insulation complies with the existing interim standard based on GSA specification HH-I-515C or the amendment to the existing interior standard that will be proposed based on GSA specification HH-I-515D. The Commission has determined that it is necessary to require a labeling requirement for the installation of cellulose insulation to inform persons installing cellulose insulation and consumers in whose homes the insulation is installed of the fire hazard associated with improperly installed cellulose insulation and the method of properly installing the insulation to prevent this hazard. The Commission anticipates that this regulation will accomplish the purpose of helping protect the public against the unreasonable risk of injury associated with improperly installed cellulose insulation.

§ 1404.3 Definitions.

(a) The definitions in section 3 of the Consumer Product Safety Act (15 U.S.C. 2052) apply to this Part 1404.

(b) "Cellulose insulation" is cellulose fiber, loose fill, thermal insulation that is suitable for blowing or pouring applications. The definition also includes insulation installed using the "wet process" method of installation. The "wet process" insulation is blown into an area with a spray or mist of water applied at the nozzle during installation.

(c) "Manufacturer" means any person who manufactures or imports a consumer product. The term includes both a person who manufactures the product at the direction of another (such as a packager) and the person at whose direction the product is manufactured (such as the marketer of the brand).

§ 1404.4 Requirements to provide performance and technical data by labeling—Notice to purchasers.

(a) Manufacturers of cellulose insulation shall give notification of performance and technical data related to performance and safety (1) to prospective purchasers of such products at the time of original purchase and (2) to the first purchaser of such products for purposes other than resale in the following manner. Manufacturers of cellulose insulation shall label all containers of cellulose insulation with the following statement, using capital letters as indicated:

WARNING

TO PREVENT FIRES: Keep cellulose insulation at least three inches away from recessed light fixtures. Do not place insulation over such fixtures.

PROPOSED RULES

Dated: December 14, 1978.

SADYE DUNN,
Secretary, Consumer
Product Safety Commission.

[FR Doc. 78-35318 Filed 12-19-78; 8:45 am]

[6351-01-M]

**COMMODITY FUTURES TRADING
COMMISSION**

[17 CFR Part 32]

**REGULATION OF COMMODITY OPTION
TRANSACTIONS**

Proposal Reissuance of and Amendments to
Commodity Option Regulations

AGENCY: Commodity Futures Trading
Commission.

ACTION: Proposed rules.

SUMMARY: The Commission proposes to reissue, and to adopt certain amendments to, its commodity option regulations. The purpose of the Commission's proposal is to implement those provisions of the Futures Trading Act of 1978 which direct the commission to issue regulations governing the grant, offer and sale of dealer options. The Commission's action does not affect the general statutory and administrative prohibition against the offer and sale of commodity options to the public.

DATES: Written comments to be received on or before February 28, 1979.

PROPOSED EFFECTIVE DATE: Not yet determined.

ADDRESS: Written comments on the proposal should be sent to: Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, Attention: Secretariat.

FOR FURTHER INFORMATION
CONTACT:

Mark N. Rae, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, 202-254-7285.

SUPPLEMENTARY INFORMATION: On October 1, 1978, the Futures Trading Act of 1978, Pub. L. 95-405, 92 Stat. 865 *et seq.* (September 30, 1978), became effective. Among other things, section 3 of that Act amends section 4c of the Commodity Exchange Act (the "Act") so as to prohibit commodity option transactions on any commodity that first became subject to regulation in 1974.¹ Option transactions in which the purchaser is a producer, processor, commercial user of, or a merchant handling the commodity involved in the transaction or the products or by-products thereof (so-called "trade op-

¹Section 4c(a) of the Act, 7 U.S.C. 6c(a) (1976), prohibits option transactions involving commodities regulated prior to 1974.

tions") are, however, exempt from this general prohibition. In addition, section 4c(d)(2) of the Act directs the Commission to issue regulations permitting grantors and futures commission merchants to grant and offer options on physical commodities (so-called "dealer options") subject to certain statutorily specified conditions and such other uniform and reasonable requirements as the Commission may prescribe.

On November 15, 1978, the Commission reissued and adopted certain amendments to its commodity option regulations in order to implement the provisions of section 4c(d)(2). See 43 FR 54220 *et seq.* (November 21, 1978). The reissuance and amendments were to have become effective on December 21, 1978. However, upon further consideration, the Commission has determined to revoke this action and to republish the reissuance and amendments in a proposed form in order to solicit the fullest public participation in this rulemaking proceeding. See Rules and Regulations Section of this issue.

Accordingly, by this notice, the Commission is proposing that the regulations presently governing the offer and sale of commodity option be reissued and that certain amendments to those regulations be adopted.² The Commission believes that its existing regulations are generally in accord with the provisions of section 4c of the Act and that the reasons for the adoption of these regulations are still valid. The Commission recognizes, however, that it will be necessary to amend its rules to some extent to conform them to the requirements of the new legislation and to insure the continued adequacy of customer protection.

For this purpose the Commission proposes to adopt the reissuance and amendments published on November 21, 1978. The full text of the reissuance and amendments are reprinted at the end of this notice. The text is identical in all material respects to that published on November 21. An extensive discussion of the basis and purpose of the reissuance and amendments is set forth at 43 FR 54221-54225 (November 21, 1978), copies of which are available from the Commission upon request. The Commission considers this discussion as part of the basis and purpose of this rulemaking proceeding.

In addition, the Commission is also proposing to adopt certain other

²The Commission's commodity option regulations that are in effect are published in 17 CFR Part 32 (1978), as amended by 43 FR 16153 *et seq.* (April 17, 1978), 43 FR 23704 *et seq.* (June 1, 1978), 43 FR 47492 (October 16, 1978) and 43 FR 52467 *et seq.* (November 13, 1978). Rule 32.12(d) published at 43 FR 23708, has been repealed. See 43 FR 54226-54228 (November 21, 1978).

Also keep this insulation away from exhaust flues of furnaces, water heaters, space heaters or other heat-producing devices.

To be sure that insulation is kept away from light fixtures and flues, use a permanent, open top barrier around these items.

During installation a removable lid may be placed over the permanent barrier so that insulation cannot get inside the barrier and against a fixture or flue. Remove the lid after the insulation is installed to prevent heat build-up in the barrier.

REQUEST TO INSTALLER: Remove this label and give it to consumer at completion of job.

(b) The labeling statement required by § 1404.4(a) shall appear prominently and conspicuously on the container in letters which are at least one-fourth inch in height. The labeling statement shall be enclosed within a rectangle formed with lines at least one-sixteenth inch in width. The labeling statement shall be printed with legible type in a color which contrasts with the background on which the statement is printed.

(c) To meet this requirement, manufacturers may use any type of label, including one which is pressure sensitive or glued-on, provided the label is made in such a manner that it will remain attached to the container for the expected time interval between the manufacture of the product and its installation.

Interested persons are invited to submit written data, views, or arguments regarding any aspect of proposed Part 1404 on or before February 20, 1979. Comments submitted after this date will be considered to the extent practicable. The Commission is particularly interested in receiving comments on the economic effect of the proposed rule, including its effect on the availability and utility of products subject to the rule, and the appropriateness of the proposed effective date of the rule.

Comments shall be accompanied, to the extent possible, by supporting data or documentation. Requests for confidentiality of documentation will be handled in accordance with the Freedom of Information Act as amended (5 U.S.C. 552), the Commission's regulations under that act (16 CFR Part 1015, February 22, 1977), and the provisions of section 6(a)(2) of the CPSA (15 U.S.C. 2055(a)(2)).

Written submissions and any accompanying data or material should be submitted, preferably in five copies, addressed to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207.

All written comments that are received, and all other material which the Commission has that is relevant to this proceeding may be seen in, or copies obtained from, the Office of the Secretary, Third Floor, 1111 18th Street NW., Washington, D.C. 20207.

amendments to its commodity option regulations. Set forth below is a narrative discussion of the other amendments that the Commission is proposing at this time as well as certain issues on which the Commission seeks comment. The Commission has not yet formulated specific language to implement these proposals and, accordingly, the proposals are not reflected in the text of the amendments reprinted at the end of this notice.

1. Section 4c(d)(2)(A)(ii) of the Act requires that an option grantor at all times have a net worth of at least \$5,000,000 certified annually by an independent public accountant using generally accepted accounting principles.³ However, the Commission is concerned that a grantor's net worth computed in accordance with generally accepted accounting principles may not always be an adequate indication of the grantor's ability to meet its obligations to option customers, particularly with respect to the obligation to segregate profits accruing to option customers (see Item 2, below). For example, certain illiquid assets, such as good will, are permitted to be included in a net worth calculation under generally accepted accounting principles.

Accordingly, the Commission is also proposing to impose a capital requirement of \$5,000,000 on grantors, in order to measure more realistically the grantor's financial capability and hence its ability to meet its obligations under outstanding options. Capital would be defined for the purpose of this rule as net worth as computed under generally accepted accounting principles except that those assets not readily convertible into cash must be deducted. Assets not readily convertible into cash would include but not be limited to fixed assets, goodwill, leasehold improvements, prepaid expenses, organization expense and unsecured receivables from affiliates of the grantor. Affiliates would include any person whose relationship with the grantor was such that a commodity futures account owned by the grantor and that person would be a proprietary account, as defined in rule 1.3(y), 17 CFR 1.3(y) (1978). The Commission is particularly interested in comment on whether this level and definition of capital would be appropriate.

2. Section 4c(d)(2)(A)(iv) of the Act and rule 32.12(a)(3) presently require a grantor to segregate daily exclusively for the benefit of purchasers of the grantor's options amounts by which "the value of each transaction exceeds the amount received or to be received by the grantor," i.e., amounts representing customers' accrued profits.⁴

³Proposed rule 32.12(a), published on November 21, 1978, and reprinted at the end of this notice, would implement this provision.

⁴See S. Rep. No. 95-850, 95th Cong., 2d Sess. 34 (1978).

The Commission proposes to amend its regulations to provide that the summary disclosure statement required by rule 32.5 must set forth the details on how the grantor proposes to compute the customer's profit in the transaction, particularly on what basis the "value of each transaction" will be measured. The Commission also seeks comment on whether a uniform method of profit computation should be imposed on grantors and on what form this method might take. In addition, the Commission proposes to require the summary disclosure statement to set forth the details regarding whether and under what conditions customers may realize their profit in the transaction by reselling the option to the grantor rather than exercising the option.

3. As amended by the Futures Trading Act of 1978, section 4c(d)(2)(B)(ii) of the Act requires futures commission merchants to treat and deal with the "purchase price" paid by a customer in connection with a commodity option transaction as belonging to the customer until the expiration of the term of the option or, if the customer exercises the option, until all rights of the customer under the option have been fulfilled. Presently rule 32.6(a) permits 10 percent of the purchase price received to be excluded from the segregation requirement, but the Commission has proposed to eliminate this provision in view of the language of the statutory amendment.⁵ One commentator has suggested that Congress did not intend to alter existing requirements by providing that the "purchase price" be segregated and that the Commission should therefore redefine the term "purchase price" (which presently covers all amounts paid, including premiums, mark-ups and commissions) so that brokerage commissions would not be subject to the segregation requirement. The Commission wishes to receive additional comment on this issue.

4. Section 4c(d)(2) of the Act requires that commodity option grantors be persons engaged in buying, selling, producing or otherwise utilizing the commodity on which the option is written. That section also empowers the Commission to impose registration requirements on grantors. In order to implement these provisions the Commission has proposed in rule 32.12(a)(10) that a commodity option grantor must be registered with the Commission and that an applicant for registration must, among other things, provide specified information evidencing that the applicant is in fact a bona fide commercial enterprise with respect to the commodity on which it intends to grant options.⁶

⁵ See FR 43 54223 (November 21, 1978).

⁶ See FR 43 54224-54225 (November 21, 1978). In passing upon applications pro-

In order further to insure that persons who are not bona fide commercial enterprises do not engage in granting options, the Commission is now proposing that grantors by registered on a commodity by commodity basis.

In addition, in order to insure adequate customer safeguards with respect to the options that applicants propose to grant and in order to permit the Commission to determine whether proposed options activity may have an adverse effect on the futures markets, the Commission is proposing to require that, as a condition to being licensed, prospective grantors demonstrate with respect to each proposed option that there is:

(1) A reliable mechanism available to the public independent of that provided by or through the grantor for determining the cash price of the particular commodity which is the subject of the option; and

(2) A readily available deliverable supply of the particular commodity which is the subject of the option. In determining whether the grantor has demonstrated that there is a readily available deliverable supply of the commodity underlying the option, the Commission will take into account the competing demands from various markets for specific supplies of that commodity. In this context, if the proposed option is to draw on the same deliverable supply as that underlying a contract for future delivery traded on a contract market, the Commission will consider, among other factors, the expiration dates of the option vis-a-vis the expiration of trading in the futures contract and the conditions precedent to the exercise of the commodity option, including time restrictions on exercise and additional fees imposed for exercise.

In developing its options policy, the Commission has repeatedly stated that whether or not it will permit the continued offer and sale of commodity options will depend on several public interest factors, including whether any economic purpose is served by commodity options. Thus, in announcing its suspension on the offer and sale of commodity options, the Commission noted that it had found no evidence of commercial use of options and that option sales activity had been directed

posed rule 32.12(a)(10) provides that the Commission will apply the specific statutory requirements set forth in section 4c(d) of the Act and also the same standards of fitness for registration that Congress has made applicable to other commodity professionals as set forth in sections 4n and 8a of the Act. Consistent with section 8a(2) of the Act, the proposed rule provides that pending final Commission action on an application for registration as a commodity option grantor, registration shall not be granted. Proposed rule 32.12(a)(10) is reprinted at the end of this notice.

almost exclusively at speculative interests. See 43 FR 16155-16156 (April 17, 1978). In order to reduce the risk to the public that would result from the offer and sale of commodity options that are likely to be purely speculative instruments, the Commission believes that, as a condition to being registered, prospective option grantors should be required to demonstrate that their proposed options have characteristics that commercial interests might find of value. This approach is consistent with section 5(g) of the Act, under which a board of trade may be designated as a contract market for futures trading only when it demonstrates that designation will not be contrary to the public interest, which included considerations of the economic purpose to be served by the contract. Of course, should the Commission determine that any or all dealer options that are sold do not in fact prove to have any substantial economic purpose, the Commission may terminate a particular dealer's options activity or prohibit the offer and sale of all dealer options. See sections 4c (d) and (e) of the Act.

Accordingly, the Commission is proposing that a prospective commodity option grantor demonstrate that the terms and conditions of the proposed option contract conform to normal commercial practice. In order that the applicant may do so, the Commission is proposing that the application for registration must be accompanied by a description of the proposed option contract, which sets forth, in addition to other terms and conditions required by Part 32:

(1) The exact specification of the commodity which may be bought or sold upon exercise of the option;

(2) The quality and quantity of the commodity to be bought or sold upon exercise of the option, including quality differentials, if any, for different delivery grades;

(3) Inspection and/or certification procedures for verification of the quality and quantity specifications for delivery of the commodity;

(4) Delivery specifications for the commodity underlying the option, including the type of delivery facility, geographical location of the delivery point or points, and locational differentials or transportation charges, if any, for different delivery points; and

(5) The type of delivery instrument, if any, evidencing ownership of the commodity, including whether or not it is negotiable or transferrable.

In connection with the economic purpose criterion, the Commission also seeks comment on whether there are certain commodities or groups of commodities for which the granting of dealer options should not be permitted. For instance, should the Commis-

sion limit the granting of dealer options to those physical commodities which are the subject of contracts for future delivery traded on contract markets?

* Interested persons are invited to participate in this rulemaking proceeding by submitting comments in written form to the Commission at the above address. As stated above, the Commission considers the discussion of the reissuance and amendments set forth at 43 FR 54221-54225 (November 21, 1978), to be part of the basis and purpose of this rulemaking proceeding. In this connection, the Commission again specifically requests comment on the type of terms and conditions that might be imposed on nondomestic grantors to assure adequate customer protection. See 43 FR at 54223, n. 8. All comments received on or before February 28, 1979, will be considered.

In consideration of the foregoing, the Commission pursuant to the authority contained in sections 2(a)(1), 4c and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6c and 12a (1976), as amended by Pub. L. 95-405, 92 Stat. 865 *et seq.* (September 30, 1978), hereby proposes to amend Part 32 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

1. By continuing in effect the following sections of Part 32:

§ 32.1 Definitions (17 CFR 32.1 (1978));

§ 32.2 Prohibited transactions (17 CFR 32.2 (1978));

§ 32.3 Unlawful commodity option transactions (17 CFR 32.3 (1978));

§ 32.4 Exemptions (17 CFR 32.4 (1978)) (except paragraph (a));

§ 32.5 Disclosure (17 CFR 32.5 (1978)) (except paragraphs (a)(i)(ii) and (c));

§ 32.6 Segregation (17 CFR 32.6 (1978)) (except paragraph (a));

§ 32.7 Books and record keeping (17 CFR 32.7 (1978));

§ 32.8 Unlawful representations (17 CFR 32.8 (1978));

§ 32.9 Fraud in connection with commodity option transactions (17 CFR 32.9 (1978));

§ 32.10 Option transactions entered into prior to the effective date of this part (17 CFR 32.10 (1978));

§ 32.11 Suspension of commodity option transactions (43 FR 16153 *et seq.* (April 17, 1978));

§ 32.12 Exemption from suspension of commodity option transactions (43 FR 23704 *et seq.* (June 1, 1978), as amended by 43 FR 52467 *et seq.* (November 13, 1978)) (except paragraphs (a)(1), (a)(3), (c) and (d)).*

2. By revising § 32.4(a) to read as follows:

§ 32.4 Exemptions.

(a) Except for the provisions of §§ 32.2, 32.8 and 32.9, which shall in

* Paragraph (d) of rule 32.12 published at 43 FR 23708 (June 1, 1978), has been repealed. See 43 FR 54226-54228 (November 21, 1978). The revocation of the reissuance of the amendments to the Commission's commodity option regulations does not affect the repeal of rule 32.12(d).

any event apply to all commodity option transactions, the provisions of this part shall not apply to a commodity option transaction in which the purchaser is a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or by-products thereof, and in which the person offering the commodity option has a reasonable basis to believe that such producer, processor, commercial user or merchant purchases the commodity option solely for purposes related to its business as such or for the purpose of meeting its obligations to option customers under outstanding options it has granted in accordance with the provisions of § 32.12.

3. By revising paragraph (a)(1)(ii) and amending paragraph (c) of § 32.5 as follows:

§ 32.5 Disclosure.

(a) * * *

(1) * * *

(ii) A listing of the elements comprising the purchase price to be charged, including the premium, mark-ups on the premium, costs, fees and other charges, as well as the method by which the premium and such costs, fees and other charges are established;

(c) * * * To the extent any of the foregoing amounts are not known, such person shall inform the option customer or prospective option customer of that fact, identify which amounts are not known, and provide a bona fide estimate of what the amounts are expected to be.

4. By revising § 32.6(a) to read as follows:

§ 32.6 Segregation.

(a) Any person which accepts money, securities or property from an option customer as payment of the purchase price in connection with a commodity option transaction or which accepts money, securities or property payable to an option customer as a result of a commodity option transaction shall treat and deal with such money, securities and property as belonging to such option customer until expiration of the term of the option, or, if the option customer exercises the option, until all rights of the option customer under the commodity option or as a result of such exercise have been fulfilled. Such money, securities and property (1) shall be sepa-

rately accounted for and segregated as belonging to such option customer, (2) shall be kept in the United States, and (3) shall not be commingled with the money, securities or property of any other person, including the money, securities or property received by a futures commission merchant to margin, guarantee or secure the trades or contracts of commodity customers (as defined in §1.3(k) of this chapter) or with the money accruing to such commodity customers as the result of such trades or contracts: *Provided, however,* That the money, securities or property treated as belonging to an option customer may for convenience be commingled with the money, securities or property treated as belonging to any other option customer and deposited in the same account or accounts with any bank or trust company in the United States. Such money, securities and property, when so deposited with any bank or trust company, shall be deposited under an account name which will clearly show that it contains money, securities or property, segregated as required by this part. Each person depositing such money, securities or property shall obtain and retain in its files for the period provided in §1.31 of this chapter an acknowledgment from such bank or trust company that it was informed that the money, securities and property therein are being treated as belonging to option customers and are being held in accordance with the provisions of this part. Such bank or trust company shall allow inspection of such accounts at any reasonable time by representatives of the Commission.

5. By revising paragraphs (a), (a)(1) and (c), amending paragraph (a)(3) and adding paragraphs (a)(9), (a)(10) and (a)(11) of §32.12 as follows:

§32.12 Exemption from suspension of commodity option transactions.

(a) The provisions of §32.11 shall not apply to the solicitation or acceptance of orders for, or the acceptance of money, securities or property in connection with, the purchase or sale of any commodity option on a physical commodity granted by a person domiciled in the United States who is in the business of buying, selling, producing, or otherwise using that commodity if all of the following conditions are met at the time of the solicitation or acceptance:

(1) The grantor at all times has a net worth of at least \$5,000,000 certified annually by an independent public accountant using generally accepted accounting principles, provides a copy of such certification to the Commission no later than 90 days after the close of the fiscal year of the grantor, and no-

tifies in writing the Commission and every futures commission merchant offering and selling the grantor's options whenever the grantor knows or has reason to believe that the grantor's net worth has fallen below \$5,000,000;

(3) * * * and the grantor shall treat and deal with and shall segregate the foregoing property in the same manner and subject to the same conditions as set forth in §32.6 with respect to the treatment and segregation of the purchase price paid by option customers;

(9) Each person who is offering and selling the option to an option customer (i) records each transaction in its customer's name by the transaction identification number provided by the grantor and (ii) has evidence in the form of an affidavit executed upon actual knowledge by the proprietor of a sole proprietorship grantor, a general partner of a partnership grantor, or the chief executive officer or chief financial officer of a corporate grantor, that the grantor of the options that it sells is in compliance with paragraphs (a), (a)(1), (a)(3), (a)(4) and (a)(5) of this section and specifies the facts evidencing such compliance.

(10)(i) The grantor is registered with the Commission as a commodity options grantor: *Provided,* That any person domiciled in the United States who on May 1, 1978, was in the business of granting an option on a physical commodity and was in the business of buying, selling, producing, or otherwise utilizing that commodity and who files an application for registration under this paragraph on or prior to (thirty days after effective date), may continue to grant or issue options in accordance with this §32.12 pending a final determination by the Commission on the application. Applications for registration as a commodity options grantor shall be filed with the Commission on Form 7-R together with a statement executed by the applicant (A) that the applicant is seeking registration as a commodity options grantor under this section and (B) containing the following information with respect to each commodity upon which the applicant intends to grant options: (1) The type and number of commercial enterprises with which the applicant has engaged in business during the preceding twelve months (or such shorter period as the applicant may have been in business); (2) the type and size (by quantity of commodity) of transactions with such enterprises during the preceding twelve months (or such

shorter period); (3) the amount of production, inventories, and cash market sales or purchases of the applicant for the most recently concluded fiscal quarter and at least the three preceding fiscal quarters (or such shorter period); and (4) any additional information evidencing the fact that the applicant is a bona fide commercial enterprise with respect to each such commodity. A Form 7-R need not be executed and filed by an applicant that is registered with the Commission and has an up-to-date Form 7-R on file with the Commission, but such an applicant must state the capacity in which it is registered with the Commission in the statement accompanying the application required by this paragraph. The application for registration shall also be accompanied by a Form 8-R executed and filed by each sole proprietor and by each natural person who is a general partner, officer, director or branch office manager of the applicant, or performs similar functions, or is any other controlling person of the applicant; except that an accompanying Form 8-R need not be filed by any individual who (A) is registered as a floor broker or an associated person or has applied for registration as a floor broker or an associated person and such application has not been withdrawn or denied or who is affiliated with any registrant, (B) has an up-to-date Form R-8 on file with the Commission and (C) is identified on the Form 7-R or statement filed by the grantor under this paragraph. Any natural person (other than a floor broker or associated person) who subsequently becomes a general partner, officer, director or branch officer manager of the registrant, or performs similar functions, or becomes any other controlling person of the registrant, shall promptly execute and file a Form 8-R. Each Form 8-R shall be filed in accordance with the instructions contained therein. Individuals who were previously required to submit biographical information on Form 94 or who have filed a Form 8-R as required by this section shall file a current Form 8-R, upon request by the Commission.

(ii) Each application for registration, or renewal thereof, as a commodity options grantor shall be accompanied by a fee of \$200. Fees shall be remitted by money order, bank draft, or check, payable to the Commodity Futures Trading Commission. All registrations under this section shall expire on the 30th day of June of each year, and shall be renewed upon application therefore subject to the same requirements as in the case of an original application. Each person registered under this section shall comply with the provisions of §§1.14(a)(4) and (c) of this chapter.

(iii) The Commission may refuse to register any person seeking registration under this section if it is found, after opportunity for hearing, that the applicant has not established that the applicant meets the requirements of Section 4(c)(d) of the Act or of paragraph (a)(1) of this section or that the applicant is unfit to engage in business because of the existence of any of the reasons upon which the Commission is authorized to refuse registration under Sections 4n or 8a of the Act. *Provided*, That pending final determination of the applicant's fitness for registration, registration shall not be granted: *And provided further*, That the applicant may appeal from a refusal of registration in the manner provided in Section 6(b) of the Act.

(11) Notwithstanding the foregoing provisions of this § 32.12, the Commission may terminate the right of any person to grant, offer, or sell options under this § 32.12 only after a hearing, including a finding that the continuation of such right is contrary to the public interest: *Provided*, That pending the completion of such termination proceedings, the Commission may suspend the right to grant, offer, or sell options of any person whose activities in the Commission's judgment present a substantial risk to the public interest. In determining whether to terminate or suspend the right of any person to grant, offer, or sell options, the Commission will consider, among other public interest factors, whether any substantial economic purpose is served by the options granted, offered or sold, whether any cause exists under Sections 4n or 8a of the Act which would warrant refusal, suspension or revocation of registration with the Commission and whether the person is in violation of any provision of the Act or the Commission's regulations thereunder, including the regulations contained in this Part 32.

(c) Upon written application the Commission may for good cause shown in any particular case waive the requirements of any provision of paragraph (a) or (b) of this section other than those requirements expressly imposed by Sections 4c(d)(1) and (2)(A) and (B) of the Act; subject to such other terms and conditions as the Commission may find appropriate in the public interest and for the protection of option customers.

Issued in Washington, D.C., on December 15, 1978, by the Commission.

GARY L. SEEVERS,
Acting Chairman, Commodity
Futures Trading Commission.

[FR Doc. 78-35315 Filed 12-19-78; 8:45 am]

[4310-HB-M]

**NAVAJO AND HOPI INDIAN
RELOCATION COMMISSION**

[25 CFR Part 700]

**COMMISSION OPERATIONS AND RELOCATION
PROCEDURES**

Revision of Regulations Concerning Eligibility
for Relocation Benefits

AGENCY: Navajo and Hopi Indian
Relocation Commission.

ACTION: Proposed Rule.

SUMMARY: This notice proposes revisions to the Commission's rules and regulations regarding eligibility for relocation benefits. The proposed rules recognize that residency can be established by substantial continuous contacts with an identifiable homesite when employment or other factors dictate temporary occupancy outside the area. The rule change is proposed in order to make the eligibility standards more responsive to the intent of the governing legislation within the guidelines stated in Opinion of the Comptroller General, August 9, 1978, B-114868.18.

DATE: Comments must be received by February 22, 1979.

**FOR FURTHER INFORMATION
CONTACT:**

Paul M. Tessler, CFR Liaison Officer, Navajo and Hopi Indian Relocation Commission, 2717 N. Steves Boulevard, Bldg. A, Flagstaff, Arizona 86001, Telephone No.: (602) 779-3311 Extension 1376, FTS: 261-1376. The principal author is William G. Lavell, Field Solicitor, Valley Bank Center, Suite 2080, 201 N. Central Ave., Phoenix, Arizona 85073.

SUPPLEMENTARY INFORMATION: On November 12, 1978, the existing regulations were published in 41 FR 49982 and are codified in 25 CFR Part 700. That period of time was the Commission's formative stage for establishment of relocation policy. The Commission could not predict the parameters of its task until applications were received and relocation needs assessed. Between February 10, 1977, the date of the Judgment of Partition issued by the United States District Court for the District of Arizona in *Sekaquaptewa, et. al. v. MacDonald, et. al.*, Civ. No. 579-PCT-JAW, and December 1, 1978, the Commission received approximately 1,883 applications for re-

location benefits. Of these, 352 files have been reviewed for certification of eligibility, and 64 actual relocations have been completed.

The Commission's task of evaluating eligibility for benefits has been complicated by recent judicial action in *Sekaquaptewa*. On May 15, 1978, the United States Court of Appeals for the Ninth Circuit vacated the Judgment of Partition of February 10, 1977, and remanded the case to the District Court for further action. On August 30, 1978, the District Court issued an Interim Partition Decree which reaffirmed the Judgment of Partition of February 10, 1977, but omitted certain parcels of land from the effects of such partition pending resolution of a title dispute along the southern and western boundaries of the Joint Use Area.

The Commission is sensitive to the unique culture and history of the Navajo and Hopi people. Experience gained to date from review of the relocation applications, analysis of the governing legislation, the Navajo-Hopi Settlement Act (P. L. 93-531, 85 Stat. 1712, 25 U.S.C. 640d-640d-24) ("the Act") and its history, and input from both Navajo and Hopi staff, all indicate the need for revision of present eligibility requirements.

Especially acute is the need to establish a workable definition of "resident" as it applies to those people affected by the Act. Many applicants, although born and raised in the area, do not occupy a dwelling on the disputed area full-time. Rather, they have temporarily left, for employment or other purposes, and maintain substantial continuous contacts with an identifiable homesite located on the disputed area. Most of these persons leave the area because of the lack of employment, or the need for education or job training opportunities. Furthermore, medical care and military service frequently require area residents to be away from land they still consider their home.

A review of the Act and its legislative history gives no clear, unambiguous definition of the word "reside" or "resident." Use of the word "reside" in a sense not related to the Joint Use Area would present significant administrative and interpretative problems. The intent of Congress can be found in Senate Report No. 93-1177 (Calendar No. 11211, September 25, 1974), which set forth the guiding principles followed by the Senate in considering the proposals from which the Act was derived. Several of the guiding principles behind this legislation were as follows:

9. That any such division of the lands of the joint use area must be undertaken in conjunction with a thorough and generous relocation program to minimize the adverse social, eco-

conomic, and cultural impacts of relocation on affected tribal members and to avoid a repetition of the unfortunate results of a number of early, official Indian relocation efforts;

* * * * *

11. That because of the Federal Government's repeated failure to resolve the land disputes, the major costs of resolution should be properly borne by the United States.

The "thorough and generous" program articulated can be interpreted as applying equally to the standards by which eligibility is determined as well as to the benefits ultimately conferred, particularly in light of the expressed intent that the major costs of resolution of the whole problem of partition and relocation should be properly borne by the United States rather (it can be inferred) than by the individual Indians affected.

The proposed rule conforms to the wording of the Act, the expressed intent of Congress as well as the opinion of the Comptroller General dated August 9, 1978.

Section 700.5 is proposed to be amended by redesignating paragraph (y) as (z) and adding a new paragraph (y) to read as follows:

§ 700.5 Definitions.

- (y) *Resident (or Residency)*
- (1) Residency is established by fulfilling either of the following criteria:
 - (A) Current occupancy
 - (B) Maintenance of substantial continuous contacts with an identifiable homesite although the individual is temporarily away for any of the following reasons:
 - (i) Employment
 - (ii) Education or job training
 - (iii) Medical
 - (iv) Military (active duty in the military service).
 - (2) Any one or more of the following criteria may be considered in establishing whether or not there have been substantial continuous contacts:
 - (A) Ownership of livestock
 - (B) Ownership of improvements
 - (C) Grazing permits
 - (D) Livestock sales receipts
 - (E) Homesite leases
 - (F) Public Health records.
 - (G) Medical and Hospital records, including those of Medicinemen
 - (H) Trading Post records
 - (I) School records
 - (J) Military records
 - (K) Employment records
 - (L) Mailing address records
 - (M) Banking records
 - (N) Drivers license records
 - (O) Voting records (Tribal and County)

- (P) Home ownership or rental off the Disputed Area
- (Q) B.I.A. Census Data
- (R) Certification from Chapter Officials
- (S) Certification of Residency
- (T) Certification by Relocatee
- (U) Information obtained by Certification Field Investigation
- (V) Social Security Administration and other related information
- (W) Marital records
- (X) Any other relevant data

Section 700.11 is proposed to be amended by revising paragraph (b) to read as follows:

§ 700.11 Relocation Standards.

- (b) *Eligibility requirements.*
- (1) To be eligible as a displaced person for benefits provided for under the Act, and these regulations, a person must meet one of the following conditions:
 - (A) The person must be a resident in the area partitioned to the tribe of which he is not a member; or,
 - (B) The person was a resident in the Joint Use Area but moved from there between December 22, 1974, and August 30, 1978; or,
 - (C) The person was a resident of an area which was partitioned to a tribe of which he is not a member but moved therefrom after August 30, 1978.
- (2) Moves described in paragraphs (1)(b) and (1)(c) are presumed to have been made pursuant to the Act.
- (3) Eligibility for certain benefits is further restricted by Secs. 14(c) and 15(c) of the Act (25 U.S.C. 640d-13(c) and 14(c), as reflected in Sections 700.10(d) and (e)2 of these regulations.

ROBERT E. LEWIS,
 Chairman, Navajo and Hopi
 Indian Relocation Commission.
 [FR Doc. 78-35296 Filed 12-19-78; 8:45 am]

[3510-16-M]
 DEPARTMENT OF COMMERCE
 Patent and Trademark Office
 [37 CFR Part 1]
 ADVISORY OPINIONS ON VALIDITY OF PATENTS
 Proposed Rulemaking
 AGENCY: Patent and Trademark Office, Commerce.
 ACTION: Proposed rulemaking.
 SUMMARY: Patent and Trademark Office proposes a procedure for giving

advisory opinions to members of the public on questions of validity of United States patents arising after the issuance of the patents. Opinions would be limited to questions of patentability in light of prior patents and publications. The person requesting the opinion would have to submit certain information and pay a \$500.00 fee. The owner of the patent and other members of the public could submit information before the advisory opinion was issued.

DATES: Written comments by April 11, 1979. Hearing: April 11, 1979, beginning at 1:30 p.m.

ADDRESSES: Address written comments to the Commissioner of Patents and Trademarks, Building 3, Room 11E10, Washington, D.C. 20231. The hearing will be held in Room 11C24 of Building 3, located at 2021 Jefferson Davis Highway, Arlington, Virginia. Written comments and transcript of hearing will be available for public inspection in Room 11E10 of Building 3.

FOR FURTHER INFORMATION CONTACT:

Mr. Herbert C. Wamsley by telephone at 703-557-3071, or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

SUPPLEMENTARY INFORMATION:

INTRODUCTION

The Patent and Trademark Office is considering amendments to the patent rules of practice. The amendments being considered will allow any member of the public to bring prior art patents and publications relevant to a patent to the attention of the Office at any time and have the Office provide an advisory opinion on the effect of that prior art on the patent. The proposed rule change, therefore, would expand the opportunities for the public to bring information concerning the validity of issued patents to the attention of the Office. One study has found that between 76 and 88 percent of patents held invalid are so held at least in part on grounds which were either outside the knowledge of the Office, or did not involve the evaluation of all the knowledge of the Office, or did not involve the evaluation of all of the same prior art considered by the Office.¹ The main purpose of the present proposal is to permit the public to bring prior art to the attention of the Office which was not, as far as the record shows, considered by the Office before granting the patent.

Under the procedures being proposed, any person could request an

¹G. Koenig, *Patent Invalidity: A Statistical and Substantive Analysis* (1974), at p. 1-6

opinion from the Office on the validity of an issued patent in view of prior patents or publications. The person would submit the prior art and a fee of \$500.00, together with an explanation of why the patent is believed invalid in whole or in part in view of the submitted art. Requests for advisory opinions would be served on the owner of record of the patent. The request would be announced in the Patent and Trademark Office's weekly *Official Gazette*. The Office would give the patent owner time to respond in writing before rendering its opinion. Comments timely submitted by other members of the public also would be considered.

Courts would not be bound by advisory opinions. The ultimate decision as to validity would, under existing law, remain with the court. Under the proposal, however, the court would have an opportunity to consider the Office's opinion on prior art that the court otherwise would be called upon to evaluate in the first instance.

PROPOSED SECTION 1.294

The main provisions of the proposal are in new § 1.294. Subparagraph 1.294(a) states that any person may request an advisory opinion from the Office. The person could be an attorney or agent requesting an opinion without identifying the client. In the case of a request containing information which included affidavits or declarations, the affiant or declarant of course would have to be identified. Inventors and patent owners could request advisory opinions on their own patents when they preferred this over the filing of a reissue application. An advisory opinion could be requested at any time during the life of the patent, and in appropriate cases even after expiration of the patent.

The first sentence of § 1.294(a) limits advisory opinions to questions of patentability in light of prior patents or publications. "Prior patents or publications" is limited to United States patents, foreign patents, inventor's certificates, and publications which could serve to invalidate a patent under 35 U.S.C. 102 or 103. It is anticipated that most requests for advisory opinions would be based on prior art not considered previously by the Office. However, the Office would not refuse requests for advisory opinions based on prior art already considered by the Office. Advisory opinions would not be given on questions of, for example, prior public use or sale (35 U.S.C. 102), fraud or failure to comply with the duty to disclose material information to the Office (37 CFR 1.56), or inadequate disclosure of the invention in the specification (35 U.S.C. 112).

The person requesting the validity opinion would have to comply with all

requirements listed in items (1) to (4) of § 1.294(a). Item (1) requires an identification of the specific claims on which an opinion is sought. Item (2) requires a prior art statement which would include a listing of the prior art, copies of the art, and an explanation setting forth why each of the claims is believed invalid.

Item (3) requires a fee for an advisory opinion on patent validity. The amount of the fee, which is set forth in § 1.21, is \$500.00; under existing law the fee would be paid into the general treasury.²

Item (4) in proposed § 1.294(a) requires the person requesting the advisory opinion to serve a copy of the request upon the patent owner of record or upon the owner's attorney or agent. This requirement is similar to the requirement in existing § 1.291 for service of protests concerning pending patent applications. In the event service upon the owner or the owner's attorney or agent is not possible, a duplicative copy of the request and prior art materials must be submitted to the Office. If the Office is unable to serve the duplicative copy of the request, an effort will be made to notify the owner by notice in the *Official Gazette*.

The last sentence of § 1.294(a) makes clear that the Office can refuse requests for advisory opinions. The sentence would enable the Office, for example, to refuse requests in cases of apparent harassment of the patentee. For instance, a request could be refused if an advisory opinion had been given on the same patent before and the newly cited art obviously was no more relevant than that already considered.

As provided in proposed § 1.294(b), requests for validity opinions would be announced in the *Official Gazette*. The second sentence of this subparagraph explains what information would appear in the *Official Gazette* announcement. The announcement would be similar to the one prescribed by 37 CFR 1.11(b) for reissue patent applications. While all information from members of the public would be considered if timely received, information should be submitted within two months after the announcement of the request for validity opinion in the *Official Gazette* in order to insure consideration. Members of the public would be expected to serve on the patent owner copies of all papers submitted to the Office.

Proposed § 1.294(c) permits the patent owner to file a response within three months after the request or two months after the *Official Gazette* an-

²H.R. 13628 and S. 3615, 95th Congress, 2nd Sess., if enacted would have authorized the Patent and Trademark Office to use the fee income to support the expense of providing advisory opinions.

nouncement, whichever is later. In order to avoid possible harassment through the filing of voluminous paperwork, ordinarily no further papers would be permitted after the request for an opinion and the owner's response. The owner could choose to submit no response at all, in which case the Office would base its decision on the information and arguments submitted by the person requesting the opinion.

Proposed § 1.294(d) makes clear that the patent owner could respond by filing a reissue application. If a reissue application was filed within the response period, the Office would not render an advisory opinion but instead would proceed with the examination of the reissue application. If a reissue was filed, the person who had requested the advisory opinion would be treated as a protester against the reissue application, and would be provided with copies of all Office actions in the reissue application and be permitted to respond to them.

Except for the fact that the patent owner would not be able to amend the claims in the absence of a reissue, it is expected that the procedure for rendering an advisory opinion would be very similar to the procedure followed by the Office with respect to protested reissue applications. The last sentence of § 1.294(d) makes clear that an owner who elected not to respond by filing a reissue application would still have the right to file for a reissue later.

Proposed § 1.294(e) explains the content of an advisory opinion and the manner of announcing the opinion and distributing copies. It is anticipated that the same employees would give advisory opinions who handle protested patent applications. Under current practice protests based on prior patents or publications are handled by patent examiners in the regular examining groups. The Commissioner invites public comments on whether an advisory opinion should be given by the same examiner who issued the patent.

Advisory opinions would not be appealable. Proposed § 1.294(f) states that there is no appeal by either the patent owner or the person requesting the advisory opinion. Patent owners could obtain the right to appeal adverse decisions to the Board of Appeals and the courts by filing reissue applications, either in response to advisory opinion requests or after advisory opinions were issued. Public comments are welcomed on whether some form of direct review of advisory opinions within the Office also should be made available. While an advisory opinion would not be an adverse decision on a patent application appealable to the Board of Appeals under 35

U.S.C. 7, the Commissioner has authority to delegate other functions to the members of the Board.³

The advisory opinion procedure would change the Office's longstanding policy⁴ of not commenting on the possible invalidity of a patent. However, the Office would continue to refrain from commenting on the validity of patents other than in connection with advisory opinions under § 1.294 or reissue applications.

RELATED CHANGES

Proposed § 1.21 would add a new item specifying the amount of the fee for an advisory opinion on validity. This fee would be prescribed under the authority of 35 U.S.C. 41(b) for a service furnished by the Patent and Trademark Office for which no fee is specified by law.

The amendments in § 1.291 and the addition of new § 1.293 are not substantive changes. Amended § 1.291 pertains only to protests against pending applications. The provisions concerning prior art citations in the files of issued patents are moved from § 1.291 to § 1.293, to be adjacent new § 1.294 which also pertains to issued patents. Paragraph 1.293 permits members of the public to place in a patent file written material which is relevant to the validity of the patent. The written materials may concern issues other than prior patents and publications.

ALTERNATIVES CONSIDERED

Consideration was given to proposing advisory opinions for all types of issues of patent validity. Under this alternative, advisory opinions would have been given on questions of public use, fraudulent procurement of the patent, inadequate disclosure of the invention, and the like. The Office has conducted public use proceedings under 37 CFR 1.292 for many years. More recently, and particularly since the 1977 amendments to the reissue and protest rules, the Office has been examining a significant number of protested applications involving issues of fraudulent procurement that previously would have been left to the courts. Nonetheless, it is believed the advisory opinion procedure should be limited to questions involving prior patents and publications, at least at the present time. A broader advisory opinion procedure would be more expensive for the Office to administer and would require an assignment of an impermissible number of person-hours. Public comments are invited,

³ *Watson v. Bruns*, 239 F.2d 948, 111 USPQ 325 (D.C. Cir. 1956).

⁴ *Manual of Patent Examining Procedure*, § 1701; *United States v. General Electric Co.*, 183 USPQ 551, 553 (Comm'r Pat. 1974); *Ex parte Overstrom*, 1903 C.D. 263, 264 (Comm'r Pat. 1903).

however, on whether advisory opinions should be provided on issues of patent validity other than prior patents and publications.

Consideration also has been given to a voluntary protest procedure prior to issuance of a patent, similar to the experiments undertaken by the Patent and Trademark Office in 1974 and 1975 with a limited number of applications.⁵ Under a pre-issuance protest procedure, however, competitors might have to file protests before learning whether they had any real economic interest in the invention. Also, such a procedure would entail greater publication costs and would delay the issuance of patents.

Finally, consideration has been given to the possibility of permitting members of the public to file reissue applications on behalf of patentees as a way to obtain a ruling on validity. It is concluded, however, that the statute requires reissue applications to be filed by the inventor or assignee, since an oath by the inventor or assignee is required and a patent may not be reissued without the surrender of the original patent.⁶

RULEMAKING AUTHORITY

The advisory opinion procedure is proposed under the Commissioner's authority in section 6 of Title 35 of the United States Code to "establish regulations, not inconsistent with law, for the conduct of proceedings in the Patent and Trademark Office." The advisory opinion of proposed § 1.294 is not tantamount to cancellation of a patent. A patentee would still have the right to sue for infringement or to license the patent even if the Office advised that some or all of the claims were invalid.

Several Federal agencies issue advisory opinions.⁷ It is "not inconsistent with law" for the Patent and Trademark Office to advise the public on whether it believes its decision in issuing a patent is consistent with prior patents or publications brought to its attention. Courts have often held that the statutory presumption of validity is weakened where the prior art considered by the court to be pertinent was apparently not considered by the Office. The advisory opinion procedure should operate to enhance the presumption of patent validity established by 35 U.S.C. 282.

RULES PROPOSED

Notice is hereby given that, pursuant to the authority contained in § 6 of

⁵ The results of the two Trial Voluntary Protest Programs were published at 939 O.G. 2, October 7, 1975, and 956 O.G. 2, March 1, 1977.

⁶ 35 U.S.C. 251.

⁷ E.g., Federal Trade Commission, 16 CFR 1.1-1.4; Department of Justice, 28 CFR 60.8. See generally M. Asimow, *Advice to the Public from Federal Administrative Agencies* (1973).

Title 35 of the United States Code, the Patent and Trademark Office proposes to amend Title 37 of the Code of Federal Regulations by amending §§ 1.21 and 1.291 and adding §§ 1.293 and 1.294. The Patent and Trademark Office has determined that these rule changes have no potential major economic consequences requiring the preparation of a regulatory analysis under Executive Order 12044. In the text of the rules below, additions are shown by arrows and deletions are shown by brackets. It is proposed to amend Title 37 of the Code of Federal Regulations, Chapter I, Part 1, as follows:

1. By amending § 1.21 by adding a new item (1) to read as follows:

§ 1.21 Patent and miscellaneous fees and charges.

• • • • •

(1) ▶ For rendering an advisory opinion on the validity of a patent \$500.00. ◀

2. By amending § 1.291 to read as follows:

PROTESTS AND ▶ POST-ISSUANCE PROCEDURES ◀ [PUBLIC USE PROCEEDINGS]

§ 1.291 Protests ▶ against pending applications ◀ [and prior art citations by public]

(a) Protests ▶ by the public ◀ against pending applications will be acknowledged and referred to the examiner having charge of the subject matter involved. A protest specifically identifying the application to which the protest is directed will be entered in the application file and, if timely submitted and accompanied by a copy of each prior art document relied upon, will be considered by the examiner.

[(b) Citations of prior art and any papers related thereto may be entered in the patent file after a patent has been granted, at the request of a member of the public or the patentee. Such citations and papers will be entered without comment by the Patent and Trademark Office.]

▶ (b) ◀ [(c)] Protests [and prior art citations] by the public and accompanying papers should either (1) reflect that a copy of the same has been served upon the applicant [or patentee] or upon his attorney or agent of record; or (2) be filed with the Office in duplicate in the event service is not possible.

3. By adding new § 1.293 to read as follows:

▶ § 1.293 Prior art citations in patent files. ◀

▶ (a) Citations of prior art or other papers concerning the validity of a

patent may be entered in a patent file after the patent has been granted, at the request of a member of the public or the patentee. The Office will comment on such citations or papers only when an advisory opinion is requested pursuant to § 1.294. ◀

▶ (b) Such citations or papers should be served upon the patent owner of record or upon the owner's attorney or agent, or be filed in the Office in duplicate in the event service is not possible. ◀

4. By adding new § 1.294 to read as follows:

▶ § 1.294 Advisory opinions on patent validity. ◀

▶ (a) Any person may request an advisory opinion from the Commissioner on the validity of claims of a United States patent in view of prior patents or publications. The requester of the opinion must: (1) Identify the claims of the patent on which an opinion is sought; (2) submit a prior art statement containing the information specified in § 1.98 and explaining why each of the claims is believed invalid; (3) remit the required fee (see § 1.21); and (4) state that a copy of the request has been served upon the patent owner or a duplicate copy filed as prescribed by § 1.293(b). The Commissioner reserves the right to refuse requests for advisory opinions at his discretion. ◀

▶ (b) Requests for advisory opinions will be announced in the *Official Gazette*. The announcement shall include at least the patent number, title, class and subclass, name of the inventor, name of the owner of record, name of the attorney or agent of record, and, if known, name of the requester of the opinion. Any information submitted by any member of the public which is timely received will be considered in the course of providing an advisory opinion. Papers from members of the public should be served upon the patent owner or filed in duplicate as prescribed by § 1.293(b). ◀

▶ (c) The patent owner may file a response in the Office within three months after service of the request for opinion, or two months after the *Official Gazette* announcement, whichever is later. The time for response may be extended by the Commissioner upon a showing of sufficient cause. The patent owner and the requester of the opinion may file further papers only with the approval of the Commissioner. ◀

▶ (d) The patent owner's response may be the filing of a reissue application pursuant to § 1.175. A reissue application filed in response to an advisory opinion request, or one already on file, will be examined in lieu of rendering an advisory opinion. The advisory opinion request will be treated as a protest against the reissue application.

This paragraph does not preclude the filing of a reissue application after an advisory opinion is rendered. ◀

▶ (e) An advisory opinion shall state whether each of the claims identified by the requester is believed valid or invalid in view of the prior patents or publications submitted by the requester, and may discuss other prior patents or publications if deemed appropriate. Advisory opinions will be announced in the *Official Gazette*; the claims considered valid and the claims considered invalid will be listed. Copies of advisory opinions will be entered in the patent file and mailed to the patent owner and the requester. ◀

▶ (f) There shall be no appeal from an advisory opinion by either the patent owner or the requester of the opinion. ◀

Dated: October 30, 1978.

DONALD W. BANNER,
Commissioner of
Patents and Trademarks.

Approved: December 13, 1978.

JORDAN J. BARUCH,
Assistant Secretary for
Science and Technology.

[FR Doc. 78-35321 Filed 12-19-78; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS
COMMISSION

[47 CFR Part 73]

[BC Docket No. 78-313; RM-3052]

TELEVISION BROADCAST STATION IN SAN
DIEGO, CALIFORNIA

Order Extending Time for Filing Reply
Comments

AGENCY: Federal Communication
Commission.

ACTION: Order.

SUMMARY: Action taken herein extends the time for filing reply comments in a proceeding involving the proposed assignment of a television channel to San Diego, California. Petitioner, Center City Complex, Inc., states that the additional time is needed for legal and engineering review of comments filed in this proceeding.

DATE: Reply comments must be received on or before January 12, 1979.

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

FOR FURTHER INFORMATION
CONTACT:

Mildred B. Nesterak, Broadcast
Bureau (202-632-7792).

SUPPLEMENTARY INFORMATION:

Adopted: December 12, 1978.

Released: December 14, 1978.

In the matter of amendment of § 73.606(b), *Table of Assignments*, Television Broadcast Stations. (San Diego, California), BC Docket No. 78-313, RM-3052.

1. On September 22, 1978, the Commission adopted a *Notice of Proposed Rule Making*, 43 FR 46049, concerning the above-entitled proceeding. The date for filing comments has expired and the date for filing reply comments is presently December 12, 1978.

2. On December 6, 1978, counsel for Center City Complex, Inc., filed a timely request seeking an extension of time for filing reply comments to and including January 12, 1979. Counsel states that it was not served with copies of opposing comments filed by the Land Mobile Communications Council. He adds that this filing was only recently discovered and that a copy has just been obtained through the duplicating process of the Commission. Counsel states that the additional time is now needed for legal and engineering review of these comments.

3. We are of the view that the public interest would be served by this extension so that the Center City Complex, Inc., may file any information which might be helpful to the Commission in reaching a decision in this proceeding.

4. Accordingly, it is ordered, That the date for filing reply comments in BC Docket No. 78-313 is extended to, and including January 12, 1979.

5. This action is taken pursuant to authority found in Section 4(i), 5(d)(1) and 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rule.

FEDERAL COMMUNICATIONS
COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 78-35323 Filed 12-19-78; 8:45 am]

[6712-01-M]

[47 CFR Part 73]

[BC Docket No. 78-309]

NETWORK REPRESENTATION OF TV STATIONS
IN NATIONAL SPOT SALES

Order Extending Time for Filing Reply
Comments

AGENCY: Federal Communications
Commission (FCC).

ACTION: Extension of time for filing
reply comments in rulemaking pro-
ceeding.

SUMMARY: This action, taken at the request of the petitioner whose petition led to the rulemaking proceeding, extends from December 22, 1978 to January 31, 1979, the time for reply comments in BC Docket 78-309, in which the FCC will consider changes

in § 73.658(i) of its rules, which bars TV stations from using as their national sales representatives an organization owned by or associated with the network with which the station is affiliated.

DATES: Reply comments must be received on or before January 31, 1979.

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

FOR FURTHER INFORMATION CONTACT:

John H. Bass, Jr., Office of Network Study (Broadcast Bureau), Area: 202-632-6339.

Adopted: December 12, 1978.

Released: December 14, 1978.

In the matter of amendment of § 73.658(i) of the Commission's rules, concerning Network Representation of TV Stations in National Spot Sales, Request of Spanish International Network (SIN) for waiver of § 73.658(i), BC Docket No. 78-309.¹

1. Reply comments in this proceeding are now due December 22, 1978 (initial comments were filed November 30). By letter request dated December 8, 1978, Spanish International Network (the original petitioner herein) asks that the time for replies be extended some 40 days, or to and including January 31, 1979.

2. In support of its request, petitioner states that initial comments were filed by numerous parties, several taking positions contrary to that of Spanish International; and therefore the three-week period now allowed for replies is inadequate. It is stated that in order to prepare a complete and meaningful response of maximum benefit to the Commission, and in view of the intervening holiday period, an additional period through January 31, 1979 is requested. It is stated that except for one party's counsel who could not be contacted, counsel for all commenting parties indicate that they will not oppose the request.

3. It appears that good cause exists for additional time in which to file reply comments, and that the requested additional period will not significantly delay resolution of the proceeding. *Accordingly, it is ordered,* That the time for filing reply comments in this proceeding is extended to and including January 31, 1979.

This action is taken pursuant to delegated authority contained in § 0.281 of the Commission's rules.

WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 78-35324 Filed 12-19-78; 8:45 am]

¹See 43 FR 54279, November 21, 1978.

[6712-01-M]

[47 CFR Part 73]

[BC Docket No. 78-378; RM-3189]

FM BROADCAST STATION IN HADLEY, N.Y.

Proposed Changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: Action taken herein proposes the assignment of FM Channel 228A to Hadley, New York, in response to a petition filed by the Adirondack Broadcasters Association. The proposed channel could provide for a first local aural broadcast service to Hadley.

DATES: Comments must be filed on or before February 12, 1979, and Reply comments must be filed on or before March 5, 1979.

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

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: December 12, 1978.

Released: December 15, 1978.

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Hadley, New York), BC Docket No. 78-378, RM-3189.

1. *Petitioner, Proposal, Comments.* (a) A petition for rule making¹ was filed by Adirondack Broadcasters Association, proposing the assignment of FM Channel 228A to Hadley, New York, as its first FM assignment. Letters in support of the proposal were filed by citizens in the area. No oppositions were filed to the petition.

(b) The channel can be assigned in conformity with the minimum distance separation requirements.

(c) Petitioner states it will apply for the channel, if assigned.

2. *Community Data.*—(a) *Location.* Hadley, in Saratoga County, is located approximately 72 kilometers (45 miles) north of Albany, New York.

(b) *Population.* Hadley—1,128; Saratoga County—121,679.²

(c) *Present Local Aural Service.* There is no local aural broadcast service in Hadley.

3. *Economic Considerations.* Petitioner states that Hadley is a steadily growing area located in a resort region

¹Public Notice of the petition was given on August 29, 1978, Report No. 1137.

²Population figures are taken from the 1970 U.S. Census.

of New York State which attracts double the year-round population during the summertime. It adds that because of Hadley's natural assets, many residents from larger metropolitan areas are coming to Hadley to live during the summer or even during the entire year. Petitioner states that the proposed station would serve other small communities in the area by presenting local news coverage that would be beneficial to their needs. Petitioner has submitted information with respect to form of government, recreation, education and civic organizations in an effort to demonstrate the need for an FM assignment to Hadley.

4. Since Hadley is located within 402 kilometers (250 miles) of the U.S.-Canada border, the proposed assignment of Channel 228A to Hadley, New York, requires coordination with the Canadian Government before it can be adopted.

5. In view of the apparent need for a first local aural broadcast service in Hadley, the Commission believes it appropriate to propose amending the FM Table of Assignments, § 73.202(b) of the rules, as it pertains to Hadley, New York, as follows:

City	Channel Number.	
	Present	Proposed
Hadley, New York.....		228A

6. Authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the Appendix below and are incorporated by reference herein.

NOTE: A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before February 12, 1979, and reply comments on or before March 5, 1979.

8. For further information concerning this proceeding contact Mildred B. Nesterak, Broadcast Bureau, 202-632-7792. However, members of the public should note that from the time a notice of proposed rule making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral

presentation required by the Commission.

FEDERAL COMMUNICATIONS
COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and § 0.281(b)(6) of the Commission's rules, IT IS PROPOSED TO AMEND the FM Table of Assignments, Section 73.202(b) of the Commission's rules and regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only re-submits or incorporates by reference its

former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding:

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in §§ 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file

comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of § 1.420 of the Commission's rules and regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 78-35325 Filed 12-19-78; 8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[6820-27-M]

ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER

IMPROVING GOVERNMENT REGULATIONS

AGENCY: Administrative Committee of the Federal Register.

ACTION: Report on improving certain FEDERAL REGISTER publications.

SUMMARY: This document sets forth the issues considered by the Administrative Committee of the Federal Register as part of the government-wide regulatory improvement program initiated by Executive Order 12044, Improving Government Regulations. The Committee submitted these issues to the public for comment and now presents their response to these comments. The Committee also announces its intent to begin a program to improve the format of the FEDERAL REGISTER and the *Code of Federal Regulations* and to expand the Table of Contents in the FEDERAL REGISTER.

ADDRESS: Director, Office of the Federal Register, National Archives and Records Service, Washington, D.C. 20408, 202-523-5240.

FOR FURTHER INFORMATION CONTACT:

Martha Girard, Office of the Federal Register, National Archives and Records Service, Washington, D.C. 20408, 202-523-5240.

SUPPLEMENTARY INFORMATION: In compliance with Executive Order 12044, Improving Government Regulations, the Administrative Committee of the FEDERAL REGISTER examined the process it uses to issue regulations for the operation of the Office of the Federal Register and the specific requirements which regulate its publications. The result of this examination appeared in the FEDERAL REGISTER on May 22, 1978 (43 FR 21995), and the public was invited to comment on it.

The Committee indicated in this document that the regulations it issues control the production of the FEDERAL REGISTER and related publications and the improvement of public access to them. After reviewing the process by which the public participates in the development of the Committee's regulations, the Committee concluded that the present regulations development process meets both the

spirit and the intent of Executive Order 12044 and recommended no immediate changes.

The Committee did review its current regulations governing the operation of the Office of the Federal Register (OFR) and public access to its publications. It concluded that these regulations could be streamlined and restated more clearly. The Committee asked the OFR staff to begin work on this process, and the initial steps in this task have begun.

The Committee's review of its substantive regulations focused on three areas and the public was asked to comment specifically on these areas:

- (1) Organization of the FEDERAL REGISTER.
- (2) Organization of the *Code of Federal Regulations*.
- (3) Expansion of Table of Contents and other Research Aids.

ORGANIZATION OF FEDERAL REGISTER

Material now published in the FEDERAL REGISTER appears in these categories:

- Presidential Documents.
- Rules and Regulations.
- Proposed Rules.
- Notices.

The Committee sought comment on whether the present system of publishing documents according to these categories should be continued, perhaps with some additional categories for documents relating to early public participation in the rulemaking process (advanced notice of proposed rulemaking, notice of inquiry, etc.), or whether documents should be grouped according to the issuing agency and subordinate component (DOT and within it: FAA, USCG, FHA, FRA). A significant number of those who commented on this issue supported some modification of the present system. A number suggested grouping together, in a daily issue of the FEDERAL REGISTER, all documents published by a single agency. This system would enable those interested in following the regulatory activity of a particular agency to find all documents that agency had published without having to search through each of the present categories. There were several variations of this suggestion. For example, some commenters urged grouping by agency but retention of the present categories (Rules and Regulations, Proposed Rules, Notices) within each

agency grouping. Other commenters suggested that in addition to an arrangement based on the issuing agency, that documents affecting a similar industry or activity (Education: OE, NIE, NSF) be grouped together or cross referenced.

The Committee has asked the FEDERAL REGISTER staff to explore a new format that will group documents in the FEDERAL REGISTER primarily by agency, and submit appropriate recommendations to the Committee including any changes in the Committee's present regulations that would be necessary.

ORGANIZATION OF CODE OF FEDERAL REGULATIONS

The Committee also sought public comment on the organization of the *Code of Federal Regulations* (CFR). The CFR was originally designed to parallel the *United States Code* (USC). So that a regulation implementing a statute published in the Title 5 of the USC would appear in Title 5 of the CFR. However, in the past forty years, the creation and frequent reorganization of the more than two hundred agencies has made it difficult to continue to pattern the CFR closely upon the USC. The Committee proposed two alternatives to the present CFR organization. One would be renewed effort to be consistent with the original plan—a CFR to parallel the USC. The other would be to group all the regulations published by a single agency or department in one title of the CFR. For example, if the Committee adopted this alternative, the regulations of the Department of Transportation now scattered throughout the CFR in Titles 14, 23, 33, 46 and 49 would appear in a single title.

The number commenting on this issue was small and the recommendations divided. The Committee realizes that adopting either alternative for the entire CFR would require a massive reorganization and renumbering of the CFR as well as of agency and private documents that cite the CFR. Since an effort of this magnitude exceeds the resources presently available to the Committee, the Committee has decided the more practical approach is to assist agencies that want to assume the initiative of gathering their regulations together in a single title. The Committee has been advised that the Department of Health, Education, and

Welfare has begun work on pulling the regulations of all its components, except those of the Food and Drug Administration which appear in Title 21, into Title 45 of the CFR. The FEDERAL REGISTER staff will provide the Department of Health, Education, and Welfare with assistance in moving forward with this reorganization. Other agencies interested in discussing possible reorganization of their regulations should contact the Office of the Federal Register.

EXPANSION OF TABLE OF CONTENTS AND OTHER FINDING AIDS

The final area on which the Administrative Committee sought comment concerned the expansion of the FEDERAL REGISTER's Table of Contents and other finding aids in the FEDERAL REGISTER system. The Table of Contents that appears in the daily issue of FEDERAL REGISTER organizes entries according to the issuing agency. In the past, time limitations have prevented development of a more comprehensive Table of Contents. The Committee did indicate that if interest warranted, it would consider amending its regulations to require agencies to submit along with their documents appropriate Table of Contents entries using a list of standardized subject headings developed by the Office of the Federal Register. There was considerable support among the commenters for the Committee to move in this direction. A number of commenters, however, expressed concern that expanding a single Table of Contents to include entries by both issuing agency and subject would introduce too much complexity into this finding aid. Several suggested that subject entries be listed separately from the present table of contents. In view of the comments received, the Committee will in the near future issue a specific proposed rule-making that would require agencies to submit with their documents the information that would be needed to include a separate finding aid in the daily FEDERAL REGISTER.

The Committee received comments on a variety of other subjects covered by its regulations on publication and distribution schedules, publication specifications, as well as services to agencies and to the public. The Committee has considered each of the comments and referred them to the FEDERAL REGISTER staff to take into account as they continue their review of the existing regulations of the Administrative Committee.

FRED J. EMERY,
*Secretary, Administrative
Committee of the Federal Register.*

DECEMBER 14, 1978.

[FR Doc. 78-35263 Filed 12-19-78; 8:45 am]

[3410-05-M]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

**ADVISORY COMMITTEE ON EXPORT SALES
REPORTING**

Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of the following Committee meetings:

NAME: Advisory Committee on Export Sales Reporting.

DATES: January 3, 1979; January 17 1979; January 31, 1979.

TIMES: 9 a.m. to 4 p.m.

PLACE: Room 218-A, Administration Building, U.S. Department of Agriculture, 1400 Independence Avenue, S.W., Washington, D.C. 20250.

TYPE OF MEETING: Open to the public. However, only written comments will be accepted and should be submitted to Kelly Harrison, General Sales Manager, U.S.D.A., Washington, D.C. 20250—telephone—(202) 447-5173. Copies of summary minutes of Committee meetings may be obtained from the addresses shown above.

PURPOSE: To review mandatory export sales reporting requirements and make recommendations to strengthen and improve the effectiveness of the monitoring system.

DATED: December 15, 1978.

KELLY HARRISON,
*General Sales Manager and
Executive Secretary, Advisory
Committee on Export Sales
Reporting.*

[FR Doc. 78-35342 Filed 12-19-78; 8:45 am]

[6320-01-M]

CIVIL AERONAUTICS BOARD

[Order 78-12-90; Docket 33696]

AERO TRADES (WESTERN) LTD.

**Statement of Tentative Findings and
Conclusions and Order To Show Cause**

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 14th day of December, 1978.

Aero Trades (Western) Ltd. is the holder of a foreign air carrier permit¹ authorizing charter foreign air transportation of persons and their accompanied baggage and payload charters of property between any point or points in Canada and any point or points in the United States with small aircraft, subject to the terms of the Nonscheduled Air Service Agreement between the United States and Canada signed May 8, 1974.

By application filed October 16, 1978, Aero Trades requests amend-

¹Issued pursuant to Order 75-4-25, approved November 27, 1974.

ment of its permit to authorize both small and large aircraft² charter operations between Canada and the United States. The carrier has been restricted to operations by small aircraft.

**FITNESS OF THE APPLICANT FOR A
FOREIGN AIR CARRIER PERMIT**

Aero Trades (Western) Ltd. was incorporated on June 8, 1956 under the Corporations Act of the Province of Manitoba, Canada. The Air Transport Committee of the Canadian Transport Commission has issued Aero Trades License No. A.T.C. 390/67 (CF) dated June 23, 1978, a Class 9-4 license which authorizes the holder to operate international charter commercial air services from a base at Winnipeg, Manitoba. The license contains a restriction which limits the holder to the use of aircraft in Groups A, B, C, D and E.³ The Canadian Department of Transport, Civil Aviation Branch, has issued Aero Trades Operating Certificate No. 1460, dated September 7, 1978, which certifies that the carrier is adequately equipped and able to conduct a safe operation.

The applicant's balance sheet as of December 31, 1977 shows current assets of \$667,901 and current liabilities of \$1,106,880. The company shows total assets of \$3,092,202. Its long-term debt equals \$1,155,171. For the year ended December 31, 1977 Aero Trades' statement of income and retained earnings shows net income of \$2,696 and accumulated retained earnings of \$580,149.⁴ The applicant states that for the past three years it has been able to meet its financial obligations, has never defaulted on its transportation commitments, and has not been refused short-term debt financing. The company has entered into long-term financing with the Federal Business Development Bank of Canada to

²"Large aircraft" are defined by the Non scheduled Air Service Agreement as aircraft having both (a) a maximum passenger capacity of more than 30 seats or a maximum payload capacity of more than 7,500 pounds, and (b) a maximum authorized takeoff weight on wheels greater than 35,000 pounds. "Small aircraft" are defined as aircraft which are not "large aircraft".

³Under Canadian Air Transport Committee regulations, aircraft are grouped according to the maximum authorized takeoff weight as follows: Group A—not greater than 4,300 pounds; Group B—greater than 4,300 pounds, but not greater than 7,000 pounds; Group C—greater than 7,000 pounds, but not greater than 18,000 pounds; Group D—greater than 18,000 pounds, but not greater than 35,000 pounds; Group E—greater than 35,000 pounds, but not greater than 75,000 pounds.

⁴See Exhibit C-1 of application. Current assets as of June 30, 1978 are shown as \$1,266,778; current liabilities, \$1,050,187; total assets, \$3,455,457, and long-term debt \$1,582,679. Net income for the first 6 months of 1978 is shown as \$9,440 with accumulated retained earnings of \$587,589.

improve its long-term financing of its new hangar and its aircraft.

The carrier lists the following aircraft available to operate charters to the United States: one Convair 640; three DC-3's; one Canso; eight Cessnas, one Piper Aztec; seven Bell helicopters. The applicant estimates that approximately forty charter flights per year will be operated between Canada (mainly Winnipeg, Manitoba) and the United States. The company has not been involved in any safety or tariff violations in the past five years. In 1976, a Cessna 402 was damaged in landing but there were no injuries.

"PUBLIC INTEREST" IN AWARD OF THE AUTHORITY SOUGHT

The applicant relies on the Non-scheduled Air Service Agreement signed by the Governments of Canada and the United States of America on May 8, 1974, as the basis for the grant of the requested authority. By diplomatic Note No. 541, dated September 28, 1978, the Embassy of Canada changed the designation of the applicant to allow it to perform its international operations with both small and large aircraft.

OWNERSHIP AND CONTROL

The officers of Aero Trades (Western) Ltd. are John Conway Jeffs, President and General Manager; J. Grant Gair, Vice President; and Margaret L. Jeffs, Secretary-Treasurer. All three are Directors of the company and are citizens of Canada.

John Conway Jeffs holds 55.6% of the capital shares of Aero Trades; his sister, Margaret Jeffs, holds 29.6%; and Mr. Gair holds 7.4%. None of these shares is held for the benefit of any other person; none of the applicant's stock is held by a corporation, or partnership, or by the Government of Canada or any Province of Canada. The applicant does not hold any shares of stock or other interests in persons other than itself.

In view of the foregoing and all the facts of record, the Board tentatively finds and concludes that:

1. Aero Trades (Western) Ltd. is substantially owned and effectively controlled by nationals of Canada;

2. It is in the public interest to issue an amended foreign air carrier permit to Aero Trades (Western) Ltd. authorizing it to engage in charter foreign air transportation of persons and their accompanied baggage and payload charters of property between any point or points in Canada and the United States without restrictions as to aircraft size except as noted in its Class 9-4 license issued by the Canadian Transport Commission;

3. The public interest requires that the exercise of the privileges granted by the amended permit shall be sub-

ject to the terms, conditions, and limitations contained in the specimen form of permit attached to this order, and to such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Board;

4. Aero Trades (Western) Ltd. is fit, willing, and able properly to perform the foreign air transportation described in the specimen permit, and to conform to the provisions of the Federal Aviation Act of 1958, as amended, and the rules, regulations, and requirements of the Board;

5. The public interest does not require an oral evidentiary hearing on the application.⁵

6. The amendment of Aero Trades (Western) Ltd.'s foreign air carrier permit would not constitute "a major Federal action significantly affecting the quality of the human environment" within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 and will not constitute "a major regulatory action" under the Energy Policy and Conservation Act of 1975, as defined in section 313.4(a)(1) of the Board's Regulations;⁶

7. Except to the extent granted, the application of Aero Trades (Western) Ltd. in Docket 33696 should be denied.

Accordingly,

1. We direct all interested persons to show cause why the Board should not (1) make final its tentative findings and conclusions, and (2) subject to the disapproval of the President, issue an amended foreign air carrier permit to Aero Trades (Western) Ltd. in the specimen form attached;

2. Any interested persons having objections to the issuance of an order making final the Board's tentative findings and conclusions and issuing the attached specimen permit shall, no later than December 26, 1978, file with the Board and serve on the persons named in paragraph 5, a statement of objections specifying the part or parts of the tentative findings or conclusions objected to, together with a summary of testimony, statistical data, and concrete evidence expected to be relied upon in support of the objections. If an oral evidentiary hearing is requested, the objector should state in detail why such a hearing is consid-

⁵Any interested persons having objections to the issuance of an order making final the Board's tentative findings and conclusions, and issuing the attached amended permit, shall be allowed ten (10) days in which to respond from the date of service of this order.

⁶Our tentative findings are based upon the fact that amendment of Aero Trades' permit will not result in a significant increase in civil air operations at any one of several named U.S. airports, nor will it result in an annual increase in fuel consumption of more than 10 million gallons.

ered necessary and what relevant and material facts he would expect to establish through such hearing which cannot be established in written pleadings;

3. If timely and properly supported objections are filed, we will give further consideration to the matters and issues raised by the objections before we take further action: *Provided*, that we may proceed to enter an order in accordance with our tentative findings and conclusions set forth in this order if we determine that there are no factual issues presented that warrant the holding of an oral evidentiary hearing;⁷

4. In the event no objections are filed, all further procedural steps will be deemed to have been waived and the Secretary shall enter an order which (1) shall make final our tentative findings and conclusions set forth in this order and (2) subject to the disapproval of the President pursuant to section 801(a) of the Act, shall issue an amended foreign air carrier permit to the applicant in the specimen form attached; and

5. We are serving this order upon Aero Trades (Western) Ltd., the Ambassador of Canada in Washington, D.C., and the Departments of State and Transportation.

We shall publish this order in the FEDERAL REGISTER and shall transmit a copy to the President of the United States.

By the Civil Aeronautics Board:⁸

PHYLLIS T. KAYLOR,
Secretary.

SPECIMEN PERMIT

UNITED STATES OF AMERICA CIVIL AERONAUTICS BOARD, WASHINGTON, D.C., PERMIT TO FOREIGN AIR CARRIER (AS AMENDED)

AERO TRADES (WESTERN) LTD. is authorized, subject to the provisions set forth, the provisions of the Federal Aviation Act of 1958 and the orders, rules and regulations of the Board, to engage in charter foreign air transportation as follows:

Charter flights of persons and their accompanied baggage, and payload charter flights of property, between any point or points in Canada and any point or points in the United States.

The holder shall be authorized to perform those types of charters originating in Canada and in the United States, as are prescribed in Annex B of the Nonscheduled Air Service Agreement between the United States and Canada, signed May 8, 1974, including any amendments, supplements, reservations or supersessions to that Agreement.¹

¹Since provision is made for the filing of objections to this order, petitions for reconsideration will not be entertained.

²All members concurred.

³Annex B (II)(B) and (III)(B) presently authorize the following types of large and small aircraft charters originating in Canada: Single Entity Passenger, Single Entity Property, Pro Rata Common Pur-

Footnotes continued on next page

This permit shall be subject to the following terms, conditions, and limitations:

(1) The authority of the holder to perform United States-originating large aircraft charter flights shall be subject to the provisions of Part 214 of the Board's Economic Regulations, other regulations of the Board governing tours or charters, and all amendments and revisions adopted by the Board. The authority of the holder to perform United States-originating small aircraft charter flights shall be limited to commercial air transportation of passengers and their accompanied baggage, and property, on a time, mileage or trip basis, where the entire payload capacity of one or more aircraft has been engaged by a person for his own use or by a person for the transportation of a group of persons and/or their property, as agent or representative of such group. The authority of the holder to perform Canadian-originating charter flights shall be subject to the Air Carrier Regulations of the Canadian Transport Commission. The holder shall, nevertheless, not be authorized by Annex B of the Nonscheduled Air Service Agreement between the United States and Canada, signed May 8, 1974, including any amendments, supplements, reservations or supersessions to that Agreement.

(2) The holder shall not engage in foreign air transportation between the United States and any point or points, other than a point or points in Canada, or transport any property or persons whose journey includes a prior, subsequent, or intervening movement by air (except for the movement of passengers independently of any group) to or from a point not in the United States or Canada: *Provided*, That the Board may, upon application by the holder, or by regulation, authorize the performance of charters where such movements are involved.

(3) The holder shall not perform United States-originating charter flights which at the end of any calendar quarter would result in the aggregate number of all United States-originating charter flights performed by the holder on or after May 8, 1974 exceeding by more than one-third the aggregate number of all Canadian-originating charter flights performed by the holder on or after May 8, 1974: *Provided*, that the Board may authorize the performance of charters not meeting the requirements set forth. For the purpose of making such computation the following shall apply:

(a) A charter shall be considered to originate in the United States (or Canada) if the passengers or property are first taken on board in that country, and shall be considered as one flight whether the charter be

one-way, round-trip, circle tour, or open jaw, even if a separate contract is entered into for a return portion of the charter trip from Canada (or the United States);

(b) The computation shall be made separately for (i) "large aircraft" flights of persons; (ii) "large aircraft" flights of property; (iii) "small aircraft" flights of persons; and (iv) "small aircraft" flights of property.²

(c) In the case of a lease of aircraft with crew for the performance of a charter flight on behalf and under the authority of another carrier, the flight shall be included in the computation if the holder is the lessee, and shall not be included if the holder is the lessor.

(d) There shall be excluded from the computation:

(i) flights utilizing aircraft having a maximum authorized takeoff weight on wheels (as determined by Canadian Transport Commission Regulations) not greater than 18,000 pounds; and

(ii) flights originating at a United States terminal point of a route authorized pursuant to the Air Transport Services Agreement between the United States and Canada, signed January 17, 1966, as amended, or any agreement which may supercede it, or any supplementary agreement which establishes obligations or privileges thereunder (if, pursuant to any such agreement, the holder also holds a foreign air carrier permit authorizing individually ticketed or individually waybilled service over such route, and provides some scheduled service on any route pursuant to any such agreement), when such flights serve either (a) a Canadian terminal point on such route, or (b) any Canadian intermediate point authorized for service on such route by such foreign air carrier permit.

(4) The holder may grant stopover privileges at any point or points in the United States only to passengers and their accompanied baggage moving (a) on a Canadian-originating large aircraft flight operating under a contract for charter transportation to be provided solely by the holder (even if a different aircraft is used), or (b) on a Canadian-originating small aircraft flight operating under a contract for round-trip charter transportation to be provided solely by the holder and as to which the same aircraft stays with the passenger throughout the journey. *Provided*, that the Board may authorize the performance of charters not meeting the requirements set forth.

(5) The initial tariff filed by the holder shall not set forth rates, fares, and charges lower than those then in effect for any U.S. air carrier in the same foreign air transportation; *However*, this limitation shall not apply to a tariff filed after the initial tariff regardless of whether this subsequent tariff is effective before or after the introduction of the authorized service.

(6) The Board, by order or regulation and without hearing, may require advance ap-

proval of individual charter trips conducted by the holder pursuant to the authority granted by this permit, if it finds such action to be required in the public interest.

(7) The holder shall conform to the airworthiness and airman competency requirements prescribed by the Government of Canada for Canadian international air service.

(8) The holder shall not operate any aircraft under the authority granted by this permit unless the holder complies with operational safety requirements at least equivalent to Annex 6 of the Chicago Convention.

(9) This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and Canada shall be parties.

(10) This permit shall be subject to the condition that the holder shall keep on deposit with the Board a signed counterpart of CAB Agreement 18900, an agreement relating to liability limitations of the Warsaw Convention and the Hague Protocol approved by Board Order E-23680, May 13, 1966, and a signed counterpart of any amendment or amendments to such agreement which may be approved by the Board and to which the holder becomes a party.

(11) The holder (1) shall not provide foreign air transportation under this permit unless there is in effect third-party liability insurance in the amount of \$1,000,000 or more to meet potential liability claims which may arise in connection with its operations under this permit, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the third-party liability insurance provided, and (2) shall not provide foreign air transportation of persons unless there is in effect liability insurance sufficient to cover the obligations assumed in CAB Agreement 18900, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the passenger liability insurance provided. Upon request, the Board may authorize the holder to supply the name and address of an insurance syndicate in lieu of the names and addresses of the member insurers.

(12) By accepting this permit, the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations by the holder under this permit.

(13) The exercise of the privileges granted by this permit shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Board.

This permit shall become effective on _____, Unless otherwise terminated at an earlier date pursuant to the terms of any applicable treaty, convention, or agreement, this permit shall terminate (1) upon the effective date of any treaty, convention, or agreement, or amendment, which shall have the effect of eliminating the charter foreign air transportation here authorized from the transportation which

Footnotes continued from last page

pose, Advance Booking, and Inclusive Tour; and split passenger charters of the types set forth, subject to Canadian Transport Commission Regulations which presently do not permit Advance Booking Charters for small aircraft. Annex B (II)(A) presently authorizes the following types of large aircraft charters originating in the United States: Single Entity Passenger, Single Entity Property, Pro Rata Affinity, Mixed (Entity/Pro Rata), Inclusive Tour, Study Groups, Overseas Military Personnel, and Travel Group; and split passenger charters of the types set forth. United States-originating small aircraft charters are governed by the definition set forth in condition (1)—see Annex B (III)(A).

²Annex A(I)(A) of the Nonscheduled Air Service Agreement between the United States and Canada, signed May 8, 1974, defines a "large aircraft" as an aircraft having both: (1) a maximum passenger capacity (as determined by CAB Regulations) of more than 30 seats or a maximum payload capacity (as determined by CAB Regulations) of more than 7,500 pounds; and (2) a maximum authorized takeoff weight on wheels (as determined by Canadian Transport Commission Regulations) greater than 35,000 pounds. A "small aircraft" is defined as an aircraft which is not a "large aircraft."

may be operated by carriers designated by the Government of Canada (or in the event of the elimination of part of the charter foreign air transportation here authorized, the authority granted here shall be terminated to the extent of such elimination), or (2) upon the effective date of any permit granted by the Board to any other carrier designated by the Government of Canada in lieu of the holder, or (3) upon the termination or expiration of the Nonscheduled Air Service Agreement between the United States and Canada, signed May 8, 1974: *Provided*, that clause (3) of this paragraph shall not apply if, prior to the occurrence of the event specified in clause (3), the operation of the foreign air transportation here authorized becomes the subject of any treaty, convention, or agreement to which the United States and Canada are or shall become parties.

The Civil Aeronautics Board, through its Secretary, has executed this permit and affixed its seal on _____

Secretary.

[FR Doc. 78-35380 Filed 12-19-78; 8:45 am]

[6320-01-M]

[Order 78-12-42; Docket 34185]

BRANIFF AIRWAYS, INC.

Amendment of Certificate of Public Convenience and Necessity for Route 9; Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 7th day of December, 1978.

By Order 78-12-41, issued concurrently with this Order, we propose to realign the route system of Trans World Airlines to give it, among other things, unrestricted authority in certain minor markets, listed in the attached Appendix, where Braniff holds restricted authority.¹ As explained in Orders 78-4-109, 77-11-74 and 76-5-101, it is our view that such small markets do not, as a practical matter, present competitive considerations of significant magnitude, and, accordingly, we proposed as a matter of policy to grant unrestricted authority to all carriers authorized to serve such minor markets. The removal of operating restrictions on Braniff as well as TWA will give these carriers greater flexibility to establish more logical aircraft routings, and may enable them to offer new or additional service, thereby benefiting the traveling public.

Therefore, consistent with our tentative findings and conclusions set forth in Order 78-12-41, and those in Order 78-4-109, we tentatively find and conclude that the elimination of restrictions on Braniff's operations in the markets listed in the Appendix is con-

¹A minor market is one with fewer than 20 passengers per day, or 7,300 per year. The traffic volume and Braniff's current authority in each market are set forth in the Appendix (Appendix filed as part of the original document).

sistent with the public convenience and necessity, and is consistent with our policy of removing restrictions that serve no useful purpose and are otherwise wasteful and undesirable.

Interested persons will be given 30 days following the date of service of this order to show cause why the tentative findings and conclusions set forth here should not be made final. We expect such persons to direct their objections, if any, to specific markets, and to support objections with detailed economic analysis. If an oral evidentiary hearing complete with the opportunity for cross-examination is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts the objector would expect to establish through such a hearing that cannot be established in written pleadings. General, vague, or unsupported objections will not be entertained.² Answers to objectives will be filed within 15 days from the date of filing objections.

Accordingly, 1. We direct all interested persons to show cause why the Board should not issue an order making final the tentative findings and conclusions stated here and amending Braniff's certificate for Route 9 so as to remove operating restrictions in the markets listed in the attached Appendix;

2. We direct any interested persons objecting to the issuance of an order making final the proposed findings, conclusions, and certificate amendment and modification set forth here, no later than January 15, 1979, to file with the Board and serve upon all persons listed in Appendix J of Order 78-12-41, a statement of objections together with a summary of testimony, statistical data, and evidence expected to be relied upon to support the stated objections; answers to objections shall be filed no later than January 30, 1979;

3. If timely and properly supported objections are filed, we will accord full consideration to the matters and issues raised before further action is taken by the Board;³

4. In the event no objections are filed to any part of this order, we will deem all further procedural steps relating to such part or parts waived, and the case will be submitted to the Board for final action; and

²We further tentatively find and conclude that Braniff is a citizen of the United States within the meaning of the Act, and is fit, willing, and able to perform properly the air transportation proposed here and to conform to the provisions of the Act and the Board's rules, regulations, and requirements.

³All motions or petitions for reconsideration shall be filed within the period allowed for filing objections and no further motions, requests, or petitions for reconsideration of this order will be entertained.

We shall serve a copy of this order upon all persons listed in Appendix J of Order 78-12-41.

We shall publish a copy of this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board: *
PHYLIS T. KAYLOR,
Secretary.

[FR Doc. 78-35382 Filed 12-19-78; 8:45 am]

[6320-01-M]

[Order 78-12-43; Docket 34186]

CONTINENTAL AIRLINES, INC.

Amendment of Certificate of Public Convenience and Necessity for Route 29; Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 7th day of December, 1978.

By Order 78-12-41, issued concurrently with this Order, we propose to realign the route system of Trans World Airlines to give it, among other things, unrestricted authority in certain minor markets, listed in the attached Appendix, where Continental holds restricted authority.¹ As explained in Orders 78-4-109, 77-11-74 and 76-5-101, it is our view that such small markets do not, as a practical matter, present competitive considerations of significant magnitude, and, accordingly, we proposed as a matter of policy to grant unrestricted authority to all carriers authorized to serve such minor markets. The removal of operating restrictions on Continental as well as TWA will give these carriers greater flexibility to establish more logical aircraft routings, and may enable them to offer new or additional service, thereby benefiting the traveling public.

Therefore, consistent with our tentative findings and conclusions set forth in Order 78-12-41, and those in Order 78-4-109, we tentatively find and conclude that the elimination of restrictions on Continental's operations in the markets listed in the Appendix is consistent with the public convenience and necessity, and is consistent with our policy of removing restrictions that serve no useful purpose and are otherwise wasteful and undesirable.

Interested persons will be given 30 days following the date of service of this order to show cause why the tentative findings and conclusions set forth here should not be made final. We expect such persons to direct their objections, if any, to specific markets, and to support objections with de-

*All Members concurred.

¹A minor market is one with fewer than 20 passengers per day, or 7,300 per year. The traffic volume and Continental's current authority in each market are set forth in the Appendix (Appendix filed as part of the original document).

tailed economic analysis. If an oral evidentiary hearing complete with the opportunity for cross-examination is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts the objector would expect to establish through such a hearing that cannot be established in written pleadings. General, vague, or unsupported objections will not be entertained.² Answers to objectives will be filed within 15 days from the date of filing objections.

Accordingly, 1. We direct all interested persons to show cause why the Board should not issue an order making final the tentative findings and conclusions stated here and amending Continental's certificate for Route 29 so as to remove operating restrictions in the markets listed in the attached Appendix;

2. We direct any interested persons objecting to the issuance of an order making final the proposed findings, conclusions, and certificate amendment and modification set forth here, no later than January 15, 1979, to file with the Board and serve upon all persons listed in Appendix of Order 78-12-41, a statement of objections together with a summary of testimony, statistical data, and evidence expected to be relied upon to support the stated objections; answers to objections shall be filed no later than January 30, 1979;

3. If timely and properly supported objections are filed, we will accord full consideration to the matters or issues raised before further action is taken by the Board;³

4. In the event no objections are filed to any part of this order, we will deem further procedural steps relating to such part or parts waived, and the case will be submitted to the Board for final action; and

5. We shall serve a copy of this order upon all persons listed in Appendix J of Order 78-12-41.

We shall publish a copy of this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board:⁴

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-35383 Filed 12-19-78; 8:45 am]

¹We further tentatively find and conclude that Continental is a citizen of the United States within the meaning of the Act, and is fit, willing, and able to perform properly the air transportation proposed here and to conform to the provisions of the Act and the Board's rules, regulations, and requirements.

²All motions or petitions for reconsideration shall be filed within the period allowed for filing objections and no further motions, requests, or petitions for reconsideration of this order will be entertained.

⁴All Members concurred.

[6320-01-M]

[Order 78-12-44; Docket 34187]

DELTA AIRLINES, INC.

Amendment of Certificate of Public Convenience and Necessity for Route 24; Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 7th day of December, 1978.

By Order 78-12-41, issued concurrently with this Order, we propose to realign the route system of Trans World Airlines to give it, among other things, unrestricted authority in the Nashville-Tulsa market, a minor market where Delta holds restricted authority.¹ As discussed in Orders 78-4-109, 77-11-4, and 76-5-101, it is our view that such small markets do not, as a practical matter, present competitive considerations of significant magnitude, and, accordingly, we proposed as a matter of policy to grant unrestricted authority to all carriers authorized to serve such minor markets. The removal of operating restrictions on Delta as well as TWA will give these carriers greater flexibility to establish more logical aircraft routings, and may enable them to offer new or additional service, thereby benefitting the traveling public.

Therefore, consistent with our tentative findings and conclusions set forth in Order 78-12-41, and those in Order 78-4-109, we tentatively find and conclude that the elimination of restrictions on Delta's operations in the Nashville-Tulsa market is consistent with the public convenience and necessity, and is consistent with our policy of removing restrictions that serve no useful purpose and are otherwise wasteful and undesirable.

Interested persons will be given 30 days following the date of service of this order to show cause why the tentative findings and conclusions set forth here should not be made final. We expect such persons to direct their objections, if any, to the specific market, and to support objections with detailed economic analysis. If an oral evidentiary hearing complete with the opportunity for cross-examination is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts the objector would expect to establish through such a hearing that cannot be established in written pleadings. General, vague, or unsupported objections will not be entertained.² An-

¹Nashville-Tulsa generated 5,870 true O&D plus interline connecting passengers for the 1975 calendar year. Therefore, it meets the Board's definition of a minor market: one with fewer than 20 passengers per day or 7,300 per year. Delta currently has two-stop authority via Chatanooga, Atlanta.

²We further tentatively find and conclude that Delta is a citizen of the United States

answers to objections will be filed within 15 days from the date on filing objections.

Accordingly, 1. We direct all interested persons to show cause why the Board should not issue an order making final the tentative findings and conclusions stated here and amending Delta's certificate for Route 24 so as to remove operating restrictions in the Nashville-Tulsa market;

2. We direct any interested persons objecting to the issuance of an order making final the proposed findings, conclusions, and certificate amendment and modification set forth here, no later than January 15, 1979, to file with the Board and serve upon all persons listed in Appendix J of Order 78-12-41, a statement of objections together with a summary of testimony, statistical data, and evidence expected to be relied upon to support the stated objections; answers to objections shall be filed no later than January 30, 1979;

3. If timely and properly supported objections are filed, we will accord full consideration to the matters or issues raised before further action is taken by the Board;³

4. In the event no objections are filed to any part of this order, we will deem all further procedural steps relating to such part of parts waived, and the case will be submitted to the Board for final action; and

5. We shall serve a copy of this order upon all persons listed in Appendix J of Order 78-12-41.

We shall publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board:⁴

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-35384 Filed 12-19-78; 8:45 am]

[6320-01-M]

[Order 78-12-45; Docket 34188]

OZARK AIRLINES, INC.

Amendment of Certificate of Public Convenience and Necessity for Route 107; Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 7th day of December, 1978.

By Order 78-12-41, issued concurrently with this Order, we propose to

within the meaning of the Act, and is fit, willing, and able to perform properly the air transportation proposed here and to conform to the provisions of the Act and the Board's rules, regulations, and requirements.

³All motions or petitions for reconsideration shall be filed within the period allowed for filing objections and no further motions, requests, or petitions for reconsideration of this order will be entertained.

⁴All Members concurred.

realign the route system of Trans World Airlines to give it, among other things, unrestricted authority in the Philadelphia-Quincy market, a minor market where Ozark holds restricted authority.¹ As discussed in Orders 78-4-109, 77-11-4, and 76-5-101, it is our view that such small markets do not, as a practical matter, present competitive considerations of significant magnitude, and, accordingly, we proposed as a matter of policy to grant unrestricted authority to all carriers authorized to serve such minor markets. The removal of operating restrictions on Ozark as well as TWA will give these carriers greater flexibility to establish more logical aircraft routings, and may enable them to offer new or additional service, thereby benefiting the traveling public.

Therefore, consistent with our tentative findings and conclusions set forth in Order 78-12-41, and those in Order 78-4-109, we tentatively find and conclude that the elimination of restrictions on Ozark's operations in the Philadelphia-Quincy market is consistent with the public convenience and necessity, and is consistent with our policy of removing restrictions that serve no useful purpose and are otherwise wasteful and undesirable.

Interested persons will be given 30 days following the date of service of this order to show cause why the tentative findings and conclusions set forth here should not be made final. We expect such persons to direct their objections, if any, to the specific market, and to support objections with detailed economic analysis. If an oral evidentiary hearing complete with the opportunity for cross-examination is requested, the objector should state, in detail, why such a hearing is necessary and what relevant and material facts the objector would expect to establish through such a hearing that cannot be established in written pleadings. General, vague, or unsupported objections will not be entertained.² Answers to objections will be filed within 15 days from the date on filing objections.

Accordingly, 1. We direct all interested persons to show cause why the Board should not issue an order making final the tentative findings and conclusions stated here and

¹Philadelphia-Quincy generated 520 true O&D plus interline connecting passengers for the 1975 calendar year. Therefore, it meets the Board's definition of a minor market: one with fewer than 20 passengers per day or 7,300 per year. Ozark currently has one-stop authority via Indianapolis.

²We further tentatively find and conclude that Ozark is a citizen of the United States within the meaning of the Act, and is fit, willing, and able to perform properly the air transportation proposed here, and to conform to the provisions of the Act and the Board's rules, regulations, and requirements.

amending Ozark's certificate for Route 107 so as to remove operating restrictions in the Philadelphia-Quincy market;

2. We direct any interested persons objecting to the issuance of an order making final the proposed findings, conclusions, and certificate amendment and modification set forth here, no later than January 15, 1979, to file with the Board and serve upon all persons listed in Appendix J of Order 78-12-41, a statement of objections together with a summary of testimony, statistical data, and evidence expected to be relied upon to support the stated objections; answers to objections shall be filed no later than January 30, 1979;

3. If timely and properly supported objections are filed, we will accord full consideration to the matters or issues raised before further action is taken by the Board;³

4. In the event no objections are filed to any part of this order, we will deem all further procedural steps relating to such part of parts waived, and the case will be submitted to the Board for final action; and

5. We shall serve a copy of this order upon all persons listed in Appendix J of Order 78-12-41.

We shall publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board: ⁴

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-35385 Filed 12-19-78; 8:45 am]

[6320-01-M]

[Order 78-12-41; Dockets 30909, 29531,
31371, 33260, 33300]

TRANS WORLD AIRLINES, INC.

Route Realignment and Removal of Certain
Restrictions; Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 7th day of December, 1978.

By application and petition dated May 19, 1977, Trans World Airlines requested that the Board issue an order directing interested persons to show cause why TWA's certificate of public convenience and necessity for Route 2 should not be amended to consolidate the existing eight segment description into a simplified system comprised of two linear segments and to eliminate certain conditions which TWA claims are outdated and otherwise serve no useful purpose.

In support of its application, TWA contends that: its route system is bur-

dened by numerous segment and route junction stop requirements and certificate conditions; relief from these restrictions would facilitate greater scheduling flexibility; and the proposed realignment conforms to the Board's realignment guidelines.

Answers in general support of TWA's petition were filed by Delta and the Las Vegas parties.¹

Various objections were filed by Allegheny, American, Braniff, Continental, Hughes Airwest, Frontier, Northwest, Ozark, Port of Oakland, United and Western. TWA filed a reply addressing the issues raised by the other parties.

As we stated in the recent Continental, Ozark, Delta and Western route realignments,² it is our policy to realign the route systems of the certificated scheduled carriers to maximize the opportunities for scheduling flexibility and equipment utilization, to conform route authority to traffic flows, and to eliminate or modify certificate conditions which serve no useful purpose, impair meaningful market development and inhibit significant improvement in the carrier's economic performance. These objectives are equally applicable to trunk and local service carriers.³

We tentatively conclude that TWA's proposed realignment, as modified by this Order, conforms with the Board's policies and objectives discussed above, and that substantial public service and carrier benefits will result from the realigned route system. The proposed realignment will offer TWA the potential for significant improvement in operating efficiency and will permit it to provide improved service to the traveling public.

Many of the local service carriers object to TWA's petition on the general grounds that our realignment of trunk carriers, through show-cause procedures, is unwise. These carriers also express concern that the award of improved authority to TWA in minor and monopoly markets will create dormant authority in those markets which will serve to discourage attempts by other carriers to enter the affected markets. They suggest that any improvement in authority to TWA could retard needed service expansion, contrary to the public interest. To remedy this alleged harm of the realignment program, it was suggested that the Board adopt a policy that, if any particular route authority awarded in a realignment is not used during

¹The Las Vegas parties include Clark County, Nevada, the Greater Las Vegas Chamber of Commerce, the City of Las Vegas, the Nevada Resort Association and the Las Vegas Convention/Visitors Authority.

²Orders 78-7-91, 78-6-4, 78-4-109 and 77-11-74.

³Order 78-4-109 at 4-5.

³All motions or petitions for reconsideration shall be filed within the period allowed for filing objections and no further motions, requests, or petitions for reconsideration of this order will be entertained.

⁴All members concurred.

a twelve month period and another carrier seeks that authority, an award of operating rights on that particular route be made to the latter carrier and the incumbent's rights be deleted automatically.

In addition, several carriers raised the *Ashbacher* doctrine⁴ as a bar to the Board's individual consideration of requests by TWA for improved authority to specific markets.

It will suffice here to say that we have rejected these contentions in the past and reject them here, and refer to our *Delta* order⁵ for a full discussion of these issues.⁶

Where objections were made to specific markets, authority was granted or denied based on the realignment guidelines.⁷

As in the preceding route realignments, we waive the requirements of Part 312 of the Board's Procedural Regulations, which require the filing of an environmental evaluation. Further, we tentatively conclude that the action we propose here will not constitute a major action significantly affecting the quality of the environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA).⁸

The proposed restriction removals for Braniff, Continental, Delta and Ozark, which we are proposing in separate orders issued concurrently, will enable those carriers to operate more efficiently, and will not constitute either major Federal actions within

⁴*Ashbacher Radio Corp. v. F.C.C.*, 326 U.S. 327 (1945).

⁵Order 78-4-109 at 5-8.

⁶In addition, by Public Law 95-504, Congress enacted a new section 401(d)(5) of the Federal Aviation Act which provides procedures by which authority can be awarded quickly to carriers seeking to provide service in markets in which dormant authority exists.

⁷In certain non-minor markets where TWA did not request authority, proposed authority was granted in conformance with the certificate format and guidelines used in the *Delta* route realignment. Additionally, in Dockets 29531, 31371, 33260 and 33300, TWA filed applications for removal of certain certificate conditions either by exemption or show-cause procedures. Since these applications were filed before the enactment of the new Act, we have decided to dismiss them. To the extent these dockets requested relief which parallels the route realignment guidelines, that relief will be granted through the instant route realignment. Section 401(e) of the new Act provides for removal and modification of certificate conditions. Relying on this section, TWA has filed an omnibus restriction removal application which supersedes the route realignment guidelines. This will be handled in a separate proceeding.

⁸We further tentatively conclude that this action will not constitute a major regulatory action within the meaning of the Energy Policy and Conservation Act and does not require an energy statement pursuant to section 313 of our Procedural Regulations.

the meaning of NEPA or major regulatory actions within the meaning of the Energy Policy and Conservation Act.

We further conclude that Trans World Airlines is a citizen of the United States within the meaning of the Act, and is fit, willing and able to perform properly that air transportation proposed here and to conform to the provisions of the Act and the Board's rules, regulations and requirements.

Interested persons will be given 30 days following the date of service of this order to show cause why the tentative findings and conclusions set forth here should not be made final. We expect such persons to direct their objections, if any, to specific markets, and to support such objections with detailed economic analysis. If an evidentiary hearing, complete with the opportunity for oral cross-examination, is requested, the objection should state, in detail, why such a hearing is necessary and what relevant and material facts the objector would expect to establish through such a hearing that cannot be established in written pleadings. General, vague or unsupported objections will not be entertained. Answers to objections will be filed within 15 days from the date for filing objections.

Accordingly, 1. We direct all interested persons to show cause why the Board should not issue an order making final the tentative findings and conclusions stated here and amending TWA's certificate for Route 2 in the manner set forth in the accompanying proposed certificate (Appendix B);⁹

2. We direct interested persons objecting to the issuance of an order making final the proposed findings, conclusions and certificate amendments and modifications set forth here, no later than January 15, 1979, to file with the Board and serve upon all persons listed in Appendix J, a statement of objections together with a summary of testimony, statistical data and evidence expected to be relied upon to support the stated objections; answers to objections shall be filed no later than January 30, 1979;

3. If timely and properly supported objections are filed, we will accord full consideration to the matters or issues raised by the objections before further action is taken by the Board;¹⁰

4. In the event no objections are filed to any part of this order, we will deem all further procedural steps relating to such part or parts waived, and the case will be submitted to the Board for final action;

⁹Appendices A through J filed as part of the original document.

¹⁰All motions and/or petitions for reconsideration shall be filed within the period allowed for filing objections and no further motions, requests, or petitions for reconsideration of this order will be entertained.

5. We grant TWA a waiver from Part 312;

6. We dismiss TWA's applications in Dockets 29531, 31371, 33260 and 33300; and

7. We shall serve a copy of this order upon all persons listed in Appendix J. We shall publish this order in the FEDERAL REGISTER.

By the Civil Aeronautics Board: ¹¹

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-35381 Filed 12-19-78; 8:45 am]

[3510-24-M]

DEPARTMENT OF COMMERCE

Economic Development Administration

PETITIONS BY FIVE PRODUCING FIRMS

For Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing from five firms: (1) The Great Six Company, 6311 Wayzata Boulevard, Minneapolis, Minnesota 55416, a producer of women's coats and jackets (accepted December 5, 1978); (2) Haspel Brothers, Inc., P.O. Box 51238, New Orleans, Louisiana 70151, a producer of men's suits and sportcoats (accepted December 8, 1978); (3) Knitcrest Fabrics, Inc., 50 Marcus Boulevard, Hauppauge, New York 11787, a producer of knit fabrics (accepted December 11, 1978); (4) New England High Carbon Wire Corporation, 50 Howe Avenue, Millbury, Massachusetts 01527, a producer of steel wire (accepted December 13, 1978); and (5) Peachtree Jeans, Inc., P.O. Box 427, Cartersville, Georgia 30120, a producer of women's blue jeans (accepted December 13, 1978). The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93-618) and Section 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315).

Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business on

¹¹All members concurred.

the tenth calendar day following the publication of this notice.

CHARLES L. SMITH,
Acting Chief, Trade Act Certification Division, Office of Planning and Program Support.

[FR Doc. 78-35268 Filed 12-19-78; 8:45 am]

[3510-25-M]

Industry and Trade Administration

NATIONAL COUNCIL OF CHURCHES IN THE
U.S.A.

Decision on Application for Duty-Free Entry of
Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

DOCKET NUMBER: 78-00319. APPLICANT: National Council of Churches in the U.S.A., 475 Riverside Drive, Room 828, New York, N.Y. 10027. ARTICLE: 40 Infant Weighing Packs, Model 235 PBW. MANUFACTURER: CMS Weighing Equipment Ltd., United Kingdom. INTENDED USE OF ARTICLE: The article is intended to be used for investigating the feeding practices of mothers with a view toward improving infant feeding.

COMMENTS: No comments have been received with respect to this application. DECISION: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. REASONS: The foreign article provides portability which is required for the necessary door to door assessments to be made. The Department of Health, Education, and Welfare advises, in its memorandum dated November 7, 1978 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes

as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational And Scientific Materials.)

RICHARD M. SEPPA,
Director,

Statutory Import Programs Staff.

[FR Doc. 78-35331 Filed 12-19-78; 8:45 am]

[3510-25-M]

SALK INSTITUTE FOR BIOLOGICAL STUDIES

Decision on Application for Duty-Free Entry of
Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

DOCKET NUMBER: 78-00343. APPLICANT: The Salk Institute for Biological Studies, P.O. Box 1809, San Diego, Calif. 92112. ARTICLE: Fluorescence amino acid analyzer, Liquimat III and spare parts. MANUFACTURER: Kontron Ltd., Switzerland. INTENDED USE OF ARTICLE: The article is intended to be used for the determination of amino acid compositions of newly isolated biologically active peptides (which are available in quantities of typically one-millionth of 1 gram only) as well as for the determination of amino acid sequence of newly isolated peptides. Furthermore, the article will be used for further development of all aspects of high-sensitivity amino acid analysis (improvements in sensitivity, simplicity, reliability, speed of analysis, etc.).

COMMENTS: No comments have been received with respect to this application. DECISION: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. REASONS: The foreign article provides the capability to detect as little as 10 picomoles (pM) proline and 20 pM hydroxyproline using o-phthalaldehyde as the fluorogenic reagent. The article also provides a specific collection of parts compatible to the long term development effort of the applicant. The Department of Health, Education, and Welfare advises in its memorandum dated November 7, 1978

that (1) the characteristics of the foreign article described above are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director,

Statutory Import Programs Staff.

[FR Doc. 78-35332 Filed 12-19-78; 8:45 a.m.]

[3510-25-M]

SOUTHERN CALIFORNIA COLLEGE OF
OPTOMETRY

Decision on Application

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

DOCKET NUMBER: 78-00318. APPLICANT: Southern California College of Optometry, 2001 Associated Road, Fullerton, Calif. 92631. ARTICLE: Nagel Anomaloscope. MANUFACTURER: Schmidt and Haensch, West Germany. INTENDED USE OF ARTICLE: The article is intended to be used to identify persons with deficiencies of color vision through quantitative assessment of the type and degree of severity of a color vision deficiency. The article will be used in Visual Science 322, a course devoted to the theories, experimental basis, and testing of human color vision. In addition, the article will be used in the teaching clinics of the college for diagnosis of color anomalies.

COMMENTS: No comments have been received with respect to this application. DECISION: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. REASONS: The foreign article provides the capability for detecting and

quantitatively assessing color vision anomalies. The Department of Health, Education, and Welfare advises in its memorandum dated November 7, 1978 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article of the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director,

Statutory Import Programs Staff.

[FR Doc. 78-35333 Filed 12-19-78; 8:45 am]

[3510-25-M]

USDA/ARS—TOBACCO RESEARCH
LABORATORY

Decision on Application for Duty-Free Entry of
Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue NW., Washington, D.C. 20230.

DOCKET NUMBER: 78-00414. APPLICANT: U.S. Department of Agriculture, Agriculture Research Service, Tobacco Research Laboratory, Route 2, Box 16G, Oxford, N.C. 27565. ARTICLE: Particulate Matter Prediction Metering Equipment. MANUFACTURER: W.D. and H.O. Wills Co., United Kingdom. INTENDED USE OF ARTICLE: The article is intended to be used to burn ground tobacco samples in a glass tube in experiments to reduce tar levels in Flue-cured tobacco. The objectives of these investigations being conducted is to reduce health hazards associated with tobacco by reducing tar levels.

COMMENTS: No comments have been received with respect to this application. DECISION: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being

manufactured in the United States. REASONS: The foreign article provides the capability for determining the very specialized particulate matter index as "tars" in tobacco by pyrolyzing in a glass tube within the heating furnace. The Department of Health, Education, and Welfare advises in its memorandum dated November 30, 1978 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director,

Statutory Import Programs Staff.

[FR Doc. 78-35330 Filed 12-19-78; 8:45 am]

[3510-25-M]

UNIVERSITY OF CALIFORNIA—IRVINE

Decision on Application for Duty-Free Entry of
Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 6886C of the Department of Commerce Building, at 14th and Constitution Avenue NW., Washington, D.C. 20230.

DOCKET NUMBER: 78-00416. APPLICANT: The Regents of the University of California, California, College of Medicine, Irvine, Calif. 92717. ARTICLE: Scanning Electron Microscope, Model PSEM 500 with Automatic Goniometer Stage and accessories. MANUFACTURER: Philips Electronics Instruments NVD, The Netherlands. INTENDED USE OF ARTICLE: The article is intended to be used for the following studies: (1) Experiment investigations of diabetic angiopathy which includes the fibrogenesis during wound repair which will include a 3-dimensional study of collagen layering in healing wounds. (2) Study of receptor sites on liver plasma membranes and individual lymphoid cells, (3) Diagnosis of tumors of uncer-

tain histogenesis, (4) Studies of a variety of congenital and acquired pulmonary lesions (hyaline membrane disease) and studies of tumors of neural origin in young children, and (5) Examination of many tissues which are suspect of viral infections, both diagnostically and in a related clinical research study. The article will also be used in the training and teaching of resident physicians, and instilling in them the importance of the scanning electron microscope as an additional tool for making diagnosis, particularly in borderline cases where resolution and 3-dimensional view can be beneficial.

COMMENTS: No comments have been received with respect to this application. DECISION: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. REASONS: The foreign article provides a motor driven fully eucentric goniometer stage with movements accurate to one micron and reproducible to 0.2 micron. The Department of Health, Education, and Welfare advises in its memorandum dated November 30, 1978 that (1) the capabilities of the article described above is pertinent to the applicant's intended use and (2) it knows of no domestic instrument that provides the pertinent feature of the article.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director,

Statutory Import Programs Staff.

[FR Doc. 78-35334 Filed 12-19-78; 8:45 am]

[3510-25-M]

UNIVERSITY OF CHICAGO—ARGONNE

Decision on Application for Duty-Free Entry of
Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 6886C of the Department of Commerce Building, at 14th

and Constitution Avenue, N.W., Washington, D.C. 20230.

DOCKET NUMBER: 78-00397. **APPLICANT:** University of Chicago, Operator of Argonne National Laboratory, 9700 South Cass Avenue, Argonne, Ill. 60439. **ARTICLE:** Rotating Anode X-Ray Generator, Model GX20 and accessories. **MANUFACTURER:** Marconi-Elliott Avionics Ltd., United Kingdom. **INTENDED USE OF ARTICLE:** The article is intended to be used to investigate three-dimensional structures of primarily human immunoglobulins and Bence-Jones proteins.

COMMENTS: No comments have been received with respect to this application. **DECISION:** Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. **REASONS:** The foreign article provides a focused spot of minimal size 200 microns and a rotating target for maximum X-ray beam intensity. The Department of Health, Education, and Welfare (HEW) advised in its memorandum dated November 22, 1978 that the capabilities described above are pertinent to the purposes for which the article is intended to be used. HEW also advises that it knows of no domestic instrument of equivalent scientific value to the foreign article for such purposes as the article is intended to be used.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director,

Statutory Import Programs Staff.

[FR Doc. 78-35335 Filed 12-19-78; 8:45 am]

[3510-25-M]

UNIVERSITY OF UTAH

Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR Part 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 6886C of the Department of Commerce Building, at 14th

and Constitution Avenue, N.W., Washington, D.C. 20230.

DOCKET NUMBER: 78-00337. **APPLICANT:** University of Utah, Department of Chemistry, Salt Lake City, Utah 84112. **ARTICLE:** Automatic Recording Spectropolarimeter, Model J-41C and accessories. **MANUFACTURER:** Japan Spectroscopic Co., Ltd., Japan. **INTENDED USE OF ARTICLE:** The article is intended to be used in research to develop a capability to predict the signs and possible magnitudes of the lowest several electronic bands in the magnetic circular dichroic (MCD) spectra of organic molecules from first principles and molecular structure.

COMMENTS: No comments have been received with respect to this application.

DECISION: Application approved. No instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, is being manufactured in the United States. **REASONS:** The foreign article provides the capability for magnetic circular dichroism over a wave length range of 185-1000 nanometers. The Department of Health, Education, and Welfare advises in its memorandum dated November 7, 1978 that (1) the capability of the foreign article described above is pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign article for the applicant's intended use.

The Department of Commerce knows of no other instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, which is being manufactured in the United States.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

RICHARD M. SEPPA,
Director,

Statutory Import Programs Staff.

[FR Doc. 78-35336 Filed 12-19-78; 8:45 am]

[3510-17-M]

Office of the Secretary

(Dept. Organization Order 10-5, Amdt. 1)

ASSISTANT SECRETARY FOR ADMINISTRATION

Statement of Organization, Functions and Delegation of Authority

This order effective November 30, 1978 amends the material appearing at 43 FR 12354 of March 24, 1978.

Department Organization Order 10-5, dated February 21, 1978, is hereby amended as shown below. The purpose of this amendment is to reflect the

consolidation of all procurement operations and staff-level procurement functions of the former Office of Administrative Services and Procurement and the functions of the former Office of ADP Management to form the new Office of Procurement and ADP Management.

The Appendix attached to this amendment supersedes the Appendix dated February 21, 1978.

Effective date: November 30, 1978.

ELSA A. PORTER,
Assistant Secretary
for Administration.

APPENDIX

DEPARTMENTAL OFFICES AND UNITS WHICH REPORT TO THE ASSISTANT SECRETARY FOR ADMINISTRATION

Office of Administrative Services
Office of Audits
Office of Budget and Program Evaluation
Office of Civil Rights
Office of the Controller
Office of Intelligence Liaison
Office of Investigations and Security
Office of Organization and Management Systems
Office of Personnel
Office of Procurement and ADP Management
Office of Publications
Appeals Board (for administrative purposes only)

[FR Doc. 78-35264 Filed 12-19-78; 8:45 am]

[3510-17-M]

(Dept. Organization Order 25-5B, Amdt. 1)

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Statement of Organization, Function and Delegation of Authority

This order effective November 14, 1978 amends the material appearing at 43 FR 51438 of November 3, 1978.

Department Organization Order 25-5B, dated October 16, 1978, is hereby amended as shown below. The purpose of this amendment is to establish, under the Administrator of NOAA, the National Climate Program Office authorized by the National Climate Program Act (Pub. L. 95-367).

I.a. A new Section 8. is added to read as follows:

SECTION 8. National Climate Program Office. "The National Climate Program Office (NCPO), whose director shall report to and act under the direction of the Assistant Administrator for Research and Development acting on behalf of the Administrator, shall act as the focal point within the Federal Government to administer the National Climate Program. The Office shall coordinate, plan, and serve national efforts in climate. In order to implement the National Climate Program Act, the Office shall:

"Develop the National Climate Program, including preparation of national climate plans.

"Define the roles of the various Federal departments and agencies in the National Climate Program and provide for Program coordination.

"Assist in the creation and maintenance of advisory committees and interagency groups concerned with the development of the National Climate Program.

"Cooperate and participate with other Federal agencies, including the Department of State, and foreign international and domestic organizations and agencies involved in international or domestic climate-related programs.

"Assist the Administrator in establishing an intergovernmental program for Federal and State cooperative activities in climate studies and advisory services.

"Administer and monitor grants for research to public or private educational institutions, State agencies, and other persons or institutions qualified to conduct climate related studies or provide climate-related services.

"Coordinate with and assist the Office of Management and Budget in the preparation of a horizontal budget for the National Climate Program

"Prepare the annual report on the National Climate Program.

"Otherwise administer the National Climate Program Act, under the guidance of the Administrator, including the development of appropriate rules, regulations, policies, and procedures."

b. In pen and ink, renumber the existing Sections 8 through 14 as Sections 9 through 15.

2. The organization chart, Exhibit 1, attached to this amendment, supersedes the organization chart dated October 16, 1978. A copy of the organization chart is on file with the original of this document in the Office of the Federal Register.

Effective date: November 14, 1978.

GUY W. CHAMBERLIN, Jr.,
Acting Assistant Secretary
for Administration.

[FR Doc. 78-35267 Filed 12-19-78; 8:45 am]

[3510-17-M]

[Dept. Organization Order 15-8]

OFFICE OF THE INSPECTOR GENERAL

Establishment and Functions

This order is effective November 27, 1978

SECTION 1. *Purpose.* This Order reflects the establishment of the Office of the Inspector General and prescribes its functions.

SEC. 2. *Organization.* .01 The Inspector General Act of 1978 (hereinafter, the "Act"), enacted October 12, 1978

(Pub. L. 95-452; 5 U.S.C. Appendix), establishes in the Department of Commerce an Office of the Inspector General headed by an Inspector General appointed by the President by and with the advice and consent of the Senate. The statute provides that the Inspector General shall report to and be under the general supervision of the Secretary of Commerce.

.02 The Office of the Inspector General shall consist of:

- a. An Assistant Inspector General for Auditing;
- b. An Assistant Inspector General for Investigations; and
- c. Such organization units as the Inspector General, in conjunction with the Assistant Secretary for Administration, may establish for the purpose of carrying out assigned authorities and functions.

SEC. 3. *Authorities and functions.* .01 The Inspector General shall exercise the authorities and perform the functions set forth in the Act.

.02 The Inspector General may delegate any authority conferred by this Order to any employee of the Office of the Inspector General, and may authorize further redelegation by any such employee, subject to such conditions as the Inspector General may prescribe.

.03 The Assistant Inspector General for Auditing or the Assistant Inspector General for Investigations shall be designated to act as Inspector General in the latter's absence.

SEC. 4. *Support Services.* The Assistant Secretary for Administration, in consultation with the Inspector General, shall ensure that the Department provides to the Office of the Inspector General personnel, space, accounting and payroll, and other administrative support services, as provided for in the Act, or as otherwise may be appropriate.

SEC. 5. *Transfers.* .01 Pursuant to the Act, there are transferred to the Office of the Inspector General: the Departmental Office of Audits, the Investigations and Inspections Staff of the Economic Development Administration, and that portion of the Departmental Office of Investigations and Security which has responsibility for investigation of alleged criminal violations and program abuse.

.02 The personnel, assets, liabilities, contracts, property, records, unexpended balances of appropriations, authorizations, and allocations, and other funds employed, held, used, arising from, available or to be made available to the offices and staffs transferred under paragraph .01, above, are assigned to the Office of the Inspector General.

SEC. 6. *Transitional provisions.* All rules, regulations, orders, determinations, authorizations, contracts, agree-

ments, proceedings, audits, hearings, investigations, inspections, or other actions issued, undertaken, pending or entered into by and for the organization units transferred under paragraph 5.01 of this Order, shall continue and remain in full force and effect until they expire in due course or are revoked or amended by appropriate authority.

GUY W. CHAMBERLIN, Jr.,
Acting Assistant Secretary
for Administration.

[FR Doc. 78-35265 Filed 12-19-78; 8:45 am]

[3510-17-M]

[Dept. Organization Order 20-14]

OFFICE OF PROCUREMENT, AND AUTOMATIC DATA PROCESSING MANAGEMENT

Establishment and Functions

This order effective November 30, 1978 supersedes the material appearing at 41 FR 50320 of November 15, 1976, 42 FR 41467 of August 17, 1977, and 43 FR 785 of January 4, 1978.

SECTION 1. *Purpose.* .01 This Order establishes the Office of Procurement and Automatic Data Processing Management and prescribes its functions.

.02 This Order is intended to be only a temporary measure to implement the consolidation of procurement and staff-level procurement responsibilities of the former Office of Administrative Services and Procurement and the functions of the former Office of ADP Management to form the new Office of Procurement and Automatic Data Processing Management. This Order will be superseded by a more complete functional statement in the near future.

SEC. 2. *Status and line of authority.* The Office of Procurement and Automatic Data Processing Management (OP&ADPM), a Departmental office, shall be headed by a Director who shall report and be responsible to the Assistant Secretary for Administration.

SEC. 3. *Functions.* Pursuant to the authority vested in the Assistant Secretary for Administration by Department Organization Order 10-5, and subject to such policies and directives as the Assistant Secretary may prescribe, OP&ADPM shall:

a. Have Departmentwide staff responsibility for procurement management, and perform procurement for all elements of the Department, except as otherwise provided in Department Administrative Order 208-2, "Procurement Authority;"

b. Provide a full range of ADP services for all elements of the Department, including development of plans, policies, and procedures for the acquisition, use and management of ADP resources, conducting or sponsoring

studies and applied research, and operation of a central computer facility for the Office of the Secretary and designated operating units;

c. Serve as a Departmental focal point for dealing with the Office of Management and Budget (OMB), the General Services Administration (GSA), the General Accounting Office (GAO), and other central management agencies on procurement and ADP matters; and

d. Exercise such authorities of the Assistant Secretary for Administration as are implicit in and essential to carry out the functions assigned by this Order.

Sec. 4. *Transitional Provisions.* 01. All rules, regulations, orders, delegations, determinations, authorizations, contracts, agreements, proceedings, hearings, investigations, or other actions issued, undertaken, pending, or entered into by and for the Office of Administrative Services and Procurement or the Office of ADP Management with respect to functions transferred by this Order, shall continue and remain in full force and effect until they expire in due course or are revoked or amended by appropriate authority.

02 The resources, including personnel, funds, property, and records, of the Office of ADP Management and the Office of Administrative Services and Procurement, as they pertain to the functional transfer described above, shall be transferred to the new Office of Procurement and ADP Management, with the effective date of such transfers to be determined by the Assistant Secretary for Administration.

SAVINGS PROVISIONS

All Department Administrative Orders which refer to the Office of Administrative Services and Procurement, or OAS&P, are constructively amended to refer instead to the Office of Procurement and ADP Management, or OP&ADPM, for procurement matters and to the Office of Administrative Services, or OAS, for other matters.

All Department Administrative Orders which refer to the Office of ADP Management, or OADPM, are constructively amended to refer instead to the Office of Procurement and ADP Management, or OP&ADPM.

GUY W. CHAMBERLIN, Jr.,
Acting Assistant Secretary
for Administration.

[FR Doc. 78-35266 Filed 12-19-78; 8:45 am]

[3910-01-M]

DEPARTMENT OF DEFENSE

Department of the Air Force

INERTIAL UPPER STAGE SEGMENT SPACE TRANSPORTATION SYSTEM

Environmental Determination

DECEMBER 12, 1978.

PROPOSED ACTION

The proposed action comprises development, production and assembly operations of the Inertial Upper Stage (IUS) vehicle at contractor installations, testing at government and contractor facilities; and construction, activation and operation of IUS facilities at The Eastern Launch Site (ELS) comprised of the Kennedy Space Center (KSC) and the Cape Canaveral Air Force Station (CCAFS) complex. Construction costs for IUS program facilities are estimated to be \$8.3 million. The IUS vehicle will be an integral part of the Space Transportation System (STS). It will supplement the Space Shuttle to allow the placement of spacecraft in high energy orbits and interplanetary flights which are beyond the capability of the Shuttle alone. The IUS will be integrated with a spacecraft for placement in the Space Shuttle Orbiter launch vehicle. During the ascent phase of flight from ELS, the passive IUS will be contained in the orbiter payload bay. After the orbiter achieves a low earth parking orbit of 185 kilometers, the IUS/spacecraft combination will be deployed and the IUS will function as an upper stage to transfer the spacecraft to higher energy orbits.

ENVIRONMENTAL EVALUATION

A Candidate Environmental Impact Statement (EIS) was prepared by the U.S. Air Force Space and Missile Systems Organization (SAMSO), Los Angeles, CA. After a careful review of this EIS, it is concluded that this proposed action will not have a significant effect on the quality of the human environment, and it is not likely to be highly controversial with regard to its environmental impacts. Thus, an EIS need not be filed with the Environmental Protection Agency (EPA). This determination is based on the following considerations:

1. *Air:* During construction of facilities, air quality will be affected by equipment exhaust emissions and dust. Dust control measures will be stringently practiced. This temporary contribution of air pollutants from facility construction will have no significant impact on air quality. During IUS assembly operations, accidental spills of hydrazine are unlikely but should they occur, detection and alarm systems will alert personnel for evacua-

tion. Containment and neutralization procedures are established to minimize release of vapors to the atmosphere. In the remote event of a catastrophic accident at the launch pad, the IUS will contribute hydrazine and solid rocket motor combustion products to those released by the Space Shuttle. The quantities constitute about 2% of the solid propellant contained in the Space Shuttle Booster and 1% of the hypergolic propellants contained in the Space Shuttle Orbiter. Because of the small contribution the IUS would make to the overall air pollution, its impact is considered insignificant. The potential environmental effects resulting from Space Shuttle operations are discussed in NASA's EIS published in July 1972 and subsequent revisions. Space Shuttle flights with IUS payloads will be launched from ELS only.

2. *Space:* Combustion products from the IUS will be discharged at altitudes in excess of 185 km. At these altitudes the exhaust gases will disperse via molecular diffusion and become individually distributed in the vertical according to their molecular masses. Diffusing throughout the vastness of space in this manner and at these altitudes, the gases will not affect the ozone maximum found near 25-30 km. The effect on absorption or scattering of incoming or outgoing radiation will be negligible.

3. *Water:* Construction and operation of facilities will have no significant impact on ground or surface water quality. Although considered unlikely, an accident could occur during assembly resulting in the spilling of hydrazine. Any adverse effect of such an accident will be prevented or minimized by use of rigid processing and handling procedures and by construction of catchments for collection, immediate treatment and prevention of escape to the adjacent ground or water surface.

4. *Noise:* Construction activity will cause some temporary increase in local noise levels adjacent to the construction sites. These levels are transient in nature and typical to light construction activity. Operational noise from final assembly is comparable to light industrial work. During Space Shuttle lift off, the IUS is a passive payload.

5. *Biota:* Neither construction of facilities nor operation will have a significant biological impact on the natural environment.

6. *Land Use:* Construction of facilities will be accomplished within the boundaries of ELS with a minimum of land disturbance.

7. *Socio-economic:* The construction/activation force is expected to be made up of hold-over employees from completed Space Shuttle construction projects and will, therefore, have little effect on the local economy. The per-

sonnel utilized for the operational years of 1980-1991 are expected to be available locally. The relocation of personnel will be minimal and will have no significant effect on the area.

SOURCE

Any comments or questions should be directed to the Deputy for Environment and Safety, Office of the Secretary of the Air Force, Room 4C885, the Pentagon, Washington, D.C. 20330, telephone 202-697-9297.

CAROL M. ROSE,
*Air Force Federal Register,
Liaison Officer.*

[FR Doc. 78-35262 Filed 12-19-78; 8:45 am]

[3910-01-M]

USAF SCIENTIFIC ADVISORY BOARD

Meeting

DECEMBER 6, 1978.

The USAF Scientific Advisory Board Ad Hoc Committee on the Air Launched Cruise Missile (ALCM) Test Plan will meet on January 17 and 18, 1979 from 8:30 a.m. to 5:00 p.m. each day at Kirtland AFB, New Mexico.

The Committee will receive classified briefings and hold classified discussions on the ALCM flight testing.

The meeting concerns matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, the meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT:

The Scientific Advisory Board Secretariat at (202) 697-8404.

[FR Doc. 78-35261 Filed 12-19-78; 8:45 am]

[3810-71-M]

Department of the Navy

NAVAL DISCHARGE REVIEW SYSTEM

Hearing Locations

In November 1975, the Naval Discharge Review Board began to convene and conduct prescheduled discharge review hearings for a number of days each quarter in certain announced locations. The cities in which these hearings are scheduled are determined in part by the concentration of applicants in a geographical area.

The following NDRB itinerary for January 1979 through August 1979 has been approved, but remains subject to modification if required:

January and February 1979—San Diego, California; San Francisco, California; Dallas, Texas; New Orleans, Louisiana.

March and April 1979—Atlanta, Georgia; Tampa, Florida; San Diego, California; El Paso, Texas; San Francisco, California; Portland, Oregon.

May and June 1979—Either Boston, Massachusetts, or Albany, New York; and Chicago, Illinois; Minneapolis, Minnesota; St. Louis, Missouri.

July and August 1979—San Diego, California; Denver, Colorado; San Francisco, California; Portland, Oregon; and sites to be selected in—North Dakota; Montana; Nevada; Arizona; New Mexico; Utah; Wyoming.

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 on the application which location is preferred. Application forms (DD 293) may be obtained from, and the completed application should be mailed to, the following address:

Naval Discharge Review Board, Suite 910, 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 Naval Discharge Review Board must obtain the applicant's military records before a hearing may be scheduled, the submission of an application to the Naval Discharge Review Board is not tantamount to scheduling a hearing. Applicants and/or their representatives, if any, will be notified by mail of the date and place of their scheduled hearing when a personal appearance is requested.

For further information concerning the NDRB, contact:

Captain John G. Shaw, U.S. Navy, Executive Secretary, Naval Discharge Review Board, Suite 910, 801 North Randolph Street, Arlington, VA 22203, telephone number 202-692-4881.

Dated: December 13, 1978.

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

J. J. WALSH,
*Commander, JAGC, U.S. Navy,
Alternate Federal Register Certifying Officer.*

[FR Doc. 78-35327 Filed 12-19-78; 8:45 am]

[3810-70-M]

Office of the Secretary

DEFENSE INTELLIGENCE AGENCY ADVISORY COMMITTEE

Closed Meeting

Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92-463, as amended by Section 5 of Public Law 94-409, notice is hereby given that a closed meeting of a Panel of the DIA Advisory Committee will be held as follows:

Tuesday & Wednesday, 30-31 January 1979, Pomponio Plaza, Rosslyn, VA.

The entire meeting, commencing at 0900 hours is devoted to the discussion of classified information as defined in section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a study on current and projected DoD HUMINT collection activities.

MAURICE W. ROCHE,
*Director, Correspondence and Directives,
Washington Headquarters Services,
Department of Defense.*

DECEMBER 14, 1978.

[FR Doc. 78-35367 Filed 12-19-78; 8:45 am]

[3810-70-M]

DEFENSE SCIENCE BOARD TASK FORCE ON STRATEGIC PLANNING EXPERIMENT IN THE MARITIME BALANCE AREA

Advisory Committee Meeting

The Defense Science Board Task Force on Strategic Planning Experiment in the Maritime Balance Area will meet in closed session on 16 January 1979 in Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

A meeting of the Task Force on Strategic Planning Experiment in the Maritime Balance Area has been scheduled for 16 January 1979 to discuss the conduct of an experiment in applying business policy/strategic planning concepts to the development of a competitive strategy for the Maritime Balance Area. The Task Force and its associated Navy Study Group will focus on the long term competition between the U.S. and the Soviet Union in the maritime area.

In accordance with Section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this Defense Science Board Task Force meeting concerns matters listed in

Section 552b(c) of Title 5, of the United States Code, specifically subparagraph (1) thereof, and that accordingly this meeting will be closed to the public.

MAURICE W. ROCHE,
*Director, Correspondence
and Directives, DoD/WHS.*

DECEMBER 15, 1978.

[FR Doc. 78-35365 Filed 12-19-78; 8:45 am]

[3810-70-M]

**DEFENSE SCIENCE BOARD TASK FORCE ON
HIGH ENERGY LASERS**

Advisory Committee Meeting

The Defense Science Board Task Force on High Energy Lasers will meet in closed session on 12-13 January 1979 in Los Angeles, California.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

A meeting of the Task Force on High Energy Lasers has been scheduled for 12-13 January 1979 to review specific aspects of laser devices, pointing and tracking, and optics technology. The Task Force will focus on major technical issues that may limit the performance characteristics and potential utility of high energy lasers to missions of interest to the Department of Defense.

In accordance with Section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this Defense Science Board Task Force meeting concerns matters listed in Section 552b(c) of Title 5, of the United States Code, specifically subparagraph (1) thereof, and that accordingly this meeting will be closed to the public.

MAURICE W. ROCHE,
*Director, Correspondence
and Directives, DoD/WHS.*

DECEMBER 15, 1978.

[FR Doc. 78-35366 Filed 12-19-78; 8:45 am]

[3810-79-M]

DEPARTMENT OF DEFENSE WAGE COMMITTEE

Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92-436, the Federal Advisory Committee Act, effective January 5, 1973, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, February 6, 1979; Tuesday, February 13, 1979; Tuesday, February 20, 1979; and Tuesday, February

27, 1979 at 10:00 a.m. in Room 1D-670, The Pentagon, Washington, D.C.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) concerning all matters involved in the development and authorization of wage schedules for Federal prevailing rate employees pursuant to Public Law 92-392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92-463, the Federal Advisory Committee Act, meetings may be closed to the public when they are "concerned with matters listed in section 552b. of Title 5, United States Code." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b. (c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b. (c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b. (c)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the Chairman concerning matters believed to be deserving of the Committee's attention. Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, Room 3D-281, The Pentagon, Washington, D.C.

MAURICE W. ROCHE,
*Director, Correspondence and
Directives, Washington Headquarters
Services, Department
of Defense.*

DECEMBER 15, 1978.

[FR Doc. 78-35364 Filed 12-19-78; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[ERA Docket No. 78-010-NG]

ST. LAWRENCE GAS CO., INC.

**Petition To Amend Order Authorizing Increase
in Importation of Natural Gas**

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of receipt of petition and invitation to submit petitions to intervene in the proceedings.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) gives notice of receipt of a petition of St. Lawrence Gas Company, Inc. (St. Lawrence), to amend the Federal Power Commission's (FPC) Order of December 8, 1966. In that Order, the FPC authorized St. Lawrence to import maximum daily and annual volumes of natural gas from Canada in amounts of 23,000 Mcf and 5,519,987 Mcf respectively. St. Lawrence now petitions for authorization to import volumes of natural gas not to exceed 30,000 Mcf in any one day and not more than 6,500,000 Mcf during any consecutive twelve (12) month period ending on the 31st day of December. This petition has been assigned ERA Docket No. 78-010-NG

Petitions to intervene are invited.

DATES: Petitions to intervene must be filed no later than January 2, 1979.

FOR FURTHER INFORMATION CONTACT:

Finn K. Neilsen, Director, Import/Export Division, 2000 M Street, N.W., Washington, D.C. 20461, Telephone: (202) 254-9730.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On September 27, 1978, St. Lawrence Gas Company, Inc. 56-58 Main Street, Massena, New York, 13662, filed in Docket No. 78-008-NG (FPC Docket No. G-17500 now ERA Docket No. 77-005-NG) a petition to amend FPC Opinion No. 347 and Order of December 8, 1966, which authorizes the importation of a maximum daily volume of 23,000 Mcf and annual volumes of 5,519,987 Mcf of natural gas from Canada. St. Lawrence requested that the maximum daily volumes be increased to 30,000 Mcf for the period from and after the date of issuance of an order authorizing the requested increase, to and including October 31, 1978, and that the maximum annual imported volume be not more than 6,235,000 Mcf during the year ending December 31, 1978. St. Lawrence filed an amended petition on October 10,

1978, which changed the maximum annual volume requested from 6,235,000 Mcf to 6,500,000 Mcf during the year ending December 31, 1978. Notice of receipt of this petition was published on November 14, 1978 in the FEDERAL REGISTER (43 FR 52760). St. Lawrence filed, on November 20, 1978, a Notice of Withdrawal of this petition. ERA accepted this withdrawal effective as of November 30, 1978 and the record in Docket No. 78-008-NG was closed.

On November 17, 1978, St. Lawrence filed its "Petition of St. Lawrence Gas Company, Inc. to Withdraw amended Petition to Amend Order Authorizing Importation of Natural Gas and for Order Authorizing Permanent Increased Importation of Natural Gas" in Docket No. 77-005-NG (FPC Docket No. G-17500). This petition has been assigned ERA Docket No. 78-010-NG. The Notice of Withdrawal filed on November 20, 1978 countermands the withdrawal portion of this petition. St. Lawrence now requests that the FPC Order of December 8, 1966, in FPC Docket No. G-17500 be revised to authorize importation of natural gas in quantities not to exceed 30,000 Mcf in any one day and not more than 6,500,000 Mcf during any consecutive twelve (12) month period ending on the 31st day of December. This authorization is to be effective from and after the date of issuance of an ERA Order granting the amendments requested.

St. Lawrence states that the additional supply is required to avoid unnecessary curtailment of interruptible customers, and that it has been advised by its sole supplier, Niagara Gas Transmission Limited (Niagara), that sufficient quantities of natural gas will be available to meet St. Lawrence's requirements.

Niagara has applied for and received authorization from the National Energy Board of Canada to export the increased quantities of natural gas as requested. No increase in the maximum quantity of natural gas to be delivered over the term of Niagara's license was authorized.

OTHER INFORMATION

The St. Lawrence petition in ERA Docket No. 78-010-NG is on file with the ERA and open to inspection in the Public Docket Room at 2000 M Street, N.W., Washington, D.C., Room B-110, between the hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, except for Federal holidays.

The ERA is hereby inviting petitions for intervention in the proceedings. Such petitions are to be filed with the Economic Regulatory Administration, Room 6318, 2000 M Street, N.W., Washington, D.C. 20461, in accordance with the requirements of the Rules of

Practice and Procedure (18 CFR 157.10). Such petitions for intervention will be accepted for consideration if filed no later than 4:30 p.m. on the tenth day after the date of publication of this notice in the FEDERAL REGISTER.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing which may be convened herein must file a petition to intervene. Any person desiring to make any protest with reference to the St. Lawrence petitions should file a protest with ERA in the same manner as indicated above for petitions to intervene. All protests filed with ERA will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Pursuant to the authority contained in Section 3 of the Natural Gas Act, as delegated to the ERA in the Department of Energy Delegation Order Nos. 0204-4 (42 FR 60726, November 29, 1977) and 0204-25 (43 FR 47769, October 17, 1978), and the Rules of Practice and Procedure, a formal hearing will not be held unless a motion for such hearing is made by any party or intervenor and is granted by ERA, or if the ERA on its own motion believes that such a hearing is required. If such hearing is deemed required, due notice will be given.

Issued in Washington, D.C. on December 12, 1978.

BARTON R. HOUSE,
Assistant Administrator, Fuels
Regulation, Economic Regula-
tory Administration.

[FR Doc. 78-35427 Filed 12-19-78; 8:45 am]

[6740-02-M]

Federal Energy Regulatory Commission

[Docket No. CP79-83]

CARNEGIE NATURAL GAS CO. AND
EQUITABLE GAS CO.

Application

DECEMBER 12, 1978.

Take notice that on November 22, 1978, Carnegie Natural Gas Company (Carnegie), 3904 Main Street, Munnhall, Pennsylvania 15120, and Equitable Gas Company (Equitable), 420 Boulevard of the Allies, Pittsburgh, Pennsylvania 15219, (Applicants) filed in Docket No. CP79-83 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity and for permission and approval to abandon certain facilities in order to implement provisions of a transportation and exchange agreement between Applicants, as amended on August 17, 1978, all as

more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that the original contract between Applicants, dated August 31, 1954, was amended on August 17, 1978, to reflect certain changes in the relationship between Applicants.

The proposed changes are stated to be:

1. An increase in the maximum daily delivery from 5000 to 8000 Mcf, and an increase in cost from 3.158 cents to 16.2 cents per Mcf, for the gas Carnegie delivers to Equitable for transportation from various locations in West Virginia to two exchange points in Marion and Wetzel Counties, West Virginia. This change is said to be reflective of increased operating cost since 1954.

2. A decrease in the amount of gas Equitable will transport through the Glenville Compressing Station, located in Gilmer County, West Virginia, from 6000 to 1000 Mcf per day. This change is said to be due to increased natural gas volumes available to Equitable in the area, for which Equitable requires more station capacity.

3. A provision to allow Equitable to remove certain hydrocarbon components from its own gas and the gas being transported for Carnegie and to pay Carnegie its proportionate share of the hydrocarbon components so removed.

4. An extra delivery point at Equitable's existing Pratt Compressing Station in Greene County, Pennsylvania. This point would be utilized, it is stated, to balance out Applicants' accounts by denominating the first gas transmitted through the Pratt Compressing Station each month as deliveries by Equitable to Carnegie.

5. The elimination of various existing delivery points on land now or formerly known as the J. M. Bush farm, Gilmer County, West Virginia, the J. P. Smith farm, Ritchie County, West Virginia, and the V. B. Queen farm, Gilmer County, West Virginia.

It is stated that these proposed changes would enable Equitable to avoid operational difficulties and would ensure continued service to Equitable's distribution customers in the Fairmont, West Virginia, and Southwest Pennsylvania areas by affording an additional supply.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 2, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with

the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

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

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-35344 Filed 12-19-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-90]

EL PASO NATURAL GAS CO.

Application

DECEMBER 12, 1978:

Take notice that on November 29, 1978, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed an application in Docket No. CP79-90 pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing (i) the continued operation of existing pipeline, measuring, regulating and appurtenant facilities and (ii) the transportation, delivery and sale by El Paso of natural gas to Southwest Gas Corporation (Southwest) for resale in and about the community of Tucson, Arizona, and environs, all as more fully set forth in the application on file with the Commission and open to public inspection.

The application states that Tucson Gas & Electric Company (TG&E) and Southwest have entered into a Letter Agreement dated June 14, 1978, pro-

viding for the sale by TG&E and purchase by Southwest of the natural gas assets owned and utilized by TG&E in its gas operations. It is stated that the prospective closing date of the sale and purchase is March 31, 1979 subject to certain conditions, including the approval by the Arizona Corporation Commission (ACC) of the arrangement, the Commission approval of the instant application, the approvals of state, county and city authorities of the transfer of all franchise, license permits and operating rights, and the approval of the Public Utilities Commission of the State of California of the securities to be issued by Southwest in connection with its acquisition of TG&E's gas properties; and such conditions precedent are required to be satisfied by December 31, 1978.

The application further states that El Paso currently sells and delivers natural gas, for resale, to TG&E at approximately eighty (80) delivery points located in the Tucson, Arizona, area under the terms of a currently effective service agreement dated March 1, 1970, as amended, between the parties and on file with the Commission. El Paso states that it also sells and delivers natural gas, on a direct sale basis, to TG&E at three (3) locations for use in providing TG&E's fuel requirements in the operation of its electric power plants located in or near the City of Tucson, Arizona, pursuant to a direct gas sales contract dated November 27, 1962, as amended, on file with the Commission. It is further stated that by agreement and assignments dated November 17, 1978, each of the aforementioned agreements have been assigned by TG&E to Southwest to become effective on the date of closing of the proposed transfer of assets.

It is stated that in order to accommodate Southwest's succession to TG&E's gas operations, El Paso and Southwest have entered into two (2) Service Agreements, each of which is dated November 20, 1978, providing for the delivery and sale for resale, by El Paso to Southwest of those quantities of natural gas currently being sold to TG&E, for resale and direct sale, pursuant to the service agreement and gas sales contract, respectively. El Paso states that the term and volumes of natural gas to be provided for Southwest under the new agreements are identical to the term and volumes of gas heretofore provided by the agreements with TG&E and such volumes shall be delivered to Southwest at the presently existing points of delivery on El Paso's mainline transmission system. El Paso proposes no new or additional facilities to implement the delivery and sale of natural gas to Southwest for resale in the Tucson, Arizona, area. It is stated that the de-

liveries and sales by El Paso to Southwest under said service agreements dated November 20, 1978, would be made at applicable rates contained in El Paso's Rate Schedules A-1, B-1 and D-1 of its FERC Gas Tariff, Original Volume No. 1, and that the operation of El Paso's system is presently governed by the revised curtailment plan prescribed by the FPC in the proceeding at Docket No. RP72-6. Upon effectiveness of the proposed acquisition by Southwest, the volumes of gas to which TG&E is entitled to receive thereunder would be transferred to the account of Southwest and reflected on the Index of Base Volumes and Index of Priority Limitations contained in El Paso's FERC Gas Tariff, Original Volume No. 1, it is stated.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 2, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

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

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

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-35345 Filed 12-19-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-95]

NEW BEDFORD GAS & EDISON LIGHT CO.

Filing of Unit Power Sale Rate Schedule

DECEMBER 13, 1978.

Take notice that on December 4, 1978 New Bedford Gas and Edison Light Company ("New Bedford") filed a rate schedule governing the sale by New Bedford of a portion of its entitlement to capacity and related energy produced by Canal Electric Company's Unit No. 2 ("the Unit").

Under the terms of the tendered rate schedule, New Bedford has agreed to sell to Braintree 5.1370% of the Net Capability of the Unit (as defined at Article III of the tendered rate schedule) plus the energy related thereto from November 1, 1978 through April 30, 1979 and 2.5685% of the Net Capability of the Unit plus the energy related thereto from May 1, 1979 through October 31, 1979. The rate schedule tendered herewith for filing will terminate at midnight on October 31, 1979.

New Bedford has requested the Commission to waive its notice requirements pursuant to Section 35.11 of its Regulations and to permit said rate schedule to become effective as proposed on November 1, 1978 on the grounds that the negotiations leading to such rate schedule proved more lengthy than had been anticipated, rendering a timely filing impossible. Once the parties reached agreement, such rate schedule was executed and tendered for filing with the greatest possible dispatch, according to New Bedford.

A copy of this filing has been served upon Braintree, according to New Bedford.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before January 2, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-35346 Filed 12-19-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-91]

NORTHERN NATURAL GAS CO.

Application

DECEMBER 12, 1978.

Take notice that on November 29, 1978, Northern Natural Gas Company (Applicant), 2223 Dodge Street, Omaha, Nebraska 68102, filed in Docket No. CP79-91, an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the transportation and sale of natural gas in interstate commerce to Inter-City Gas Limited, Inc. (Inter-City), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that applicant is currently authorized to transport and sell to Inter-City 818 Mcf per day during the period December 15 through March 15 pursuant to its WPS-1 rate schedule and 459 Mcf per day during the period November 27 through March 26 pursuant to its SS-1 rate schedule. It is stated that Inter-City has requested that these contract demands be terminated due to conservation and conversions to alternate fuels by its customers in the market area served by Applicant.

Applicant does not propose to reallocate the volumes being cancelled.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 2, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for

the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

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

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-35347 Filed 12-19-78; 8:45 am]

[6740-02-M]

PROJECT NO. 77—CALIFORNIA (POTTER VALLEY PROJECT); APPLICANT: PACIFIC GAS & ELECTRIC CO.

Availability of Environmental Impact
Statement for Inspection

DECEMBER 15, 1978.

Notice is hereby given that on or about December 15, 1978, as required by the Commission Rules and Regulations under Order 415-C, issued December 18, 1972, a final environmental impact statement prepared by the Commission's staff pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (Public Law 91-100) was placed in the public files of the Federal Energy Regulatory Commission. This statement deals with the environmental impact of the issuance of a new Federal Energy Regulatory Commission license to the Pacific Gas and Electric Company for the continued operation and maintenance of the Potter Valley Project. The project is located on the Eel and East Fork Russian Rivers in Lake and Mendocino Counties, California. The project consists of (1) Scott Dam; (2) Lake Pillsbury, the project storage reservoir, formed by Scott Dam across the Eel River; (3) Cape Horn Dam; (4) Van Arsdale Reservoir, the project forebay, formed by Cape Horn Dam across the Eel River; (5) an intake structure on the south side of Van Arsdale Reservoir; (6) an interbasin water diversion system consisting of two tunnel sections and two pipe sections with a total length of approximately 7,400 feet; (7) two penstocks, each approximately 1,800 feet in length; (8) a powerhouse, with three turbine-generator units having an installed capacity totaling 9,040 kW; (9) a tailrace canal approximately 6,400 feet in length discharging into the East Fork Russian River; and (10) appurtenant facilities.

This statement is available for public inspection in the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E.,

Washington, D.C. 20426 and its San Francisco Regional Office located at 555 Battery Street, San Francisco, California 94111. Copies may be ordered from the Commission's Office of Public Information, Washington, D.C. 20426.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-35343 Filed 12-19-78; 8:45 am]

[6740-02-M]

[Docket No. CP77-7]

PANHANDLE EASTERN PIPE LINE CO.

Petition To Amend

DECEMBER 12, 1978

Take notice that on November 22, 1978, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed in Docket No. CP77-7 a petition to amend the order of November 24, 1976, in the instant docket (56 FPC) (order) pursuant to Section 7(c) of the Natural Gas Act and Section 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79), to authorize the continued transportation of natural gas on behalf of Chemetals Corporation (Chemetals), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that Chemetals has agreed to purchase, pursuant to an assignment and assumption agreement dated May 28, 1978, certain assets from Diamond Shamrock Corporation (Diamond), including a manganese oxide plant near Baltimore, Maryland. It is stated that Panhandle has been granted authority by the order to transport up to 1,000 Mcf of gas per day for Diamond's manganese plant. It is further stated that on August 4, 1978, Panhandle filed a petition to amend the order to reflect the change in the gas purchaser resulting from the sale of the manganese plant from Diamond to Chemetals.

In the instant petition to amend, Panhandle seeks modification of the order to extend the term of the transportation service for an additional two years (to November 30, 1980) and to reduce the volumes of gas to be transported from 1,000 Mcf per day (the original maximum daily volume) to a firm 480 Mcf per day plus 320 Mcf per day on a best efforts basis.

It is stated that the gas would continue to be delivered to Panhandle at Diamond's McKee Plant in Moore County, Texas, transported by Panhandle with delivery to Columbia Gas Transmission Corporation (Columbia) at the existing delivery point in Ohio, and further transported and delivered by Columbia to Baltimore Gas and

Electric Company (BG&E) which in turn would deliver to Chemetals. No additional facilities are necessary to be constructed to perform Panhandle's portion of the service.

It is stated that Panhandle's monthly transportation charge for the service to be performed for Chemetals would be \$4,238 for the 480 Mcf of gas transported per day for Chemetals. Such charge would be subject to increase or decrease by an amount equal to 29.03 cents per Mcf of gas, if the volumes transported varies from the firm volume of 480 Mcf per day, it is asserted. Panhandle would also retain 12 percent of the volumes delivered to it for compressor fuel usage, it is indicated.

It is further stated that the modifications requested are required because Chemetals faces a projected 45 percent curtailment by its supplier for the coming winter season. Such a curtailment, it is stated, would result in layoffs in the aforementioned manganese plant, with a concomitant ripple effect in other industries.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before January 2, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-35348 Filed 12-19-78; 8:45 am]

[6450-01-M]

Office of Hearings and Appeals

ISSUANCE OF PROPOSED DECISIONS AND ORDERS

Week of November 27 Through December 1, 1978

Notice is hereby given that during the period November 27 through December 1, 1978, the Proposed Decisions and Orders which are summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to Appli-

cations for Exception which had been filed with that Office.

Amendments to the DOE's procedural regulations, 10 CFR, Part 205, were issued in proposed form on September 14, 1977 (42 FR 47210 (September 20, 1977)), and are currently being implemented on an interim basis. Under the new procedures any person who will be aggrieved by the issuance of the Proposed Decision and Order in final form may file a written Notice of Objection within ten days of service. For purposes of the new procedures, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. The new procedures also specify that if a Notice of Objection is not received from any aggrieved party within the time period specified in the regulations, the party will be deemed to consent to the issuance of the Proposed Decision and Order in final form. Any aggrieved party that wishes to contest any finding or conclusion contained in a Proposed Decision and Order must also file a detailed Statement of Objections within 30 days of the date of service of the Proposed Decision and Order. In that Statement of Objections an aggrieved party must specify each issue of fact or law contained in the Proposed Decision and Order which it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these Proposed Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., e.s.t., except federal holidays.

MELVIN GOLDSTEIN,
*Director, Office of
Hearings and Appeals.*

DECEMBER 15, 1978.

PROPOSED DECISIONS AND ORDERS

CHEVRON USA, INC., SAN FRANCISCO, CALIFORNIA, FEE-4786, DEE-0364, DEE-0365, CRUDE OIL

Chevron USA, Inc. filed Applications for Exception from the provisions of Special Rule No. 9, the FEA Buy/Sell Notice for the period October 1977 through March 1978, and a telegraphic Order which was issued to Chevron. The exception request, if granted, would relieve Chevron of the requirement that it supply Plateau, Inc. with crude oil under the provisions of Section 211.65 during the period September 1977 through October 1978. On December 1, 1978, the DOE issued a Proposed Decision and Order which determined that the exception request be granted in part.

L & M OIL COMPANY, INDIANAPOLIS, INDIANA, DEE-1480, CRUDE OIL

L & M Oil Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D, in which the firm requested that it be permitted to sell certain of the crude oil produced from the Allen 2A Well, located in Lewisville County, Arkansas, at market price levels. On November 30, 1978, the DOE issued a Proposed Decision and Order which determined that the L & M exception request be granted in part.

**MID-MICHIGAN TRUCK SERVICE,
KALAMAZOO, MICHIGAN, DXE-1997,
MOTOR GASOLINE.**

Mid-Michigan Truck Service, Inc. filed an Application for Exception from the provisions of 10 CFR 211.25. The exception request, if granted, would permit Mid-Michigan to purchase its motor gasoline directly from the Gulf Oil Corporation rather than through Gulf's designated substitute supplier, the Bestrom Oil Company. On December 1, 1978, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

**O'MEARA BROTHERS, NEW ORLEANS,
LOUISIANA, DXF-2013, CRUDE OIL.**

O'Meara Brothers filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit O'Meara to sell the crude oil produced from the Louisiana State Lease at upper tier price levels. On November 28, 1978, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

**O'MEARA BROTHERS, NEW ORLEANS,
LOUISIANA, DEE-2021, CRUDE OIL.**

O'Meara Brothers filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit O'Meara to sell a portion of the crude oil produced from the Vinton lease at upper tier ceiling price levels. On December 1, 1978, the Department of Energy issued a Proposed Decision and Order which determined that this exception request be denied.

[FR Doc. 78-35353 Filed 12-19-78; 8:45 am]

[6450-01-M]

**ISSUANCE OF PROPOSED DECISIONS AND
ORDERS**

December 4 Through December 8, 1978

Notice is hereby given that during the period December 4 through December 8, 1978, the Proposed Decisions and Orders which are summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to Applications for Exception which had been filed with that Office.

Amendments to the DOE's procedural regulations, 10 CFR, Part 205, were issued in proposed form on September 14, 1977 (42 FR 47210 (September 20, 1977)), and are currently being implemented on an interim basis. Under the new procedures any person who will be aggrieved by the issuance of the Proposed Decision and Order in final form may file a written Notice of Objection within ten days of service. For

purposes of the new procedures, the date of service of notice shall be deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. The new procedures also specify that if a Notice of Objection is not received from any aggrieved party within the time period specified in the regulations, the party will be deemed to consent to the issuance of the Proposed Decision and Order in final form. Any aggrieved party that wishes to contest any finding or conclusion contained in a Proposed Decision and Order must also file a detailed Statement of Objections within 30 days of the date of service of the Proposed Decision and Order. In that Statement of Objections an aggrieved party must specify each issue of fact or law contained in the Proposed Decision and Order which it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these Proposed Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., e.s.t., except federal holidays.

**MELVIN GOLDSTEIN,
Director, Office of
Hearings and Appeals.**

DECEMBER 14, 1978.

PROPOSED DECISIONS AND ORDERS

**BEACON OIL COMPANY, HANFORD,
CALIFORNIA, DXE-1904, CRUDE OIL**

Beacon Oil Company (Beacon) filed an Application for Exception from the provisions of 10 CFR 211.67 (the Entitlements Program). The exception request, if granted, would relieve Beacon of its obligations to purchase entitlements for the months of December 1978 through May 1979 to account for its crude oil receipts and runs to stills during the months of October 1978 through March 1978. On December 6, 1978, the DOE issued a Proposed Decision and Order which determined that Beacon's request be denied. The DOE also determined that Beacon should be required to purchase entitlements equal in value to \$127,637 during each month of the twelve month period following the issuance of a final order in Case No. DXE-1904 in order to recover the excessive exception relief which the firm was accorded during the first nine months of its 1978 fiscal year.

**BUNTING OIL COMPANY, LANCASTER,
PENNSYLVANIA, FEE-4409, NO. 2
HEATING OIL**

Bunting Oil Company filed an Application for Exception from the provisions of 6 CFR 150.359 and 10 CFR 212.93. The exception request, if granted, would relieve the firm of its obligation to refund revenues which it obtained by charging prices for No. 2 heating oil in excess of the maximum prices permitted under the applicable regulations. On December 4, 1978, the DOE issued a Pro-

posed Decision and Order which determined that the exception request be denied.

**CHEVRON U.S.A., INC., WASHINGTON
D.C., DEE-1820, CRUDE OIL**

Chevron U.S.A. Inc. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Chevron to sell the crude oil produced for its benefit from the State Lease PRC 1824 Main Zone at market prices. On December 5, 1978, the DOE issued a Proposed Decision and Order which determined that the exception request be granted.

**CRAFT PETROLEUM COMPANY, INC.,
FRANKLIN COUNTY, MISSISSIPPI,
DEE-1558, DEE-1559**

Craft Petroleum Company filed two Applications for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Craft to sell the crude oil produced from the Bedford 33-10 and the Hodged 33-11 wells at market prices. On December 8, 1978, the DOE issued a Proposed Decision and Order which determined that the exception requests be granted in part.

**EDGINGTON OIL COMPANY, LONG
BEACH, CALIFORNIA, DXE-1890,
CRUDE OIL**

Edgington Oil Company (Edgington) filed an Application for Exception from the provisions of 10 CFR 211.67 (the Entitlements Program). The exception request, if granted, would relieve Edgington of its obligations to purchase entitlements for the months of December 1978 through May 1979 to account for its crude oil receipts and runs to stills during the months of October 1978 through March 1979. On December 6, 1978, the DOE issued a Proposed Decision and Order which determined that the exception request be granted in part. Accordingly, the Proposed Decision and Order determined that Edgington's monthly entitlement purchase obligations during the period December 1978 through February 1979 should be reduced by \$321,515, and that the firm's monthly entitlement purchase obligation during the period March through May 1979 should be reduced by \$1,018,910.

**KERN COUNTY REFINERY, INC., BA-
KERSFIELD, CALIFORNIA, DXE-
1904, CRUDE OIL**

Kern County Refinery, Inc. (Kern) filed an Application for Exception from the provisions of 10 CFR 211.67 (the Entitlements Program). The exception request, if granted, would relieve Kern of its obligations to purchase entitlements for the months of December 1978 through May 1979 to account for its crude oil receipts and runs to stills during the months of October 1978 through March 1979. On December 6, 1978, the DOE issued a Proposed Decision and Order which determined that Kern's monthly entitlement purchase obligations during the period December 1978 through February 1979 should be reduced by \$913,565. The Proposed Decision and Order further determined that Kern's request for exception relief for the period March 1979 through May 1979 should be denied.

**LUNDAY-THAGARD OIL COMPANY,
SOUTH GATE, CALIFORNIA, DXE-
1936, CRUDE OIL**

Lunday-Thagard Oil Company filed an Application for Exception from the provi-

sions of 10 CFR 211.67 (the Entitlements Program). The exception request, if granted, would relieve Lunday-Thagard of its obligations to purchase entitlements for the months of December 1978 through May 1979 to account for its crude oil receipts and runs to stills during the months of October 1978 through March 1979. On December 6, 1978, the DOE issued a Proposed Decision and Order which determined that the exception request be granted in part. Accordingly, the Proposed Decision and Order determined that Lunday-Thagard's monthly entitlement purchase obligations during the period December 1978 through February 1979 should be reduced by \$260,220 and that the firm's monthly entitlements purchase obligation should be reduced by \$71,799 for the period March 1979 through May 1979.

MEASON OPERATING COMPANY, NATCHEZ, MISSISSIPPI, DXE-1836, CRUDE OIL

Meason Operating Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The exception request, if granted, would permit Meason to continue to sell 100 percent of the crude oil produced for the benefit of the working interests from the Arnold Perry Unit located in the East Kelly Hill Field, Wilkinson County, Mississippi at upper tier ceiling prices. On December 5, 1978, the DOE issued a Proposed Decision and Order which determined that the Meason request be granted.

MOHAWK PETROLEUM CORPORATION, INC., LOS ANGELES, CALIFORNIA, DXE-1905, CRUDE OIL

Mohawk Petroleum Corporation, Inc. (Mohawk) filed an Application for Exception from the provisions of 10 CFR 211.67 (the Entitlements Program). The exception request, if granted, would relieve Mohawk of its obligations to purchase entitlements for the months of December 1978 through May 1979 to account for its crude oil receipts and runs to stills during the months of October 1978 through March 1979. On December 6, 1978, the DOE issued a Proposed Decision and Order which determined that the exception request be granted in part and that Mohawk's monthly entitlement purchase obligations during the period December 1978 through February 1979 should be reduced by \$84,051. The Proposed Decision and Order further determined that Mohawk's request for exception relief for the period March 1979 through May 1979 should be denied.

NAVAJO REFINING COMPANY, WASHINGTON, D.C. DXE-1937, CRUDE OIL

Navajo Refining Company filed an Application for Exception from the provisions of 10 CFR 211.67 (the Entitlements Program). The exception request, if granted, would relieve Navajo of its obligations to purchase entitlements for the months of December 1978 through May 1979 to account for its crude oil receipts and runs to stills during the months of October 1978 through March 1979. On December 6, 1978, the DOE issued a Proposed Decision and Order which determined that the exception request be granted in part. Accordingly, the Proposed Decision and Order determined that Navajo's monthly entitlement purchase obligations during the period December 1978 through

February 1979 should be reduced by \$995,187 and that the firm's monthly entitlements purchase obligation should be reduced by \$169,758 for the period March 1979 through May 1979.

SOUTHLAND OIL COMPANY/VGS CORPORATION, JACKSON, MISSISSIPPI, DXE-1903, CRUDE OIL

Southland Oil Company/VGS Corporation (Southland) filed an Application for Exception from the provisions of 10 CFR 211.67 (the Entitlements Program). The exception request, if granted, would relieve Southland of its obligations to purchase entitlements for the months of December 1978 through May 1979 to account for its crude oil receipts and runs to stills during the months of October 1978 through March 1979. On December 6, 1978, the DOE issued a Proposed Decision and Order which determined that the exception request be granted in part. Accordingly, the Proposed Decision and Order determined that Southland's monthly entitlement purchase obligations during the period December 1978 through February 1979 should be reduced by \$1,811,350, and that the firm's monthly entitlement purchase obligation during the period March through May 1979 should be reduced by \$598,001.

WARRIOR ASPHALT COMPANY OF ALABAMA, INC., WASHINGTON, D.C., DXE-1891, CRUDE OIL

Warrior Asphalt Company of Alabama, Inc. (Warrior) filed an Application for Exception from the provisions of 10 CFR 211.67 (the Entitlements Program). The exception request, if granted, would relieve Warrior of its obligation to purchase entitlements during the months of December 1978 through May 1979 to account for its crude oil receipts and runs to stills during the months of October 1978 through March 1979. On December 4, 1978 the DOE issued a Proposed Decision and Order which determined that the exception request be granted in part. Accordingly, the Proposed Decision and Order determined that Warrior's monthly entitlement purchase obligations should be reduced by \$270,103 during the period December 1978 through February 1979, and that the firm's monthly entitlement purchase obligation should be reduced by \$26,192 during the period March 1979 through May 1979.

YOUNG REFINING CORPORATION, DOUGLASVILLE, GEORGIA, DXE-1978, CRUDE OIL

Young Refining Corporation (Young) filed an Application for Exception from the provisions of 10 CFR 211.67 (the Entitlements Program). The exception request, if granted, would relieve Young of its obligations to purchase entitlements for the months of December 1978 through May 1979 to account for its crude oil receipts and runs to stills during the months of October 1978 through March 1979. On December 6, 1978, the DOE issued a Proposed Decision which determined that the exception request be granted in part. Accordingly, the Proposed Decision and Order determined that Young's monthly entitlement purchase obligations during the period December 1978 through February 1979 should be reduced by \$175,347, and that the firm's monthly entitlement purchase obligations

during the period March through May 1979 should be reduced by \$96,951.

[FR Doc. 78-35384 Filed 12-19-78; 8:45 am]

[6450-01-M]

ISSUANCE OF DECISIONS AND ORDERS

Week of September 25 through September 29, 1978

Notice is hereby given that during the week of September 25 through September 29, 1978, the Decisions and Orders summarized below were issued with respect to Appeals and Applications for Exception or other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions which were dismissed by the Office of Hearings and Appeals and the basis for the dismissal.

APPEALS

AKIN, GUMP, HAUER & FELD, WASHINGTON, D.C., DFA-0205, FREEDOM OF INFORMATION

The law firm of Akin, Gump, Hauer & Feld (Akin, Gump) appealed from a partial denial by the DOE Information Access Officer of a request for information which the firm submitted under the Freedom of Information Act (the Act) in its initial request. Akin, Gump had sought copies of agency documents which related to various proposals to modify DOE regulations governing the importation of crude oil, refined petroleum products and residual fuel oil. The DOE Information Access Officer released copies of four documents to Akin, Gump but withheld from disclosure several documents which were determined to be within the scope of Akin, Gump's request for information. One of these documents was withheld on the ground that it related to internal personnel rules and practices of the agency (Exemption 2 of the Act) and the other three documents were withheld on the ground that they were intra-agency memoranda (Exemption 5 of the Act). In considering the Akin, Gump Appeal, the DOE determined that Exemption 2 was improperly applied since the document which was withheld under that exemption clearly did not relate to the agency's internal personnel rules or practices. With respect to the documents withheld under Exemption 5, the DOE found that two of those documents contained the advice and recommendations of various DOE personnel with respect to the proposed amendments to the agency's regulations governing the importation of residual fuel oil. The DOE determined that this material was predecisional in nature and its release could be injurious to the consultative functions of government. Nevertheless, the DOE determined that one of the documents which was withheld under Exemption 5 contained substantial portions of factual material which were easily segregable from the remaining portions of the document. The DOE therefore directed that Information Access Officer to release the factual portions of that document. Accordingly, the Akin, Gump Appeal was granted in part.

ANDREWS, KURTH, CAMPBELL AND JONES, WASHINGTON, D.C., DFA-0204, FREEDOM OF INFORMATION

Andrews, Kurth, Campbell and Jones (Andrews) appealed from a denial by the Information Access Officer of a Request for Information which the firm submitted under the Freedom of Information Act (the Act). In its Appeal, Andrews requested that the DOE direct the Information Access Officer to (a) undertake a search for certain types of documents described in the firm's request and (b) release to the firm more than two hundred documents which were identified, but were withheld on the grounds that they are exempt from disclosure under one or more provisions of the Act. In considering the Appeal, the DOE found that most of the documents identified by the Information Access Officer could be classified into three general categories: (i) investigatory materials, (ii) drafts of DOE communications to firms; and (iii) drafts and memoranda involved in the formulation of Ruling 1977-5. The DOE determined that, with exception of a few documents, the material in each category is precisely the type of information which exemption 5 of the Act was designed to protect from disclosure since it consists of deliberative, pre-decisional intra-agency memoranda. The DOE also found that a large number of the documents are also protected by the attorney-client privilege. In addition, the DOE held that certain factual materials and discussions of existing regulatory provisions should not be released since they were either inextricably intertwined with opinion and analysis, or fell under Exemption 4 of the Act. However, the DOE directed that certain non-deliberative, intra-agency material contained in the documents be released. It also remanded a number of documents withheld under Exemptions 4 and 7A to the FOI Office with instructions to release those documents which are not concerned with ongoing investigations, after deletion of confidential commercial or financial information. The DOE further determined that Andrews request that the FOI office search for certain broad categories of documents did not reasonably describe the materials requested and placed an unreasonable burden on the agency. Nevertheless, the DOE directed the FOI Officer to search for 13 missing documents, review them and release those which are not exempt from disclosure. The Andrews Appeal was therefore granted in part and denied in part.

ANDREWS, KURTH, CAMPBELL & JONES, WASHINGTON, D.C., DFA-0207, FREEDOM OF INFORMATION

Andrews, Kurth, Campbell & Jones (Andrews) filed an Appeal from a determination issued to the firm by the DOE Information Access Officer on July 5, 1978. In that determination, the Information Access Officer found that a Request for Information which the firm had submitted was not one for "reasonably described records" as is required under 10 CFR 202.3 of the DOE regulations implementing the Freedom of Information Act (the Act), 5 U.S.C. 552. In its Appeal, Andrews contended that its Request for Information satisfied the standards which the DOE had previously applied to similar requests. In reaching a determination on the Andrews Appeal, the DOE noted that the firm's request was very sweeping and that any attempt to comply with it as written would require a search lasting hun-

dreds of hours and which might result in the location of volumes of information which would be of no real interest to the firm. The DOE also observed that the July 5 response provided the name of a knowledgeable DOE employee who could assist the firm in reformulating its request. Based on these considerations, the DOE concluded that the July 5 response had fully complied with the provisions of 10 CFR 202.3 which specify the statements and information which must be provided in a determination that a request for information is not for reasonably described records.

The DOE also determined that it would not review on the merits an appeal from a determination that a firm reformulate its Request for Information, unless the firm could demonstrate that the request for reformulation amounted to a gross abuse of administrative discretion. The DOE determined that evidence presented by Andrews in support of its Appeal did not meet this threshold requirement and the firm's Appeal was accordingly dismissed.

MIKE KAHN, LOGAN COUNTY, OKLAHOMA, DRA-0126, CRUDE OIL PRODUCER

On January 30, 1978, Mike Kahn (Kahn) filed an Appeal of a Remedial Order which was issued to him by the Regional Director of Compliance of the Federal Energy Administration, Region VI. In the Remedial Order, FEA Region VI determined that, during the period from January 1, 1975 through May 31, 1975, Kahn improperly sold the crude oil produced from the Rouse Lease at Prices in excess of the ceiling prices specified in Section 212.73. The Kahn Appeal, if granted, would have resulted in a determination that the Rouse Lease was a stripper well property during the period concerned and thereby relieved Kahn of the obligation to refund revenues which it realized as a result of charging unlawful prices for crude oil produced and sold from the Lease during the period. In his Appeal, Kahn contended that the Rouse Lease would have been classified as a stripper well property during the period of the alleged overcharges if the Lease's Well #2, which produces crude oil from two separate reservoirs, were regarded as two separate wells. In considering Kahn's Appeal, the DOE noted that pursuant to Ruling 1975-12, a well may be regarded as two wells for the purpose of calculating average daily production pursuant to the stripper well lease exemption only if the well consists of two or more tubing strings and the production capabilities of each producing formation are unaffected by any change in the production level of any other formation producing crude oil through the same well. The DOE determined that although Kahn's Rouse Well #2 produces crude oil from two reservoirs, that crude oil is recovered through the same tubing string. The DOE therefore concluded that Kahn's Well #2 did not qualify as a multiple completion well under Ruling 1975-12. The DOE further noted that the type of specialized treatment for multiple completion wells discussed in Ruling 1975-12 was intended to compensate crude oil producers who invested a significant amount of capital in excess of the amount generally required to complete a single well. The DOE found that Kahn had not demonstrated that the cost of completing and operating Well #2 substantially exceeded the investment required to complete

and operate a well which produces crude oil from only one formation. Accordingly, Kahn's Appeal was denied.

NORTHERN OIL COMPANY, INC., BURLINGTON, VERMONT, DRA-0071, MIDDLE DISTILLATES

Northern Oil Company, Inc. filed an Appeal of a Remedial Order which was issued to the firm by the Acting Director of Enforcement for DOE Region I. In the Remedial Order, the Office of Enforcement found that during the period November 1, 1973 through April 30, 1974, Northern had overcharged its purchasers of No. 2 heating oil and kerosene. The Remedial Order therefore directed Northern to refund the amount of the overcharges to its customers. In considering Northern's Appeal, the DOE found that contrary to the firm's statements, the Office of Enforcement had included the price discounts offered by Northern's supplier in its calculations of Northern's May 15, 1973 cost of inventory for No. 2 heating oil. The DOE also found that the regulations did not permit Northern to retroactively include in its May 15, 1973 selling price for kerosene a cost increase which the firm had incurred in January 1973 but had not actually reflected in its May 15, 1973 selling price. Furthermore, the DOE determined that, contrary to Northern's contentions, the Office of Enforcement had properly used as an offset against the firm's overcharges only those voluntary price discounts which produced a price below the maximum allowable selling price. Finally, the DOE held that it was proper for the Remedial Order to treat transportation costs incurred by the firm subsequent to its receipts of products into inventory at its storage facilities as non-product costs in determining the firm's maximum allowable selling prices. Consequently, the DOE affirmed the Remedial Order and denied the Northern Appeal.

PENINSULA EXPLORATION COMPANY, CORPUS CHRISTI, TEXAS, FRA-1391, CRUDE OIL

Peninsula Exploration Company filed an Appeal from a Remedial Order which was issued to the firm by DOE Region VI. In the Remedial Order, the DOE found that, during the period from September 1, 1973 through December 31, 1975, Peninsula sold crude oil and gas condensate from several of its properties at prices which exceeded the ceiling price levels specified in 10 CFR, Part 212, Subpart D. The Remedial Order therefore directed Peninsula to refund the overcharges to the purchasers of those products. In considering Peninsula's Appeal, the DOE initially determined that, contrary to the firm's contention, it was not erroneous for Region VI to refuse to permit the firm to offset undercharges from one of the properties involved against overcharges from another property. The DOE also rejected the firm's argument that an amendment to the stripper well exemption published in December 1973 constituted an arbitrary and capricious action by the agency. In addition, the DOE determined that it had the statutory authority under the Emergency Petroleum Allocation Act of 1973 (EPAA) to regulate the price of condensate recovered from natural gas wells and that it was not arbitrary and capricious for it to distinguish between wells which produce crude oil and wells which produce natural gas condensate for purposes of the stripper well exemption.

Southern Union Production Co. v. FEA, 569 F.2d 1147 (Em. App. 1978). Finally, the DOE rejected Peninsula's contention that its violation was not willful and that it should therefore not be subject to civil penalties pursuant to 10 CFR 205.203. The DOE noted that there was nothing either in the EPA or its legislative history that would indicate that willfulness or gross negligence must be demonstrated before the agency could impose the penalties specified in the EPA and 10 CFR 205.203. On the basis of these findings, the Peninsula Appeal was denied.

REQUEST FOR EXCEPTION

**ALLIED CHEMICAL CORPORATION,
HOUSTON, TEXAS, DEE-1413 (BURNELL-NORTH PETTUS), DEE-1414 (NORTH TERREBONNE-TEBONE), DEE-1415 (SOUTH FULLERTON),
NATURAL GAS LIQUID PRODUCTS**

Allied Chemical Corporation (ACC) filed three Applications for Exception from the provisions of 10 CFR 212.165 which, if granted, would permit ACC to increase the selling prices of natural gas liquid products which it charges to reflect non-product cost increases incurred at three of its natural gas processing plants. After considering the firm's exception applications, the DOE issued a Proposed Decision and Order on July 24, 1978, in which it proposed to grant ACC exception relief from the provisions of 10 CFR 212.165 for the period July 21, 1978 through December 31, 1978, with respect to the non-product cost increases which the firm incurred at those three natural gas processing plants. However, on September 21, 1978, the DOE published amendments to 10 CFR 212.165 which became effective on November 1, 1978. 43 Fed. Reg. 42984 (September 21, 1978). In view of the fact that these amendments provide that most non-product cost increases incurred by ACC in the production of natural gas liquid products may be passed through automatically without the ceiling limitations previously imposed in Section 212.165, the DOE determined that the issue of whether exception relief should be granted for periods beyond October 31, 1978, had been resolved by regulatory changes. Consequently, exception relief was granted to ACC but limited to the period ending on October 31, 1978.

APCO OIL CORPORATION, WASHINGTON, D.C., DEE-0977, MOTOR GASOLINE

Apco Oil Corporation filed an Application for Exception from Part 211 of the DOE Regulations in order to facilitate the firm's sale of 15 retail service stations to Kerr-McGee Refining Corporation. Apco's request, if granted, would result in the issuance of an Order (i) terminating Apco's base period supply obligations to the affected service stations and reassigning those obligations to Kerr-McGee, (ii) substituting Kerr-McGee for Apco as the base period purchaser of motor gasoline with respect to the quantities of motor gasoline which Apco previously supplied to the service stations, and (iii) permitting Apco to sell the allocated product inventories at the service stations to Kerr-McGee without first including those products in its "allocable supply" as required under 10 CFR 211.10(b). In considering Apco's Application, the DOE noted that since Apco was in the process of selling the two refineries which it owns, the firm would terminate its refining operations and reduce

its marketing operations. As a result, the DOE found that Apco would no longer possess the capability of supplying the base period purchasers which it previously supplied through its two refineries. The purchasers of the two Apco refineries were willing to assume these obligations, and the DOE therefore concluded that any economic distortion resulting from the transfer of the refineries would be minimized if these purchasers were assigned as Kerr-McGee's base period suppliers of gasoline for the 15 retail outlets. Similarly, the DOE determined that if Apco's base period supply obligations to the 15 outlets are transferred to Kerr-McGee, those outlets will continue to receive motor gasoline in the same manner as previously and will be able to avoid any disruption in their supplies of product. On the basis of these considerations, the DOE granted the Apco exception request.

**DON SHEETZ OIL COMPANY, CARLTON, MINNESOTA, DRC-0011,
MOTOR GASOLINE**

Don Sheetz Oil Company filed an Application for Exception from the provisions of 10 CFR 212.93, which, if granted, would permit the firm to increase the prices it charges its bulk contract class of purchaser for motor gasoline to levels above the maximum permissible prices allowed under the DOE regulations. Sheetz also requested that the exception relief be granted retroactively to November 1, 1973. In considering the Sheetz Application, the DOE found that in July 1972, Sheetz had entered into fixed price contracts with the members of its bulk contract class of purchaser. The DOE further found that as a result of cost increases between July 1972 and May 1973, which Sheetz was not able to pass through under its sales contracts, the markups which Sheetz applied in its May 15, 1973 prices to the bulk contract class of purchaser were unrepresentative of the firm's historical levels. The DOE also determined that the anomalous May 15, 1973 price levels affected Sheetz in a significant manner. Based upon these findings and the financial data submitted by Sheetz, the DOE granted prospective exception relief to the firm which would permit it to increase its selling prices to the bulk contract class of purchaser by \$0.03 per gallon. However, because Sheetz failed to make a showing that it would incur an irreparable and severe injury in the absence of retroactive exception relief, the firm's request for a retroactive exception was denied.

**GETTY OIL COMPANY, OKLAHOMA CITY, OKLAHOMA, DXE-1464,
CRUDE OIL**

Getty Oil Company filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The request, if granted, would result in an extension of exception relief previously granted to Getty and would permit the firm to continue selling a portion of the crude oil produced from the Ed Dillon No. 2 well (the Dillon well) located in Oklahoma County, Oklahoma, at upper tier ceiling prices. In considering the exception request, the DOE found that Getty was continuing to incur a loss in the operation of the Dillon well despite the exception relief previously granted. Consequently, the DOE concluded that Getty would have no economic incentive to continue to produce crude oil at the Dillon well unless additional exception relief were approved. In accordance with the precedent

established in a number of previous Decisions, the DOE concluded that Getty should be permitted to sell at upper tier ceiling prices 96.47 percent of the crude oil produced from the Dillon well for the benefit of the working interest owners during the seven-month period ending March 31, 1979.

GREAT SOUTHERN OIL & GAS CO., INC., LAFAYETTE, LOUISIANA, DEE-0455, CRUDE OIL

Great Southern Oil & Gas Co., Inc. filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D which, if granted, would permit the firm to sell at upper tier ceiling prices the crude oil which it produces from the St. Martin Bank & Trust Company Lease No. 1 (the St. Martin lease) located in the Anse LaButte Field, St. Martin Parish, Louisiana. In considering the Application, the DOE found that the cost of producing crude oil from the St. Martin lease had increased to a level where it now exceeds the revenue the firm can obtain from the sale of the crude oil at the lower tier ceiling price. The DOE found that Great Southern had no economic incentive to continue to produce crude oil from the property, and that it was unlikely that the crude oil in the reservoir underlying the St. Martin lease could be recovered by any other firm in the absence of exception relief. The DOE therefore concluded that the application of the ceiling price rule resulted in a gross inequity to Great Southern and the other working interest owners. In order to provide the working interest owners with an incentive to continue to produce, the DOE granted an exception which permits Great Southern to sell at upper tier ceiling prices 89.03 percent of the crude oil produced from the St. Martin lease for a period of six months.

HALLIBURTON COMPANY/VESSELS GAS PROCESSING COMPANY, DALLAS, TEXAS, DXE-1403 NATURAL GAS LIQUID PRODUCTS

Halliburton Company/Vessels Gas Processing Company (HVGPC) filed an Application for Exception from the provisions of 10 CFR 212.165. The exception request, if granted, would result in an extension for an additional period of time of exception relief permitting the firm to increase its prices for natural gas liquids and natural gas liquid products to reflect the non-product cost increases which the firm has incurred at the Irondale Processing Plant. Halliburton Company/Vessels Gas Processing Company, Case No. DXE-0316 (unreported decision, February 15, 1978). In considering the application, the DOE noted that exception relief will generally be granted to any natural gas processor which can demonstrate that the non-product costs which it has experienced since the fiscal quarter including May 1973 have increased by an amount substantially in excess of the \$0.05 per gallon pass-through permitted at that time under the provisions of Section 212.165. The DOE determined that HVGPC had made this type of showing and proposed to allow HVGPC to increase its prices for natural gas liquids and natural gas liquid products produced by and sold for the benefit of the applicant from the Irondale Processing Plant, above the maximum levels determined in accordance with the provisions of 10 CFR Part 212, Subpart K by an amount not to exceed \$0.790 per gallon for the period July 18,

1978 through December 31, 1978. On September 5, 1978 HVGPC filed a Statement of Objections to the Proposed Decision and Order in which it claimed that the date on which the proposed relief was to become effective should be earlier. After reviewing the HVGPC submission, the DOE determined that HVGPC had not filed its Application for an extension of the exception relief in a timely manner, and that the relief was therefore properly granted from the date of issuance of the Proposed Decision and Order.

**LAKETON ASPHALT REFINING, INC.,
EVANSVILLE, INDIANA, DXE-1293,
CRUDE OIL**

Laketon Asphalt Refining, Inc. filed an Application for Exception from the provisions of 10 CFR 211.67 (the Domestic Crude Oil Entitlements Program) which, if granted, would relieve the firm of its obligation to purchase entitlements beginning with the month of August 1978. In support of its Application, Laketon submitted actual and projected financial and operating data for its current fiscal year ending December 31, 1978. On the basis of the Laketon submission, the DOE determined that Laketon would incur an obligation to purchase entitlements during the remainder of its current fiscal year which would prevent it from achieving either its historical profit margin or historical return on invested capital (ROIC). The DOE therefore concluded that exception relief was warranted under the criteria set forth in *Delta Refining Co.*, 2 FEA Par. 83,275 (September 11, 1975), and *Beacon Oil Co.*, 3 FEA Par. 83,209 (June 8, 1976). In determining the amount of exception relief which should be granted to Laketon under the *Delta-Beacon* criteria, the DOE found that Laketon's projections indicated that even if the firm were relieved of its entire projected entitlement purchase obligation for the remainder of the current fiscal year, Laketon would still not attain either its historical profit margin or historical ROIC. Accordingly, on the basis of the firm's projections, the DOE relieved Laketon of its entitlement purchase obligation amounting to \$305,150 per month during the period August 1, 1978 through January 31, 1979. The DOE noted that subsequent reviews will be conducted of the entitlements exception relief which Laketon was granted, and that the firm will be required to purchase additional entitlements if a subsequent determination is made that the firm received excessive exception relief benefits.

**MOBIL OIL CORPORATION, NEW
YORK, NEW YORK, DEE-1460
CRUDE OIL**

Mobil Oil Corporation filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D which, if granted, would permit the firm to sell the crude oil produced from the H&J 495-D Lease, located in Gaines County, Texas, at upper tier ceiling prices. In considering the exception request, the DOE found that Mobil's operating costs had increased to the point where the firm no longer had an economic incentive to continue the production of crude oil from the H&J 495-D Lease if the crude oil were subject to the lower tier ceiling price rule. The DOE also determined that if Mobil abandoned its operations at the H&J 495-D Lease, a substantial quantity of domestic crude oil would not be recovered. On

the basis of criteria applied in previous Decisions by the DOE it was determined that Mobil should be permitted to sell 60.61 percent of the crude oil produced from the H&J 495-D Lease for the benefit of the working interest owners at upper tier ceiling prices.

**ROBERT W. O'MEARA, NEW ORLEANS,
LOUISIANA, DXE-1552, CRUDE OIL**

Robert W. O'Meara filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D. The request, if granted, would result in an extension of exception relief previously granted to O'Meara and would permit him to sell at upper tier ceiling prices the crude oil produced for the benefit of the working interest owners from the Louisiana Fruit No. 2 well (the No. 2 well), located in the Tiger Pass Field of Plaquemines Parish, Louisiana. In considering the exception request, the DOE found that O'Meara had produced no crude oil from the No. 2 well during the period January through June 1978 as a result of operating difficulties, and that he had continued to incur a loss in the operation of the well. Consequently, the DOE concluded that O'Meara would have no economic incentive to produce crude oil at the No. 2 well unless additional exception relief were approved. In accordance with the mechanism for calculating the proper level of exception relief established in previous Decisions, the DOE concluded that O'Meara should be permitted to sell at upper tier ceiling prices 100 percent of the crude oil produced from the No. 2 well for the benefit of the working interest owners during the six-month period ending March 31, 1979.

**UNION OIL COMPANY OF CALIFORNIA,
LOS ANGELES, CALIFORNIA, DEE-
1024, CRUDE OIL**

The Union Oil Company of California filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D which, if granted, would permit the firm to sell at upper tier ceiling prices all of the crude oil produced from the West Richfield Chapman Zone Unit (Chapman Unit) in Orange County, California. In considering the Application, the DOE determined that the costs of producing crude oil from the Chapman Unit had increased to the point where the working interest owners would realize only a marginal profit even if they received the full lower tier ceiling price rather than the applicable market price for the crude oil produced and sold from the Chapman Unit. The DOE determined that the working interest owners of the Chapman Unit did not have an economic incentive to continue production from the property at either the market price or the applicable lower tier price, and that if the Chapman Unit were abandoned, a significant quantity of recoverable domestic crude oil would not be produced. On the basis of those findings, the DOE concluded that the application of the lower tier ceiling price rule resulted in a gross inequity to the working interest owners. In determining the appropriate measure of exception relief, the DOE observed that because the working interest owners process their proportionate working interest shares of the Chapman Unit crude oil into refined petroleum products at refining facilities which they own and operate, the benefit of exception relief to the working interest owners would be realized in the form of entitlement benefits accruing to

them in their capacities as refiners of the crude oil. Therefore the value of the entitlement benefit was substituted for the difference between the upper and lower tier ceiling prices in the denominator of the formula used to determine the proportion of the working interest share of the crude oil production which is designated as upper tier crude oil. After making this adjustment, the DOE determined that Union should be permitted to charge upper tier ceiling prices for 27.24 percent of the crude oil produced from the Chapman Unit for the benefit of the working interest owners.

**EARL E. WALL, ARCADIA PARISH, LOU-
ISIANA, FEE-4465, CRUDE OIL**

Earl E. Wall filed an Application for Exception from the provisions of 10 CFR, Part 212, Subpart D which, if granted, would relieve Wall and other working interest owners of the Lester Reed Unit, located in the Grand Conlee Field of Arcadia Parish, Louisiana, of any obligation to refund revenues which they obtained as a result of their sales of crude oil at prices in excess of applicable ceiling prices. If the Wall exception request were granted, Wall and other working interest owners would also receive prospective relief permitting them to sell crude oil produced from the Unit at prices that exceed the applicable lower tier ceiling price. In considering Wall's request for retroactive relief, the DOE determined that Wall had failed to show any justifiable basis for his alleged confusion regarding applicable regulatory requirements, and that Wall had failed to meet his affirmative obligation to be cognizant of the correct application of the DOE Regulations to his operations. The DOE also found that Wall had established no evidentiary support for his contention that the Unit's working interest owners would experience an irreparable injury unless they were granted retroactive exception relief. Accordingly, Wall's request for retroactive exception relief was denied. However, the DOE found that the costs of producing crude oil from the Unit had increased significantly since 1973, that Wall has therefore experienced a significant decline in the net operating position of the Unit, and that Wall does not currently have a sufficient economic incentive to continue operating the Unit if its crude oil production is subject to the lower tier ceiling price rule. The DOE also found that if Wall abandoned the Unit, a significant quantity of otherwise recoverable domestic crude oil would not be produced. On the basis of precedents involving similar factual situations, the DOE granted prospective exception relief to Wall which permits the firm to sell 100 percent of the crude oil produced from the unit at market prices not to exceed \$19.58 per barrel.

**108 SMALL RETAILERS OF MOTOR
FUELS REQUIRED TO FILE FROM
EIA 8, MOTOR FUELS**

A substantial number of small retailers of motor fuels filed Applications for Exception from the operating requirements set forth in Form EIA 8 ("Retail Motor Fuels Service Station Survey"). Since the exception requests involved similar issues, they were consolidated for consideration in a single proceeding. In reviewing the exception requests, the DOE noted that Form EIA 8 had been replaced with a greatly simplified reporting form designated as Form EIA 79. In addition, the DOE examined Form EIA 79

and determined that the applicants' objections to the data requirements of Form EIA 8 did not apply to the simplified informational requirements of the new form. The DOE also observed that a substantial number of the applicants would not be required to participate in the EIA 79 gasoline monitoring program. On the basis of these considerations, the DOE dismissed the exception applications without prejudice to a refileing at a later date.

REQUEST FOR STAY

NORHLAND OIL & REFINING COMPANY, TULSA, OKLAHOMA, DES-0102, CRUDE OIL

Northland Oil & Refining Company Requested that its obligation under the provisions of 10 CFR 211.67 (the Entitlements Program) be stayed for the month of September 1978 pending a determination on the merits of an Application for Exception which the firm had filed. In considering the Northland request, the DOE found that the financial material which the firm submitted made a substantial *prima facie* showing that the firm did not possess the financial resources which would enable it to purchase entitlements during the month of September 1978. Accordingly, the DOE concluded that it was impossible for the firm to purchase entitlements during September. The DOE therefore granted the request for stay pending a determination on the firm's Application for Exception.

SUPPLEMENTAL ORDER

GULF OIL CORPORATION, HOUSTON, TEXAS, DEX-0107, MOTOR GASOLINE

On March 21, 1978, the DOE issued a Decision and Order to the Gulf Oil Corporation denying the firm's Appeal of a Remedial Order which had been issued to it by the Federal Energy Administration. The Remedial Order directed Gulf to make refunds to Anthony Weber to compensate him for certain overcharges on the rental of a retail gasoline station. On September 6, 1978, the DOE Office of General Counsel (OGC) and the DOE Office of Special Counsel for Compliance (OSC) jointly requested that the March 21 Decision and Order be withdrawn. In considering this request, the DOE noted that OGC had stated that the withdrawal of the March 21 Decision and Order would contribute to a satisfactory resolution of a lawsuit between Gulf and the DOE. In addition, the DOE noted that OGC had indicated that its involvement in other matters are more significant and that devoting staff resources to resolving the remaining legal and factual issues in the Gulf matter would not be warranted. Finally, the DOE noted that OSC, which has the primary responsibility for enforcing the Remedial Order which was issued to Gulf, had stated that it did not object to the withdrawal of the March 21 Decision and Order. Accordingly, the March 21, 1978 Decision and Order was withdrawn.

DISMISSALS

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

CHARTER OIL COMPANY, JACKSONVILLE, FLORIDA, DES-1398

FORD OIL CO., HOUSTON, TEXAS, DRH-0078

GAS MARKETING, INC., SALINA, KANSAS, DEE-0204

The following submissions were dismissed following a determination made by the DOE that the relief requested was no longer necessary:

PLACID REFINING CO., WASHINGTON, D.C., DEN-0156

WHEATCO REFINING CO., INC., WHEATLAND, WYOMING, DEE-1462

The following submission was dismissed on the grounds that recent regulatory changes have eliminated the need for the exception relief requested:

CHAMPLIN PETROLEUM CO., FORTH WORTH, TEXAS, DEE-1488 THROUGH DEE-1490

Copies of the full text of these Decisions and Orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., e.d.t., except Federal Holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

**MELVIN GOLDSTEIN,
Director,
Office of Hearings and Appeals.**

DECEMBER 13, 1978.

[FR Doc. 78-35355 Filed 12-19-78; 8:45 am]

[6450-01-M]

Office of the Special Counsel For Compliance
[Case No. 910R0052]

**STANDARD OIL CO. OF CALIFORNIA
THROUGH CHEVRON U.S.A.**

Action Taken on Consent Order

Pursuant to 10 CFR 205.199J(c) the Office of the Special Counsel (OSC) of the Department of Energy hereby gives notice of final action taken on a Consent Order.

On October 26, 1978 OSC published Notice of a Consent Order which was executed between Standard Oil Co. of California acting through Chevron, U.S.A. (Chevron) and OSC (43 FR 50023 (October 26, 1978)). With that Notice, and in accordance with 10 CFR 205.199J(c), OSC invited interested persons to comment on the Consent Order by submission of written responses on or before 4:30 p.m. CST, November 26, 1978.

At the expiration of the comment period, no comments had been received with respect to the Consent Order. Therefore, OSC has concluded that the Consent Order as executed between OSC and Chevron is an appropriate resolution of the compliance

proceedings described in the Notice published on October 26, 1978, and hereby gives notice that the Consent Order shall become effective as proposed, without modification, upon publication of this Notice in the FEDERAL REGISTER.

Issued in Washington, D.C. on the 12th day of December, 1978.

**PAUL L. BLOOM,
Special Counsel for Compliance.**

[FR Doc. 78-35357 Filed 12-19-78; 8:45 am]

[6560-01-M]

**ENVIRONMENTAL PROTECTION
AGENCY**

[FRL 1027-6; PP 8G2080/T175]

PESTICIDE PROGRAMS

Establishment of Temporary Tolerances for
Glyphosate

Monsanto Company, 800 N. Lindbergh Blvd., St. Louis, MO 63166, has submitted a pesticide petition (PP 8G2080) to the Environmental Protection Agency (EPA). This petition requests that temporary tolerances be established for residues of the herbicide glyphosate (*N*-phosphono methylglycine) and its metabolite aminomethylphosphonic acid in or on raw agricultural commodities forage legumes at 0.4 part per million (ppm) and the liver and kidney of cattle, goats, hogs, horses, poultry and sheep at 0.1 ppm.

Establishment of these temporary tolerances will permit the marketing of the above raw agricultural commodities when treated in accordance with an experimental use permit that has been issued under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

An evaluation of the scientific data reported and other relevant material showed that the requested tolerances were adequate to cover residues resulting from the proposed experimental use, and it was determined that the temporary tolerances would protect the public health. The temporary tolerances have been established for the pesticide, therefore, with the following provisions:

1. The total amount of the pesticide to be used must not exceed the quantity authorized by the experimental use permit.

2. Monsanto Company must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The firm must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the

EPA or the Food and Drug Administration.

These temporary tolerances expire November 14, 1980. Residues not in excess of 0.4 ppm remaining in or on forage legumes and 0.1 ppm in liver and kidney of cattle, goats, hogs, horses, poultry, and sheep after the expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with the provisions of, the experimental use permit and temporary tolerances. These temporary tolerances may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicate such revocation is necessary to protect the public health. Inquiries concerning this notice may be directed to Product Manager (PM) 25, Registration Division (TS-767), Office of Pesticide Programs, EPA, East Tower, 401 M St., SW, Washington DC 20460 (202/755-7012).

Dated: December 12, 1978.

(Section 408(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(j)).)

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc. 78-35259 Filed 12-19-78; 8:45 am]

[6560-01-M]

[FRL 1027-7 OPP-30155]

PESTICIDE PROGRAMS

Receipt of Applications to Register Pesticide Products Containing New Active Ingredients

Applications have been submitted to the Environmental Protection Agency (EPA) to register pesticide products containing active ingredients which have not been included in any previously registered pesticide products. Applications were made pursuant to the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136) and the regulations thereunder (40 CFR Part 162). Notice of receipt of these applications does not indicate a decision by the Agency on the applications.

Interested persons are invited to submit written comments on any applications referred to in this notice to the Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, EPA, Room 401, East Tower, 401 M St., SW, Washington DC 20460. The comments must be received on or before January 19, 1979 and should bear a notation indicating the EPA File Symbol number of the application to which the comments pertain. Comments received within the specified time period will be considered before a final decision is made;

comments received after the specified time period will be considered only to the extent possible without delaying processing of the application. Specific comments concerning these applications and the data submitted should be directed to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, at the above address or appropriate telephone number cited. The labels furnished by each applicant, as well as all written comments filed pursuant to this notice, will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4:00 p.m. Monday through Friday.

Notice of approval or denial of the applications to register pesticide products will be announced in the FEDERAL REGISTER. Except for such material protected by Section 10 of FIFRA, the test data and other information submitted in support of registration as well as other scientific information deemed relevant to the registration decision may be made available after approval under the provisions of the Freedom of Information Act. The procedures for requesting such data will be given in the FEDERAL REGISTER if an application is approved.

Dated: December 12, 1978.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

APPLICATIONS RECEIVED

EPA File Symbol 359-AIU. Rhodia Inc., Agricultural Div., Monmouth Junction, NJ 08852. RHODIA IPRODIONE TECHNICAL. Active Ingredient: [3-(3,5-dichlorophenyl)-N-(1-methylethyl)-2,4-dioxo-1-imidazolidine-carboxamide] 95.0% PM21. (202/426-2454)

EPA File Symbol 359-AIL. Rhodia Inc. CHIPCO 26019. Contains 50.0% of the same active ingredient as above. Application proposes that this product be classified for general use as a turf fungicide PM21.

EPA File Symbol 707-RUI. Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105. INDAR 70 LC. Active Ingredient: Triazbutil 4-butyl-4H-1,2,4-triazole 70.0%. Application proposes that this product be classified for general use as a fungicide for the control of leaf rust on wheat. PM21.

[FR Doc. 78-35256 Filed 12-19-78; 8:45 am]

[6560-01-M]

[FRL 1027-5]

POLYCHLORINATED BIPHENYLS

Approved PCB Disposal Facilities

On February 17, 1978, the U.S. Environmental Protection Agency published in the FEDERAL REGISTER the final rule for the "Disposal and Marking of Polychlorinated Biphenyls (PCBs)" (43 FR 7150). (This rule is required by Section 6(e) (1) of the Toxic

Substances Control Act (Pub. L. 94-469, 15 U.S.C. 2605(e)).

Under this rule, disposal of many PCBs, as defined in the regulation, is prohibited subsequent to April 18, 1978, except at EPA approved facilities. All facility approvals will be granted in writing by the appropriate Regional Administrator in which the respective facility is located.

To date, the following facilities have been approved by EPA under the authority of §§ 761.40(d) and 761.41(c) of the PCB Disposal and Marking Regulation to dispose of PCBs:

EPA REGION II (26 Federal Plaza, New York, New York 10007).

1. Facility: General Electric Co., Sillicone Products Division. Facility Address: 260 Hudson River Rd., Waterford, New York 12189. Facility Telephone Number: (518) 237-3330. Type of Facility Approved: Incinerator. Type of PCB Waste Handled: Approval allows G.E. to incinerate only those PCB wastes which are generated on-site i.e., G.E. can not accept PCBs for incineration from any other company or any other G.E. facility. Expiration Date of Approval: September 1, 1981. EPA Regional Office Contact: Wayne Pierre. EPA Telephone Number: (212) 264-0505.

2. Facility: Newco Chemical Waste Systems, Inc. Facility Address: 4520 Royal Avenue, Niagara Falls, New York 14330. Facility Telephone Number: (716) 285-6944. Type of Facility Approved: Chemical Waste Landfill. Type of PCB Waste Handled: Capacitors (small and large); Properly drained transformers; Contaminated soil, dirt, rags, and other debris; Dredge spoils; Municipal sludges; and Properly drained containers (drums). Expiration Date of Approval: August 18, 1981*. EPA Regional Office Contact: Wayne Pierre. EPA Telephone Number: (212) 264-0505.

3. Facility: SCA Chemical Services, Inc. Facility Address: 1550 Bulmer Rd., Model City, New York 14107. Facility Telephone Number: (716) 754-8231. Type of Facility Approved: Chemical Waste Landfill. Type of PCB Waste Handled: Capacitors (small and large); Properly drained transformers; Contaminated soil, dirt rags, and other debris; Dredge spoils, Municipal sludges; and Properly drained containers (drums). Expiration Date of Approval: October 2, 1981.*

EPA Regional Office Contact: Wayne Pierre. EPA Telephone Number: (212) 264-0505.

* NOTE.—After January 1, 1980, PCB capacitors and contaminated soils, rags and other debris cannot be disposed of in chemical waste landfills. A special provision does permit, without time limits, the disposal in chemical waste landfills of contaminated soil and debris resulting from spills or from old disposal sites that predate the PCB regulations.

EPA REGION IV (345 Courtland Street, N.E., Atlanta, Georgia 30308).

1. **Facility:** Waste Management of Alabama, Inc. **Facility Address:** P.O. Box 1200 Livingston, Alabama 35470. **Facility Telephone Number:** (205) 652-9529. **Type of Facility Approved:** Chemical Waste Landfill. **Type of PCB Waste Handled:** Capacitors (small and large); Properly drained transformers; Contaminated soil, dirt, rags, and other debris; Dredge spoils; Municipal sludges; and Properly drained containers (drums). **Expiration Date of Approval:** Open-ended.* **EPA Regional Office Contact:** Mr. James Scarbrough. **EPA Telephone Number:** (404) 881-3016.

EPA REGION IX (215 Freemont St., San Francisco, California 94105).

1. **Facility:** Casmailia Disposal. **Facility Address:** 539 Ysidro Rd., P.O. Box 5275, Santa Barbara, California 93108-main office (site located near Casmailia in Santa Barbara County). **Facility Telephone Number:** (805) 969-4703. **Type of Facility Approved:** Chemical Waste Landfill. **Type of PCB Waste Handled:** Capacitors (small and large); Properly drained transformers; Contaminated soil, dirt, rags and other debris; Dredge spoils; Municipal sludges; and Properly drained containers (drums). **Expiration Date of Approval:** Open-ended.* **EPA Regional Office Contact:** Raymond Seid **EPA Telephone Number:** (415) 556-3450.

2. **Facility:** Nuclear Engineering Co., Inc. **Facility Address:** 9200 Shelbyville Rd., Suite, 526 P.O. Box 7246, Louisville, Kentucky 40207 main-office (site located near Beatty, Nev. in Nye County). **Facility Telephone Number:** (502) 426-7160. **Type of Facility Approved:** Chemical Waste Landfill. **Type of PCB Waste Handled:** Capacitors (small and large); Properly drained transformers; Contaminated soil, dirt, rags and other debris; Dredge spoils; Municipal sludges; and Properly drained containers (drums). **Expiration Date of Approval:** Open-ended.* **EPA Regional Office Contact:** Raymond Seid. **EPA Telephone Number:** (415) 556-3450.

EPA REGION X (1200 Sixth Avenue, Seattle, Washington 98101).

1. **Facility:** Chem-Nuclear Systems, Inc. **Facility Address:** P.O. Box 1269, Portland, Oregon 97205-main office (Site located in Arlington, Oregon). **Facility Telephone Number:** (503) 223-1912. **Type of facility Approved:** Chemical Waste Landfill. **Type of PCB Waste Handled:** Capacitors (small and large); Properly drained transformers; Contaminated soil, dirt, rags, asphalt, and other debris; and Properly drained containers (drums). **Expiration Date of Approval:** January 1, 1980. **EPA Regional Office Contact:** Mr. Roger Fuentes. **EPA Telephone Number:** (206) 442-1260.

2. **Facility:** Wes-Con, Inc. **Facility Address:** P.O. Box 564, Twin Falls, Idaho 83301-main office (Site located in Grand View, Idaho). **Facility Telephone Number:** (208) 734-7711. **Type of Facility Approved:** Disposal in Missile Silos. **Type of PCB Waste Handled:** Capacitors (small and large); Properly drained transformers; Contaminated soil, dirt, rags, asphalt, and other debris; and Properly drained containers (drums). **Expiration Date of Approval:** January 1, 1980. **EPA Regional Office Contact:** Mr. Rogers Fuentes. **EPA Telephone Number:** (206) 442-1260.

Future notices, updating this list of approved facilities will be published in the FEDERAL REGISTER approximately every month. For further information on the EPA approval of these disposal facilities, please get in touch with the appropriate EPA Regional Office contact.

Date: December 12 1978.

STEFFEN W. PLEHN,
Deputy Assistant Administrator
for Solid Waste.

[FR Doc. 78-35258 Filed 12-19-78; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION

[General Order 7, Rev.]

ALLOWING OFFICERS OR EMPLOYEES OF A RATE-FIXING AGREEMENT TO SERVE AS THE POLICING AUTHORITY

Filing of Petitions

Pursuant to § 528.3(b)(3) of Part 528, 46 CFR (General Order 7, Revised) petitions for exemption have been filed on behalf of the following rate-fixing agreements to allow agreement personnel to perform the self-policing functions in lieu of an independent policing authority; viz:

East Coast Colombia Conference, Agreement No. 7590.
West Coast South American Northbound Conference, Agreement No. 7890.
Ceylon/U.S.A. Conference, Agreement No. 8050.
Atlantic & Gulf/West Coast of Central America & Mexico Conference, Agreement No. 8300.

Interested parties may inspect and obtain a copy of each of the petitions at the Washington Office of the Federal Maritime Commission, 1100 L Street NW., Room 11101, and at the Field Offices located at New York, New York; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Comments on each petition may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before January 4, 1979. Comments should include facts and arguments concerning the request for an exemption.

Dated: December 15, 1978.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-35270 Filed 12-19-78; 8:45 am]

[6325-01-M]

FEDERAL PREVAILING RATE ADVISORY COMMITTEE

OPEN COMMITTEE MEETINGS

Pursuant to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, January 4, 1979;
Thursday, January 11, 1979;
Thursday, January 18, 1979;
Thursday, January 25, 1979.

The meetings will convene at 10 a.m., and will be held in Room 5A06A, Civil Service Commission Building, 1900 E Street, NW., Washington, D.C.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives of five labor unions holding exclusive bargaining rights for Federal blue-collar employees, and representatives of five Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the prevailing rate system and other matters pertinent to the establishment of prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Civil Service Commission thereon.

These scheduled meetings will convene in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would impair to an unacceptable degree the ability of the Committee to reach a consensus on the matters being considered and disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public on the basis of a determination made by the Chairman of the Civil Service Commission under the provisions of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. section 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Civil Service Commission, the

President, and Congress a comprehensive report of pay issues discussed, concluded recommendations thereon, and related activities. These reports are also available to the public, upon written request to the Committee Secretary.

Members of the public are invited to submit material in writing to the Chairman concerning Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information concerning these meetings may be obtained by contacting the Secretary, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW., Washington, D.C. 20415 (202-632-9710).

JEROME H. ROSS,
*Chairman, Federal Prevailing
Rate Advisory Committee.*

DECEMBER 14, 1978.

[FR Doc. 78-35298 Filed 12-19-78; 8:45 am]

[6210-01-M]

FEDERAL RESERVE SYSTEM

FAIRMONT BANCORPORATION, INC.

Formation of Bank Holding Company

Fairmont Bancorporation, Inc., Fairmont, Minnesota, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 98.33 per cent or more of the voting shares of Fairmont National Bank, Fairmont, Minnesota. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Minneapolis. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than January 11, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 11, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-35371 Filed 12-19-78; 8:45 am]

[6210-01-M]

FIRST CORDELL BANCO, INC.

Formation of Bank Holding Company

First Cordell Banco, Inc., Cordell, Oklahoma, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of Cordell National Bank, Cordell, Oklahoma. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

First Cordell Banco, Inc., Cordell, Oklahoma, has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire the beneficial interest in First Cordell Business Trust, Cordell, Oklahoma, which will own all the shares of First Cordell Insurance Agency, Inc., Cordell, Oklahoma. Notice of the application was published on September 14, 1978, in *The Cordell Beacon*, a newspaper circulated in Cordell, Oklahoma.

Applicant states that the sole function of First Cordell Business Trust will be to own shares of First Cordell Insurance Agency, Inc. The Agency will engage in the sale of credit life and accident and health insurance in connection with extensions of credit by Cordell National Bank, Cordell, Oklahoma. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

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

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

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Gov-

ernors of the Federal Reserve System, Washington, D.C. 20551, not later than January 2, 1979.

Board of Governors of the Federal Reserve System, December 12, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.
[FR Doc. 78-35372 Filed 12-19-78; 8:45 am]

[6210-01-M]

FIRST STATE HOLDING CO., INC.

Formation of Bank Holding Company

First State Holding Company, Inc., Joplin, Missouri, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of First State Bank, Joplin, Missouri. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January 12, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 13, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.
[FR Doc. 78-35373 Filed 12-19-78; 8:45 am]

[6210-01-M]

I.B.F. DELAWARE CORP.

Formation of Bank Holding Company

I.B.F. Delaware Corp., Encino, California, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 99.6 per cent of the voting shares of Independence Bank, Encino, California. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than January

4, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, December 13, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-35374 Filed 12-19-78; 8:45 am]

[6210-01-M]

NATIONAL DETROIT CORP.

Proposed Acquisition of Certain Assets of
James Talcott, Inc., New York, N.Y.

National Detroit Corporation, Detroit, Michigan, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire certain assets of James Talcott, Inc., New York, N.Y. Notice of the application was published on October 18, 1978, in *The Detroit News*, a newspaper circulated in Detroit, Michigan, and on October 20, 1978, in *The Plain Dealer*, a newspaper circulated in Cleveland, Ohio and *The Grand Rapids Press*, a newspaper circulated in Grand Rapids, Michigan.

Applicant states that its subsidiary, Instalcoan Financial Services, Inc., would acquire certain assets of the Business Finance Division of James Talcott, Inc., and thereafter engage in a commercial finance business at the present Detroit office of Talcott. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals, in accordance with the procedures of § 225.4(b).

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

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

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than January 11, 1979.

Board of Governors of the Federal Reserve System, December 11, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.
[FR Doc. 78-35370 Filed 12-19-78; 8:45 am]

[6820-96-M]

GENERAL SERVICES
ADMINISTRATION

ORDER TRANSFERRING TO THE TENNESSEE VALLEY AUTHORITY THE USE, POSSESSION, AND CONTROL OF CERTAIN LAND IN ROANE COUNTY, TENN., FROM THE ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

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) (1970)), and delegated to the Administrator of General Services by Section 1(17) of Executive Order No. 11609 of July 22, 1971, and further delegated to the Commissioner, Federal Property Resources Service, by GSA Order ADM 5450.49 of July 20, 1978, it is hereby ordered that the use, possession, and control of the land hereinafter described be, and it is hereby, transferred from the Energy Research and Development Administration to the Tennessee Valley Authority, such transfer being deemed necessary and proper for the purposes of the Tennessee Valley Authority as stated in the Tennessee Valley Authority Act of 1933, as amended, said transfer to be effective as of the date hereof:

TRACT NO. RNSS-1

A parcel of land located in the Second Civil District of Roane County, State of Tennessee, on the west side of the Southern Railway Company right-of-way immediately north of the Southern Railway bridge across the Popular Creek Arm of Watts Bar Reservoir, as shown on a map prepared by the Tennessee Valley Authority and entitled "Roane, Tenn. Substation Property Map," the said parcel being more particularly described as follows:

Beginning at the point where the west line of the existing right of way of the Southern Railway Company, a line 25 feet west of and parallel to the center line of the main line track, intersects a line 50 feet southeast of and parallel to the center line of Blair Road; thence with the railway right-of-way line on a curve to the left with a radius of 987.9 feet in a southerly direction 206.6 feet (long chord bearing

and distance being S. 10°05' E. TVA=S. 10°40' E. RR, 206.6 feet) to the tangent point of the curve; thence S. 16°06' E. TVA=S. 16°41' E. RR, 603.1 feet to the tangent point of a curve; thence on the curve to the right with a radius of 784.6 feet in a southerly direction 502.0 feet (long chord bearing and distance being S. 2°14' W. TVA=S. 1°39' W. RR, 493.5 feet) to the tangent point of a curve; thence S. 20°34' W. TVA=S. 19°59' W. RR, 1279.0 feet to a point on the north shore of the Poplar Creek Arm of Watts Bar Reservoir; thence, leaving the railway right-of-way line, along the following bearings and distance: N. 87°30' W., 85.2 feet, S. 62°31' W., 151.3 feet to a point in a line 50 feet east of and parallel to the center line of Blair Road; thence with the line that is 50 feet east of and parallel to the center line of Blair Road approximately along the following bearings and distances: N. 7°12' W., 365.4 feet, N. 10°54' W., 96.0 feet, N. 16°41' W., 65.3 feet, N. 22°50' W., 111.2 feet, N. 26°21' W., 369.1 feet, N. 16°46' W., 48.0 feet, N. 1°53' W., 58.0 feet, N. 15°00' E., 55.4 feet, N. 25°14' E., 61.3 feet, N. 30°26' E., 166.8 feet, N. 27°20' E., 117.5 feet, N. 14°52' E., 121.4 feet, N. 5°54' E., 101.6 feet, N. 3°46' E., 184.4 feet, N. 7°44' E., 111.8 feet, N. 14°10' E., 98.7 feet, N. 25°35' E., 103.8 feet, N. 33°56' E., 87.3 feet, N. 44°59' E., 85.4 feet, N. 52°20' E., 312.0 feet, N. 49°57' E., 127.7 feet, N. 47°36' E., 26.3 feet to the point of beginning, and containing 34.33 acres, more or less.

The above described land is subject to such rights as may be vested in third parties to rights-of-way for electric power distribution lines and a gas pipeline.

TRACT NO. RNSS-2

A parcel of land located in the Second Civil District of Roane County, State of Tennessee, on the east side of the Southern Railway Company right-of-way immediately north of the Southern Railway bridge across the Popular Creek Arm of Watts Bar Reservoir, as shown on a map prepared by the Tennessee Valley Authority and entitled "Roane, Tenn. Substation Property Map," the said parcel being more particularly described as follows:

Commencing at the point where the west line of the existing right-of-way of the Southern Railway Company, a line 25 feet west of and parallel to the center line of the main line track, intersects a line 50 feet southeast of and parallel to the center line of Blair Road; thence N. 47°36' E. TVA=N. 47°01' E. RR, 64.5 feet to the POINT OF BEGINNING, a point in the east line of the right-of-way of the Southern Railway Company, a line 25 feet east of and parallel to the center line of the main line track; thence N. 47°36'

E., 185.1 feet to a point on the west shore of the Poplar Creek Arm of Watts Bar Reservoir; thence along the following bearings and distances: S. 13°57' E., 391.1 feet, S. 15°38' E., 289.9 feet, S. 18°07' E., 232.5 feet, S. 23°45' E., 322.7 feet, S. 29°00' E., 126.4 feet, S. 35°33' E., 401.8 feet, S. 19°27' E., 210.4 feet, S. 36°32' E., 195.1 feet, S. 21°56' E., 178.9 feet, S. 5°42' E., 30.8 feet, S. 19°51' W., 115.9 feet, S. 44°28' W., 130.2 feet, S. 70°27' W., 154.5 feet, S. 77°57' W., 804.9 feet, N. 88°51' W., 151.1 feet, S. 56°47' W., 112.8 feet, N. 87°30' W., 13.8 feet to a point in the east line of the existing right-of-way of the Southern Railway Company, a line 25 feet east of and parallel to the center line of the main line track; thence with the railway right-of-way line N. 20°34' E. TVA=N. 19°59' E. RR, 1262.8 feet to the tangent point of a curve; thence on the curve to the left with a radius of 832.6 feet in a northerly direction 534.6 feet (long chord bearing and distance being N. 2°14' E. TVA=N. 1°39' E. RR, 524.9 feet) to the tangent point of the curve; thence N. 16°06' W. TVA=N. 16°41' W. RR, 603.1 feet to the tangent point of a curve; thence on the curve to the right with a radius of 937.9 feet in a northerly direction 215.8 feet (long chord bearing and distance being N. 9°30' W. TVA=N. 10°05' W. RR, 215.4 feet) to the tangent point of the curve; thence continuing with the railway right-of-way line N. 2°55' W. TVA=N. 3°30' W. RR, 20.6 feet to the point of beginning, and containing 29.96 acres, more or less.

The above described land is subject to such rights as may be vested in third parties to rights-of-way for an electric power line and a gas pipeline.

TRACT NO. RNSS-3

A parcel of land located in the Second Civil District of Roane County, State of Tennessee, on the right side of the Poplar Creek Arm of Watts Bar Reservoir at the intersection of the Southern Railway Company right-of-way with Blair Road, as shown on a map prepared by the Tennessee Valley Authority and entitled "Roane, Tenn. Substation Railroad Relocation," the said parcel lying west of and adjacent to the west line of the existing right-of-way of the Southern Railway Company and being more particularly described as follows:

Beginning at the most northerly corner of the land to be acquired in fee by the Tennessee Valley Authority in the name of the United States of America from the United States of America Energy Research & Development Administration under the designation of Tract No. RNSS-1, a point where the west line of the existing right-of-way of the Southern Railway Company, a line 25 feet west of and parallel to the center line of the main

line track, intersects a line 50 feet southeast of and parallel to the center line of Blair Road; thence with the northwest line of Tract No RNSS-1 S. 47°36' W. TVA=S. 47°01' W. RR, 26.3 feet to a point; thence S. 49°57' W. TVA=S. 49°22' W. RR, 6.2 feet to a point; thence, leaving the northwest line of Tract No. RNSS-1, N. 2°55' W. TVA=No. 3°30' W. RR, 175.0 feet to the tangent point of a curve; thence with a line 25 feet west of and parallel to the west line of the existing right-of-way of the Southern Railway Company on the curve to the left with a radius of 939.2 feet in a northerly direction 180.6 feet (long chord bearing and distance being N. 8°25' W. TVA=N. 9°00' W. RR, 180.3 feet) to the tangent point of the curve; thence N. 13°57' W. TVA=N. 14°32' W. RR, 375.2 feet to a point; thence S. 76°03' W. TVA=S. 75°28' W. RR, 25.0 feet to a point; thence with a line 30 feet west of and parallel to the west line of the existing right-of-way N. 13°57' W. TVA=N. 14°32' W. RR, 300.0 feet to a point; thence, leaving the line that is 50 feet west of and parallel to the west line of the existing right-of-way, N. 76°03' E. TVA=N. 75°28' E. RR, 25.0 feet to a point; thence with a line 25 feet west of and parallel to the west line of the existing right-of-way N. 13°57' W. TVA=N. 14°32' W. RR, 18.3 feet to the tangent point of a curve; thence on the curve to the left with a radius of 529.0 feet in a northerly direction 291.7 feet (long chord bearing and distance being N. 29°44' W. TVA=N. 30°19' W. RR, 288.2 feet) to the tangent point of the curve; thence N. 45°31' W. TVA=N. 46°06' W. RR, 166.6 feet to a point; thence, leaving the line that is 25 feet west of and parallel to the west line of the existing right-of-way, N. 44°29' E. TVA=N. 43°54' E. RR, 25.0 feet to a point in the west line of the existing right-of-way of the Southern Railway Company; thence with the west line of the said existing right-of-way S. 45°31' E. TVA=S. 46°06' E. RR, 166.6 feet to the tangent point of a curve; thence on the curve to the right with a radius of 554.0 feet in a southerly direction 305.5 feet (long chord bearing and distance being S. 29°44' E. TVA=S. 30°19' E. RR, 301.8 feet) to the tangent point of the curve, thence S. 13°57' E. TVA=S. 14°32' E. RR, 693.5 feet to the tangent point of a curve; thence on the curve to the right with a radius of 964.2 feet in a southerly direction 185.4 feet (long chord bearing and distance being S. 8°25' E. TVA=S. 9°00' E. RR, 185.1 feet) to the tangent point of the curve; thence S. 2°55' E. TVA=S. 3°30' E. RR, 133.7 feet to the tangent point of a curve; thence on the curve to the left with a radius of 987.9 feet in a southerly direction 20.8 feet (long chord bearing and distance being S.

3°36' E. TVA=S. 4°11' E. RR, 20.8 feet) to the point of beginning, and containing 1.04 acres, more or less.

The above described land is subject to the following:

1. Such rights as may be vested in the State and county to rights-of-way for roads.

2. Such rights as may be vested in third parties to rights-of-way for telephone lines and electric power distribution lines.

This 1st day of December, 1978.

ROY MARKON,
Commissioner,

Federal Property Resources Service.
(FR Doc. 78-35297 Filed 12-19-78; 8:45 am)

[4110-35-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration

MAXIMUM ALLOWABLE COST PROGRAM

Intent To Set MAC Limits

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Notice of intent to set MAC limits.

SUMMARY: The Pharmaceutical Reimbursement Board is considering setting maximum allowable cost (MAC) limits for the drug products specified in this notice.

FOR FURTHER INFORMATION CONTACT:

Mr. Peter J. Rodler, Office of Pharmaceutical Reimbursement, 3076 Switzer Building, 330 C Street S.W., Washington, D.C. 20201, (202) 472-3820.

SUPPLEMENTARY INFORMATION: Pursuant to 45 CFR 19.4, the Pharmaceutical Reimbursement Board has identified the following multiple-source drugs as drugs for which significant amounts of federal funds are expended and for which there are significantly different prices:

Papaverine, 1501 mg. T.R. capsules
Amyltriptyline, 10, 25 and 50 mg tablets
Isosorbide dinitrate, 5 and 10 mg tablets, 5 mg sublingual tablets and 10 mg T.R. tablets
Diphenoxylate w/atropine sulfate, 2.5 mg/0.25 mg tablets
Hydralazine, 10, 25 and 50 mg tablets
Doxycycline, 50 and 100 mg tablets
Erythromycin ethylsuccinate, 200 and 400 mg/5 cc oral liquid
Chlorpromazine, 25, 50 and 100 mg tablets
Methocarbamol, 500 and 750 mg tablets
Minocycline, 50 and 100 mg capsules
Hydrocortisone, 0.5% and 1.0% cream
Sulfasoxazole, 0.5 Gm tablets
Oxyphenbutazone, 100 mg tablets
Tetracycline HCl 125 mg syrup
Doxepin HCl, 100 mg capsules

The Board has submitted these drugs to FDA for review.

The Board may also reconsider the MAC limits which have already been set for chlorthalidopoxide HCl 10 mg capsules and tetracycline HCl 250 mg capsules.

We are publishing this notice of intent in order that all interested parties will be advised of the Board's intentions at the same time and will have ample opportunity to make their views known to the Board. Proposed MAC limits and the dates of any public hearing will be published at a later date.

Dated: December 15, 1978.

PETER RODLER,
Executive Secretary, Pharmaceutical Reimbursement Board.

[FR Doc. 78-35368 Filed 12-19-78; 8:45 am]

[4110-08-M]

National Institutes of Health

BOARD OF REGENTS

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Regents of the National Library of Medicine on January 25-26, 1979, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland, and the meeting of the Extramural Programs Subcommittee of the Board of Regents on the preceding day, January 24, 1979, from 2:00 to 5:00 p.m., in Conference Room "B" of the Library.

The meeting of the Board will be open to the public all day on January 25 and from 9:00 to 10:45 a.m. on January 26 for administrative reports and program and operation discussions. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4), 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the entire meeting of the Subcommittee on January 24 will be closed to the public, and the regular Board meeting on January 26 will be closed from 10:45 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the application.

Mr. Robert B. Mehnert, Chief, Office of Inquiries and Publications Management, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20014, Telephone

Number: 301-496-6308, will furnish a summary of the meeting, rosters of Board members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13-879—National Institutes of Health)

Dated: December 12, 1978.

SUZANNE FREMEAUX,
*Committee Management Officer,
National Institutes of Health.*

[FR Doc. 78-35314 Filed 12-19-78; 8:45 am]

[4110-08-M]

COMMUNICATIVE DISORDERS REVIEW
COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Communicative Disorders Review Committee, National Institutes of Health, January 12-13, 1979, in the Holiday Inn of Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20014.

The meeting will be open to the public from 9:00 a.m. until 11:00 a.m. on January 12th, to discuss program planning and program accomplishments. Attendance by the public will be limited to space available. In accordance with the provisions set forth in Section 552b(c)(4), and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on January 12th from 11:00 a.m. to adjournment on January 13th, for the review, discussion and evaluation of individual grant applications. The applications and the discussion could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications.

Sylvia Shaffer, Chief, Office of Scientific and Health Reports, Building 31, Room 8A02, NIH, NINCDS, Bethesda, MD 20014 (Telephone 301/496-5751), will furnish summaries of the meeting and rosters of committee members.

Dr. Ernest J. Moore, Executive Secretary, NINCDS, NIH, Federal Building, Room 9C14, Bethesda, MD 20014 (301/496-9223), will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.852, National Institutes of Health)

Dated: December 12, 1978.

SUZANNE L. FREMEAUX,
*Committee Management Officer,
National Institutes of Health.*

[FR Doc. 78-35313 Filed 12-19-78; 8:45 am]

[4110-08-M]

NATIONAL ADVISORY ALLERGY AND
INFECTIOUS DISEASES COUNCIL

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Allergy and Infectious Diseases Council, National Institute of Allergy and Infectious Diseases, January 24, 25, and 26, 1979, in Building 31C, Conference Room 10, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on January 24 from 9:00 a.m. until 1:00 p.m., and on January 25 from 8:30 a.m. until recess, to discuss program policies and issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code, and Section 10(d) of Pub. L. 92-463, the meeting of the Council will be closed to the public on January 24 from 1:00 p.m. until recess, and on January 26 from 8:30 a.m. until adjournment, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications.

Mr. Robert L. Schreiber, Chief, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, Room 7A32, National Institutes of Health, Bethesda, Maryland, telephone (301) 496-5717, will provide summaries of the meetings and rosters of the Council members.

Dr. William I. Gay, Director, Extramural Activities Program, NIAID, NIH, Westwood Building, Room 703, telephone (301) 496-7291, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.855, 13.856, 13.857, and 13.858, National Institutes of Health)

Dated: December 14, 1978.

SUZANNE L. FREMEAUX,
*Committee Management Officer,
National Institutes of Health.*

[FR Doc. 78-35305 Filed 12-19-78; 8:45 am]

[4110-08-M]

NATIONAL ADVISORY CHILD HEALTH AND
HUMAN DEVELOPMENT COUNCIL

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Child Health and Human Development Council, Janu-

ary 29-30, 1979 Building 31, Conference Room 10, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on January 29 from 9:00 a.m. to 5:00 p.m. with current status reports, review of the Mental Retardation and Developmental Disabilities Program, and scientific presentations. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on January 30 from 9:00 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications.

Mrs. Marjorie Neff, Council Secretary, NICHD, Building 31, Room 2A-04, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496-1848, will provide a summary of the meeting and a roster of Council members as well as substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.864 and 13.865, National Institutes of Health)

Dated: December 14, 1978.

SUZANNE L. FREMEAUX,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-35309 Filed 12-19-78; 8:45 am]

[4110-08-M]

NATIONAL ADVISORY COUNCIL ON AGING

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Council on Aging, National Institute on Aging, on January 29, 30, 1979, in Building 31C, Conference Room 6, National Institutes of Health, Bethesda, Maryland.

The meeting will be open to the public from 9:00 a.m. until 3:30 p.m. on January 29, 1979, and again from 1:30 p.m. until adjournment on January 30, 1979. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on January 29, 1979 from 3:30 p.m. until recess, and will remain closed to the public on January 30 until noon, for the review, discussion and evaluation of grant applications. These applications and the discussions could reveal

confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications.

Mrs. Suzanna Porter, Council Secretary, National Institute on Aging, Building 31, Room 5C-05, National Institutes of Health, Bethesda, Maryland, 20014, (Area Code 301, 496-5345), will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.866, National Institutes of Health)

Dated: December 12, 1978.

SUZANNE L. FREMEAUX,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-35304 Filed 12-19-78; 8:45 am]

[4110-08-M]

NATIONAL ADVISORY DENTAL RESEARCH COUNCIL

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Dental Research Council, National Institute of Dental Research, on February 1-2, 1978, in Building 31C, Conference Room 8, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 9:00 a.m. to adjournment of February 2 for general discussion and program presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting of the Council will be closed to the public on February 1, from 9:00 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications.

Mrs. Edith G. Sharpless, Committee Management Assistant, National Institute of Dental Research, National Institutes of Health, Building 31C, Room 2C-36, Bethesda, Md 20014 (phone 301 496-6705), will furnish rosters of committee members, a summary of the meeting, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program Nos. 13-840 thru 13-845, and 13-878, National Institutes of Health)

Dated: December 14, 1978.

SUZANNE L. FREMEAUX,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-35310 Filed 12-19-78; 8:45 am]

[4110-08-M]

NATIONAL DIABETES ADVISORY BOARD

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of meetings of the National Diabetes Advisory Board on January 30 and 31, 1979, at the Old Town Holiday Inn, 480 King Street, Alexandria, Virginia.

The Executive Committee meeting will be held on January 30, 1979. The Board meeting will be held on January 31, 1979. The time of the meetings may be obtained by contacting Mr. Raymond M. Kuehne, Executive Director of the Board, P.O. Box 30174, Bethesda, Maryland 20014, (301) 496-6045.

The meetings, which will be open to the public, are being held to continue review of the status and implementation of national diabetes programs. Attendance by the public will be limited to space available.

Mr. Raymond M. Kuehne (address above) will provide summaries of the meetings and a roster of the committee members.

Dated: December 6, 1978.

SUZANNE L. FREMEAUX,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-35302 Filed 12-19-78; 8:45 am]

[4110-08-M]

NATIONAL ADVISORY ENVIRONMENTAL HEALTH SCIENCES COUNCIL

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, National Institute of Environmental Health Sciences, January 29-30, 1979, in Building 18 Conference Room, National Institute of Environmental Health Sciences, Research Triangle Park, N.C.

This meeting will be open to the public on January 29, 1979, from 9 a.m. to approximately 12 noon to discuss program policies and issues, recent legislation, interagency activities, NIEHS program planning report, NIH Evaluation Plan, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5 U.S. Code and Section 10(d) of Pub. L. 92-463, the meet-

ing will be closed to the public on January 29, 1979, from 1 p.m. to adjournment on January 30, 1979, for the review, discussion and evaluation of individual grant applications.

Leota B. Staff, Committee Management Officer, NIEHS, Westwood Building, Room 340, Bethesda, Maryland 20014, (301) 496-7483, will provide summaries of the meeting and rosters of Council members.

Dr. Wilford L. Nusser, Associate Director for Extramural Program, National Institute of Environmental Health Sciences, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (919) 755-4015, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.872, 13.873, 13.874, 13.875, National Institutes of Health)

Dated: December 12, 1978.

SUZANNE L. FREMEAUX,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-35311 Filed 12-19-78; 8:45 am]

[4110-08-M]

NATIONAL ADVISORY GENERAL MEDICAL
SCIENCES COUNCIL

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory General Medical Sciences Council, National Institute of General Medical Sciences, National Institutes of Health, February 2-3, 1979, Building 31, Conference Room 6.

This meeting will be open to the public on February 2, 1979, from 9 a.m. to 12 noon for opening remarks; report of the Director, NIGMS; and other business of the Council. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Title 5, U.S. Code 552b(c)(4) and 552b(c)(6), and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on February 2, 1979, from 12 noon to 5 p.m. and on February 3, 1979, from 9 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications.

Mr. Paul Deming, Public Information Officer, National Institute of General Medical Sciences, National Institutes of Health, Room 9A05, Westwood Building, Bethesda, Maryland 20014, Telephone: 301, 496-7301 will provide a summary of the meeting and a roster of council members.

Dr. Ruth L. Kirschstein, Executive Secretary, NAGMS Council, National Institutes of Health, Building 31, Room 4A52, Bethesda, Maryland 20014, Telephone: 301, 496-5231 will provide substantive program information.

(Catalog of Federal Domestic Assistance Programs Nos. 13-859, 13-860, 13-861, 13-862, 13-863, National Institutes of Health.)

Dated: December 14, 1978.

SUZANNE L. FREMEAUX,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-35312 Filed 12-19-78; 8:45 a.m.]

[4110-08-M]

NATIONAL ARTHRITIS ADVISORY BOARD

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the National Arthritis Advisory Board on January 11-2, 1979 from 9:00 a.m. to adjournment at the Sheraton National Motor Hotel, Columbia Pike and Washington Boulevard, Arlington, Virginia, to discuss the Board's activities and to continue its evaluation of the implementation of the long-range plan to combat arthritis. Notice of the Meeting Room will be posted in the Hotel lobby. The meeting will be open to the public. Attendance is limited to space available.

Further information may be obtained from Mr. William Plunkett, Executive Secretary, National Arthritis Advisory Board, Room 620, Federal Building, 7550 Wisconsin Avenue, Bethesda, Maryland, telephone (301) 496-1991.

Mr. James N. Fordham, Office of Scientific and Technical Reports, NIAMDD, National Institutes of Health, Building 31, Room 9A04, Bethesda, Maryland 20014, (301) 496-3583, will provide summaries of the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.846, National Institutes of Health.)

Dated: December 14, 1978.

SUZANNE L. FREMEAUX,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-35307 Filed 12-19-78; 8:45 am]

[4110-08-M]

NATIONAL ARTHRITIS, METABOLISM, AND
DIGESTIVE DISEASES ADVISORY COUNCIL

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Arthritis, Metabolism, and Digestive Diseases Advisory Council and its subcommittees on February 1-2,

1979, in Wilson Hall, Building 1, National Institutes of Health, Bethesda, Maryland. This meeting will be open to the public from 8:30 a.m. to 12:30 p.m. the first day to discuss administrative reports. Attendance by the public will be limited to space available.

In accordance with provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meetings of the Digestive Diseases Subcommittee; the Arthritis, Bone and Skin Diseases Subcommittee; the Diabetes, Endocrine, and Metabolic Diseases Subcommittee; and the Kidney, Urologic and Blood Diseases Subcommittee; will be closed on February 1 from 1:30 p.m. to closing, Building 31, exact room assignments to be announced later, for the review, discussion and evaluation of individual grant applications. On February 2 the full Council meeting will be closed from 8:30 a.m. to adjournment, for the review, discussion and evaluation of research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications.

Further information concerning the Council meeting may be obtained from Dr. George T. Brooks, Executive Secretary, National Institute of Arthritis, Metabolism, and Digestive Diseases, Westwood Building, Room 637, Bethesda, Maryland 20014, (301) 496-7277.

Mr. James N. Fordham, Office of Scientific and Technical Reports, NIAMDD, National Institutes of Health, Building 31, Room 9A04, Bethesda, Maryland 20014, (301) 496-3583, will provide summaries of the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.846-850, National Institutes of Health)

Dated: December 14, 1978.

SUZANNE L. FREMEAUX,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-35306 Filed 12-19-78; 8:45 am]

[4110-08-M]

NATIONAL HEART, LUNG, AND BLOOD ADVISORY COUNCIL AND ITS MANPOWER SUBCOMMITTEE AND RESEARCH SUBCOMMITTEE

Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Advisory Council, National Heart, Lung, and Blood Institute, February 8, 9, and 10, 1979, National Institutes of Health.

Building 31, Conference Room 10, at 9:00 a.m.

This meeting will be open to the public on February 8 from 9:00 a.m. to 3:30 p.m., to discuss program policies and issues. Attendance by the public is limited to space available. In addition, meetings of the Manpower Subcommittee and the Research Subcommittee of the above Council will be held February 7, 1979, at 8:00 p.m. in Building 31, Conference Room 9 and 10 respectively.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on February 8 from 3:30 p.m. until recess, and on February 9 from 9:00 a.m. to adjournment on February 10 for the review, discussion and evaluation of individual grant applications. The Manpower Subcommittee and the Research Subcommittee of the above Council will be closed from 8:00 p.m. to adjournment on February 7, also for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications.

Mr. York Onnen, Chief, Public Inquiries and Reports Branch, National Heart, Lung, and Blood Institute, Building 31, Room 5A03, National Institutes of Health, Bethesda, Maryland 20014, (301) 496-4236, will provide summaries of the meetings and rosters of the Council members.

Dr. Jerome G. Green, Director of Extramural Affairs, NHLBI, Westwood Building, Room 7A17, (301) 496-7416, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, 13.838, and 13.839, National Institutes of Health.)

Dated: December 14, 1978.

SUZANNE L. FREMEAUX,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-35303 Filed 12-19-78; 8:45 am]

[4110-08-M]

NATIONAL INSTITUTE OF CHILD HEALTH AND HUMAN DEVELOPMENT

Meeting

Notice is hereby given that the National Institutes of Health Consensus Development Conference on Antenatal Diagnosis sponsored by the National Institute of Child Health and Human Development (NICHD) will be held on March 5-7, 1979 in the Masur

Auditorium, Clinical Center, National Institutes of Health, Bethesda, Md.

The Conference will convene 9:00 a.m. on each day and will be open to the public, but attendance will be limited to space available.

One of a series of NIH Consensus Development Conferences, this Conference will consider the state of the art of techniques used in antenatal diagnosis; the legal, ethical, social and economic implications of their use; appropriate applications for these techniques at present; and the need for additional research on their use.

Preliminary reports will be prepared by a Task Force on each of three major topics to be considered. The three topics are: Predictors of hereditary disease or congenital defects (including mid-trimester amniocentesis, fetoscopy, alpha-fetoprotein measurements, and ultrasound); predictors of fetal maturity (including lecithin/sphingomyelin ratios and ultrasound); and predictors of fetal distress (monitoring during labor). Advance copies of these preliminary reports that will be presented at the Conference will be available to the public by February 15, 1979. Interested persons or organizations may obtain copies of these reports and submit comments on them in writing to the NICHD by March 2 and/or present comments at the Conference.

Those planning to make an oral presentation at the Conference must file a written statement or detailed summary of their presentation with the office listed below before 5:00 p.m. E.S.T. on March 2, 1979. Speakers will be scheduled in order of receipt of their written statement or summary. Presenters must state which report/reports they wish to discuss. Whenever statistical data are presented in support of a position, appropriate reference to the scientific literature should be included.

Each speaker will be allotted approximately five minutes, although more time may be available depending upon the number of scheduled speakers. It will be the prerogative of the Chairman to extend or terminate oral testimony and to direct interchange between speakers and Task Force members.

Written comments and discussion at the Conference will be used to prepare the final Task Force reports which will be available by April 15. Statements received after the meeting cannot be considered by the Task Forces in preparing their final reports. Summaries of the Conference will be published in professional journals and other publications.

AGENDA

Monday (full day) March 5—Presentation by the Task Force on Predictors of He-

reditary Disease or Congenital Defects; Comments and Discussion.

Tuesday a.m. March 6—Presentation by the Task Force on Predictors of Fetal Maturity; Comments and Discussion.

Tuesday p.m. March 6—Presentation by the Task Force on Predictors of Fetal Distress; Comments and Discussion.

Wednesday a.m. March 7—Presentation of Summaries and Final Recommendations by the Chairmen of the Task Forces.

Inquiries about the Conference, requests for Task Force reports, and written statements and summaries should be addressed to Ms. Anne Ballard, Office of Research Reporting, NICHD, Bldg. 31, Room 2A34, Bethesda, Md. 20014. Telephone number: (301) 496-5133.

Dated: December 6, 1978.

SUZANNE L. FREMEAUX,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-35308 Filed 12-19-78; 8:45 am]

[4110-08-M]

REVIEW OF CONTRACT PROPOSALS AND GRANT APPLICATIONS

Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of committees advisory to the National Cancer Institute.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual contract proposals and grant applications, as indicated. These proposals and applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals and applications.

Mrs. Marjorie F. Early, Committee Management Officer, NCI, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20014 (301/496-5708) will furnish summaries of the meetings and rosters of committee members, upon request. Other information pertaining to the meeting can be obtained from the Executive Secretary indicated. Meetings will be held at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20014, unless otherwise stated.

NAME OF COMMITTEE: Biometry and Epidemiology Contract Review Committee.

DATES: January 22-23, 1979; 8:00 p.m.

PLACE: Landow Building Room A, 7910 Woodmont Avenue, Bethesda, Maryland 20014.

TIMES:

OPEN: January 22; 8:00 p.m. to adjournment.

CLOSED: January 23, 8:30 a.m.-adjournment.

CLOSURE REASON: To review research contract proposals.

EXECUTIVE SECRETARY: Dr. Wilna Woods.

ADDRESS: Westwood Building Room 821, National Institutes of Health.

PHONE: 301/496-7153.

(Catalog of Federal Domestic Assistance Number 13.393 National Institutes of Health.)

NAME OF COMMITTEE: Cancer Control Intervention Programs Contract Review Committee.

DATES: January 23, 1979; 8:30 a.m.

PLACE: Building 31C Conference Room 8, National Institutes of Health.

TIMES:

OPEN: January 23, 8:30 a.m.-9:00 a.m.

CLOSED: January 23, 9:00 a.m.-adjournment.

CLOSURE REASON: To review research grant applications.

EXECUTIVE SECRETARY: Dr. Louis M. Ouellette.

ADDRESS: Westwood Building Room 806, National Institutes of Health.

PHONE: 301/496-7413.

(Catalog of Federal Domestic Assistance Number 13.399 National Institutes of Health.)

NAME OF COMMITTEE: Large Bowel and Pancreatic Cancer Review Committee (Pancreatic Subcommittee).

DATES: January 25, 1979; 8:30 a.m.

PLACE: Tidewater Place Room 1521, 1440 Canal Street, New Orleans, Louisiana 70112.

TIMES:

OPEN: January 25, 8:30 a.m.-10:00 a.m.

CLOSED: January 25, 10:00 a.m.-adjournment.

CLOSURE REASON: To review research grant applications.

EXECUTIVE SECRETARY: Dr. William E. Straile.

ADDRESS: Westwood Building Room 853, National Institutes of Health.

PHONE: 301/496-7194.

(Catalog of Federal Domestic Assistance Number 13.393; 13.394; 13.395 National Institutes of Health.)

Dated: December 14, 1978.

SUZANNE L. FREMEAUX,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-35301 Filed 12-19-78; 8:45 am]

[4110-08-M]

REVIEW OF GRANT APPLICATIONS

Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of committees advisory to the National Cancer Institute.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in Section 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal personal information concerning individuals associated with the applications.

Mrs. Marjorie F. Early, Committee Management Officer, NCI, Building 31, Room 4B43, National Institutes of Health, Bethesda, Maryland 20014 (301-496-5708) will furnish summaries of the meetings and rosters of committee members, upon request. Other information pertaining to the meeting can be obtained from the Executive Secretary indicated. Meetings will be held at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20014, unless otherwise stated.

NAME OF COMMITTEE: Subcommittee for Cancer Etiology and Prevention of the Cancer Research Manpower Review Committee.

DATES: January 25, 1979; 9 a.m.-adjournment.

PLACE: Building 31A, Conference Room 4, National Institutes of Health.

TIMES: CLOSED FOR THE ENTIRE MEETING.

CLOSURE REASON: To review research grant applications.

EXECUTIVE SECRETARY: Dr. Leon J. Niemiec. **ADDRESS:** Westwood Building, Room 10A15, National Institutes of Health. **PHONE:** 301-496-7803.

(Catalog of Federal Domestic Assistance Number 13.398 National Institutes of Health)

NAME OF COMMITTEE: Subcommittee on Treatment, Restorative Care, Detection, and Diagnosis of the Cancer Research Manpower Review Committee.

DATES: January 25, 1979; 9 a.m.-adjournment.

PLACE: Building 31C, Conference Room 7, National Institutes of Health.

TIMES: CLOSED FOR THE ENTIRE MEETING.

CLOSURE REASON: To review research grant applications.

EXECUTIVE SECRETARY: Dr. Leon J. Niemiec. **ADDRESS:** Westwood Building, Room 10A15, National Institutes of Health. **PHONE:** 301-496-7803.

(Catalog of Federal Domestic Assistance Number 13.398 National Institutes of Health)

NAME OF COMMITTEE: Cancer Research Manpower Review Committee.

DATES: January 26, 1979; 9:00 a.m.

PLACE: Building 31C, Conference Room 7, National Institutes of Health.

TIMES: OPEN: January 26, 9:00 a.m.-9:30 a.m. **CLOSED:** January 26, 9:30 a.m.-adjournment.

CLOSURE REASON: To review research grant applications.

EXECUTIVE SECRETARY: Dr. Leon J. Niemiec. **ADDRESS:** Westwood Bldg., Room 10A15, National Institutes of Health. **PHONE:** 301-496-7803.

(Catalog of Federal Domestic Assistance Number 13.398 National Institutes of Health)

Dated: December 12, 1978.

SUZANNE L. FREMEAUX,
Committee Management Officer,
National Institutes of Health.

[FR Doc. 78-35300 Filed 12-19-78; 8:45 a.m.]

[4110-02-M]

Office of Education

NATIONAL ADVISORY COUNCIL ON THE EDUCATION OF DISADVANTAGED CHILDREN.

Meeting

Notice is hereby given, pursuant to Pub. L. 92-463, that the next meeting of the National Advisory Council on the Education of Disadvantaged Children will be held on Friday and Saturday, January 12 and 13, 1979. On Thursday, January 11, 1979, several members will conduct site visits in the Palm Beach County, Florida areas to observe migrant education programs. The Council meeting will be held Friday, from 9:00 a.m. until 5:00 p.m.,

and Saturday from 9:00 a.m. until 1:00 p.m. The meetings will be held at the Howard Johnson's Ocean Resort, 2096 N.E. Second Street, Dearfield Beach, Florida, (305)428-2850.

The National Advisory Council on the Education of Disadvantaged Children is established under section 148 of the Elementary and Secondary Act (20 U.S.C. 2411) to advise the President and the Congress on the effectiveness of compensatory education to improve the educational attainment of disadvantaged children.

The purpose of the meeting is to:

1. review and comment on final drafts of special reports on Migrant Education and Urban Education;
2. hear reports from members who participate in the site visits;
3. hold hearings on urban education; and,
4. further discuss the activities and tasks to be performed by Consultant/Conferee.

The entire meeting will be open to the public. Because of limited space, all persons wishing to attend should call for reservations by January 8, 1979, area code 202/724-0114 and speak with Mrs. Lisa Haywood.

Records shall be kept of all Council proceedings and shall be available for public inspection at the Office of the National Advisory Council on the Education of Disadvantaged Children located at 425-13th Street, N.W., Suite 1012, Washington, D.C., 20004.

Signed at Washington, D.C. on December 18, 1978.

PAUL F. KELLER,
Acting Executive Director.

[FR Doc. 78-35417 Filed 12-19-78; 8:45 am]

[4110-02-M]

**NATIONAL ADVISORY COUNCIL ON THE
EDUCATION OF DISADVANTAGED CHILDREN**

Meeting (Editing Committee)

Notice is hereby given, pursuant to Pub. L. 92-463, that the Editing Committee of the National Advisory Council on the Education of Disadvantaged Children will meet in Washington, D.C., on Friday, January 5, 1979. The meeting will be held from 8:30 a.m.-5:00 p.m., at 425-13th Street, N.W., Suite 1012.

The National Advisory Council on the Education of Disadvantaged Children is established under 148 of the Elementary and Secondary Act (20 U.S.C. 2411) to advise the President and the Congress on the effectiveness of compensatory education to improve the educational attainment of disadvantaged children.

The Committee is meeting to edit the final drafts of special reports on Migrant Education, Mandated Studies and Urban Education.

All meetings of the Council are open to the public. Because of limited space, all persons wishing to attend should call for reservations by January 3, 1979 at area code 202/724-0114.

Upon finalization, all above reports will be available for public inspection at the Office of the National Advisory Council on the Education of Disadvantaged Children, located at the above address.

Signed at Washington, D.C. on December 18, 1978.

PAUL F. KELLER,
Acting Executive Director.

[FR Doc. 78-35418 Filed 12-19-78; 8:45 am]

[4110-85-M]

Public Health Service

**NATIONAL COUNCIL ON HEALTH CARE
TECHNOLOGY**

Nominations for Committee Positions

The National Center for Health Care Technology invites the submission of nominations for positions on the National Council on Health Care Technology.

Initial appointments to the National Council on Health Care Technology will be made within 120 days of enactment of the Health Services Research, Health Statistics, and Health Care Technology Act of 1978, (P.L. 95-623, signed November 9, 1978). The Council will advise the Secretary of HEW and the Director of the National Center for Health Care Technology in the performance of its assessments on health care technologies. Technologies will be evaluated according to their safety, effectiveness, cost-effectiveness, and social, ethical and economic impact. The Council will also have the responsibility for 1) reviewing applications for grants and contracts for technology assessment in excess of \$35,000, 2) developing exemplary standards, norms, and criteria for assessed health care technologies, and 3) disseminating the standards, norms, and criteria developed by the Council.

The Council shall be composed of representatives of agencies in the Federal government and by eighteen members of the public appointed by the Secretary. Of these eighteen public members of the Council: Six members shall be selected from individuals who are distinguished in the fields of medicine, engineering, or science (including social science). Of these six members at least two shall be selected from individuals who are representatives of business entities engaged in the development or production of health care technology.

Two members shall be physicians
Two shall be hospital administrators.

Two will be selected from individuals who are distinguished in the field of economics.

Two members shall be selected from individuals who are distinguished in the field of law.

One from individuals who are distinguished in the field of ethics, and three members who are representative of the interest of consumers of health care.

Additional information on the functions and membership of the National Council on Health Care Technology may be found in the Health Services Research, Health Statistics, and Health Care Technology Act of 1978 (Public Law 95-623) and in the committee and conference reports on this legislation (Senate Report 95-839; House of Representatives Report 95-1190; and House Report 95-1783).

Respondents must document the qualifications of each individual recommended by attaching a curriculum vitae and bibliography.

Nominations for positions on the National Council on Health Care Technology should be forwarded by January 15, 1979 to: Dr. Seymour Perry, Acting Director, National Center for Health Care Technology, Building 1, Room 216, National Institutes of Health, Bethesda, Maryland 20014.

Dated: December 12, 1978.

SEYMOUR PERRY,
*Acting Director, National Center
for Health Care Technology,
and Acting Deputy Assistant
Secretary for Health (Technology), OASH.*

[FR. Doc. 78-35328 Filed 12-19-79; 8:45 am]

[4110-87-M]

Public Health Service

**OCCUPATIONAL SAFETY AND HEALTH FIELD
RESEARCH PROJECT**

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Center for Disease Control, PHS, HEW.

ACTION: Notice of Research Project Initiation.

SUMMARY: NIOSH announces that it is ready to begin data collection on a field research project entitled "Cross-sectional Medical Study of Workers Exposed to Carbon Disulfide." Carbon disulfide is a colorless, volatile liquid with excellent solvent properties. The substance is widely used in the production of viscose rayon and cellophane. This project is part of the NIOSH industrywide research effort conducted

under the Occupational Safety and Health Act of 1970.

This notice does not constitute a request for proposal.

DATES: Field work is scheduled to begin on or about February 15, 1979.

FOR FURTHER INFORMATION CONTACT:

Bruce E. Albright, M.D., Division of Surveillance, Hazard Evaluations, and Field Studies; NIOSH, Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, OH 45226, Telephone: (513) 684-3593.

SUPPLEMENTARY INFORMATION: On September 20, 1978, NIOSH published in the FEDERAL REGISTER (43 FR 42305) a list of field research projects scheduled for initiation in calendar year 1978. That notice stated that more specific information would be provided to the public 6 weeks before starting field work on any of the proposed projects. Field investigation and data collection on the following study will begin on or about February 15, 1979:

Title: Cross-sectional Medical Study of Workers Exposed to Carbon Disulfide.

Project Officer: Bruce E. Albright, M.D., Division of Surveillance, Hazard Evaluations, and Field Studies, NIOSH.

Purpose: The purpose of this study is to determine what, if any, adverse health effects are suffered by workers exposed to carbon disulfide at the current Federal standard of 20 ppm.

Background: The current Federal standard for exposure to carbon disulfide is based on the 1968 American National Standards Institute Z37.3 consensus standard for carbon disulfide. A review of available medical and industrial hygiene literature suggests a number of adverse health effects from occupational exposure to carbon disulfide. However, much of the literature has been unable to correlate adverse medical effects with specific exposure levels. Based on available literature, NIOSH has recommended that the concentration of carbon disulfide in the workplace air not exceed 1 ppm as a 10-hour, time weighted average concentration during a 40-hour work week. This study is designed to correlate medical effects with known exposure levels of 20 ppm or less.

Study Description: The proposed study group will consist of approximately 300 workers from a vesicose rayon plant. A comparison group of 300 workers, matched for age and sex, will be randomly chosen.

A questionnaire covering demographic data, occupational history, and medical history will be completed for each of the 600 selected workers.

Each of the 600 workers will be given a limited physical examination

concentrating on the cardiovascular and reproductive systems, and a blood sample will be taken from each subject for laboratory studies.

The NIOSH field research project described above will be conducted under the authority of section 20 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669) and in accordance with the provisions of Part 85a of Title 42, Code of Federal Regulations. The Protocol for this type of project has been reviewed by the Office of Management and Budget and determined to be in compliance with the Federal Reports Act.

Dated: December 13, 1978.

EDWARD J. BAIER,
Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. 78-35269 Filed 12-19-78; 8:45 am]

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Disaster Assistance Administration

[Docket No. NFD-651, FDAA-567-DR1]

NOTICE OF MAJOR DISASTER AND RELATED DETERMINATIONS

AGENCY: Federal Disaster Assistance Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Louisiana (FDAA-567-DR), dated December 6, 1978; and related determinations.

DATED: December 6, 1978.

FOR FURTHER INFORMATION CONTACT:

A. C. Reid, Program Support Staff, Federal Disaster Assistance Administration, Department of Housing and Urban Development, Washington, D.C. 20410 (202/634-7825).

NOTICE: Pursuant to the authority vested in the Secretary of Housing and Urban Development by the President under Executive Order 11795 of July 11, 1974, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285; and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143); notice is hereby given that on December 6, 1978, the President declared a major disaster as follows:

I have determined that the damage in certain areas of the State of Louisiana resulting from severe storms and tornadoes beginning about December 3, 1978, is of sufficient severity and magnitude to warrant a major

disaster declaration under Public Law 93-288. I therefore declare that such a major disaster exists in the State of Louisiana.

Notice is hereby given that pursuant to the authority vested in the Secretary of Housing and Urban Development under Executive Order 11795, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285, I hereby appoint Mr. Joe D. Winkle of the Federal Disaster Assistance Administration to act as the Federal Coordinating Officer for this declared major disaster.

I do hereby determine the following areas of the State of Louisiana to have been adversely affected by this declared major disaster.

The Parishes of: Bossier and Webster.

(Catalog of Federal Domestic Asst. No. 14.701, Disaster Asst.)

WILLIAM H. WILCOX,
Federal Disaster Assistance Administration.

[FR Doc. 78-35287 Filed 12-19-78; 8:45 a.m.]

[4210-01-M]

[Docket No. D-78-538]

NEWARK AREA OFFICE

Designation and Delegation of Authority

SECTION A. Designation of Acting Area Manager. Each of the officials appointed to the following positions is designated to serve as Acting Area Manager during the absence of, or vacancy in the position of, the Area Manager, with all the powers, functions and duties redelegated or assigned to the Area Manager. Provided, that no official is authorized to serve as Acting Area Manager unless all officials listed before him/her in this designation are unavailable to act by reason of absence or vacancy in the position:

1. The Deputy Area Manager,
2. The Director, Housing Division,
3. The Director, Community Planning and Development Division,
4. The Director, Fair Housing and Equal Opportunity Division,
5. The Area Counsel.

Effective Date. This designation and delegation shall be effective as of December 1, 1978.

THOMAS APFLEBY,
*Regional Administrator,
New York Regional Office.*

[FR Doc. 78-35292 Filed 12-19-78; 8:45 am]

[4210-01-M]

[Docket No. D-78-535]

REGION X (SEATTLE, WASH.)

Designation of Acting Service Office Supervisor for the Boise Service Office

The officers appointed to the following listed positions in Region X (Seattle) are hereby designated to serve as Acting Service Office Supervisor during the absence of the Service Office Supervisor, with all the powers, functions, and duties delegated or assigned to the Service Office Supervisor, provided that no officer is authorized to serve as Acting Service Office Supervisor unless all other officers whose titles precede his in this designation are unable to act by reason of absence:

1. Chief Appraiser, Valuation Branch,
2. Chief Architect, Architectural Branch,
3. Loan Specialist Realty, Mortgage Credit Branch.

Date of Issuance of this Designation: November 13, 1978.

Effective Date of this Designation: November 13, 1978.

GEORGE J. ROYBAL,
Regional Administrator.

[FR Doc. 78-35289 Filed 12-19-78; 8:45 am]

[4210-01-M]

[Docket No. D-78-537]

REGION X (SEATTLE, WASH.)

Designation of Acting Area Manager for the Portland Area Office

The officers appointed to the following listed positions in Region X (Seattle) are hereby designated to serve as Acting Area Manager during the absence of the Area Manager, with all the powers, functions, and duties delegated or assigned to the Area Manager, provided that no officer is authorized to serve as Acting Area Manager unless all other officers whose titles precede his in this designation are unable to act by reason of absence:

1. The Deputy Area Manager,
2. The Director, Housing Division,
3. The Director, CPD Division,
4. The Area Counsel.

Date of Issuance of this Designation: November 13, 1978.

Effective Date of this Designation: November 13, 1978.

GEORGE J. ROYBAL,
Regional Administrator.

[FR Doc. 78-35291 Filed 12-19-78; 8:45 am]

[4210-01-M]

[Docket No. D-78-536]

REGION X (SEATTLE, WASH.)

Designation of Acting Area Manager for the Seattle Area Office

Superseded. This designation supersedes the designation published at 39 F.R. 4599, February 5, 1974.

The officers appointed to the following listed positions in Region X (Seattle) are hereby designated to serve as Acting Area Manager during the absence of the Area Manager, with all the powers, functions, and duties delegated or assigned to the Area Manager, provided that no officer is authorized to serve as Acting Area Manager unless all other officers whose titles precede his in this designation are unable to act by reason of absence:

1. Deputy Area Manager,
2. Director, Housing Division,
3. Director, Community Planning and Development Division,
4. Area Counsel.

Date of Issuance of this Designation: October 12, 1978.

Effective Date of this Designation: October 12, 1978.

GEORGE J. ROYBAL,
Regional Administrator.

[FR Doc. 78-35290 Filed 12-19-78; 8:45 am]

[4210-01-M]

[Docket No. D-78-534]

REGION X (SEATTLE, WASHINGTON)

Designation of Acting Service Office Supervisor for the Spokane Service Office

The officers appointed to the following listed positions in Region X (Seattle) are hereby designated to serve as Acting Service Office Supervisor during the absence of the Service Office Supervisor, with all the powers, functions, and duties delegated or assigned to the Service Office Supervisor, provided that no officer is authorized to serve as Acting Service Office Supervisor unless all other officers whose titles precede his in this designation are unable to act by reason of absence:

1. Chief, Valuation Branch,
2. Chief, Loan Management Property Disposition Branch,
3. Chief, Mortgage Credit Branch.

Date of Issuance of this Designation: November 13, 1978.

Effective Date of this Designation: November 13, 1978.

GEORGE J. ROYBAL,
Regional Administrator.

[FR Doc. 78-35288 Filed 12-19-78; 8:45 am]

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[4310-84]

MacLEAN CREEK AND MOOSE CREEK ROAD

Closure of Road to Motorized Vehicles

DECEMBER 8, 1978.

Notice is hereby given that use of motorized vehicles on a portion of the MacLean Creek Road and Moose Creek Road is restricted in accordance with the provisions of 43 CFR Part 8364.1 and Executive Order 11644. These restrictions do not apply to emergency, law enforcement or other government vehicles used for emergency purposes, or vehicles authorized by permit or contract. The area and road affected by this designation are located approximately 18 air miles south west of Butte, Montana, in the Moose Creek drainage.

Roads will be posted by signs at points of access as to their restrictions.

The areas adjacent to these roads are excellent winter range for big game and other wildlife. Past motorized vehicle use of the MacLean Creek Road and the adjoining public lands has damaged soils and vegetation, increased soil erosion and reduced or destroyed wildlife habitat. Due to public access now afforded by the Moose Creek Road and the probable increase of motorized vehicles during critical periods for wildlife, the road will be closed during these periods. It is concluded these vehicular use restrictions are necessary to protect the wildlife resources and to prevent further degradation of the vegetation and land in these areas.

The specific use restrictions are as follows:

1. MacLean Creek Road—closed to motorized vehicles year-round except as stated above from the NE $\frac{1}{4}$, Sec. 19, T. 1 S., R. 8 W., to its confluence with Moose Creek in the NE $\frac{1}{4}$, Sec. 23, T. 1 S., R. 9 W.

2. Moose Creek Road—closed to motorized vehicles from December 1 to April 30 every year. Open to motorized vehicles the remainder of the year. This road is located in the SW $\frac{1}{4}$ SW $\frac{1}{4}$, Sec. 27, to the NE $\frac{1}{4}$, Sec. 23, T. 1 S., R. 9 W.

This notice is effective immediately. Any person who knowingly and willfully violates this closure shall be fined not more than \$1,000 or imprisoned not more than 12 months, or both.

Additional information regarding these restrictions can be obtained at

the Dillon Resource Area Office and Butte District Office.

EDWIN ZAIDLICZ,
State Director.

[FR Doc. 78-35329 Filed 12-19-78; 8:45 am]

[7020-02-M]

**INTERNATIONAL TRADE
COMMISSION**

[Inv. TA-201-36]

CLOTHESPINS

Report to the President

DECEMBER 12, 1978.

To the President: In accordance with section 201(d)(1) of the Trade Act of 1974 (88 Stat. 1978), the United States International Trade Commission herein reports the results of an investigation relating to clothespins. The investigation (No. TA-201-36) was undertaken to determine whether clothespins, provided for in items 790.05, 790.07, and 790.08 of the Tariff Schedules of the United States (TSUS), are being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing articles like or directly competitive with the imported articles.

The Commission instituted the investigation on its own motion on July 27, 1978, under the authority of section 201(b)(1) of the Trade Act, on the basis of information collected in connection with Commission investigations Nos. TA-406-2, TA-406-3, and TA-406-4. These investigations were conducted under section 406(a) of the Trade Act of 1974 and concerned clothespins from the People's Republic of China, the Polish People's Republic, and the Socialist Republic of Romania.

Notice of the investigation and hearing was duly given by publishing the original notice in the FEDERAL REGISTER of August 3, 1978 (43 FR 34218). A public hearing in connection with the investigation was conducted on October 5, 1978, in Portland, Maine. All interested persons were afforded an opportunity to be present, to submit information, and to be heard. A transcript of the hearing and copies of briefs submitted by interested parties in connection with the investigation are attached.¹

The information contained in this report was obtained from fieldwork, from questionnaires sent to domestic manufacturers and importers, and

¹Attached to the original report sent to the President, and available for inspection at the U.S. International Trade Commission, except for material submitted in confidence.

from the Commission's files, other Government agencies, and information presented at the hearing and in briefs filed by interested parties.

**DETERMINATION, FINDINGS, AND
RECOMMENDATIONS OF THE COMMISSION**
DETERMINATION

On the basis of evidence developed during the course of investigation No. TA-201-36—

The Commission unanimously² determines that clothespins provided for in item 790.05, 790.07, and 790.08 of the Tariff Schedules of the United States (TSUS), are being imported in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing articles like or directly competitive with the imported articles.

FINDINGS AND RECOMMENDATIONS

The Commission³ finds and recommends that, in order to remedy the serious injury to the domestic industry that it has found to exist, it is necessary to impose a quota on U.S. imports of wood and plastic spring clothespins with a dutiable value not over \$2.10 per gross that are provided for under item 790.05 of the Tariff Schedules of the United States.

The quota that the Commission finds necessary is of 5 years' duration and should be administered on a yearly basis, to become effective January 1, 1979. The quota amount for each of the 5 yearly quota periods should be established at 3,200,000 gross and should be allocated on a global basis as follows:

Category:	Yearly quota allocation (gross)
Valued not over 80 cents per gross.....	200,000
Valued over 80 cents per gross but not over \$1.35 per gross.....	400,000
Valued over \$1.35 per gross but not over \$1.70 per gross.....	600,000
Valued over \$1.70 per gross but not over \$2.10 per gross.....	2,000,000
Total.....	3,200,000

**VIEWS OF CHAIRMAN JOSEPH O. PARKER,
VICE CHAIRMAN BILL ALBERGER, AND
COMMISSIONERS GEORGE MOORE AND
CATHERINE BEDELL**

This investigation under section 201 of the Trade Act of 1974 was instituted by the Commission on its own motion on the basis of information developed in investigations Nos. TA-406-2, TA-406-3, and TA-406-4, conducted under section 406(a) of the Trade Act of 1974, concerning clothespins from the People's Republic of China, the

²Chairman Joseph O. Parker, Vice Chairman Bill Alberger, and Commissioners George M. Moore and Catherine Bedell concurred in the affirmative determination. Commissioner Paula Stern did not participate in the investigation.

³Commissioner Paula Stern not participating.

Polish People's Republic, and the Socialist Republic of Romania.⁴ Section 201(b) of the Trade Act requires that each of the following criteria be met if the Commission is to make an affirmative determination and find a domestic industry eligible for import relief:

(1) Imports of the article concerned are entering the United States in increased quantities (either actual or relative to domestic production);

(2) The domestic industry producing an article like or directly competitive with the imported article is being seriously injured or threatened with serious injury; and

(3) Increased imports are a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article concerned.

DETERMINATION

On the basis of the evidence developed during this investigation, we have determined that clothespins, provided for in items 790.05, 790.07, and 790.08 of the Tariff Schedules of the United States (TSUS), are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing articles like or directly competitive with the imported articles.

**THE PRODUCT AND THE DOMESTIC
INDUSTRY**

There are four major types of clothespins produced by the domestic industry: spring-type clothespins of wood; spring-type clothespins of plastic; round or square head nonspring-type clothespins of wood that are not ironbound; and round or square head nonspring-type clothespins of wood that are ironbound. While the various types of clothespins are generally interchangeable as to function, prices vary substantially from type to type. The higher priced domestic wood ironbound clothespins and plastic spring clothespins enjoy a substantially smaller market share than the lower priced the wood spring clothespins. Of the four major types of domestic clothespins, in 1977 the wood spring variety accounted for 69 percent of U.S. capacity and approximately 83 percent of total U.S. production. In the absence of country-of-origin marking requirements, it is quite un-

⁴Commissioner Alberger believes it is unfortunate that the section 406 petition was filed. This industry would have been spared both expenses and time if the case had been brought under section 201 of the Trade Act of 1974 in the first instance. Where rapidly increasing imports are evenly split between nonmarket economy countries and market economy countries, it is clearly more appropriate to seek relief under section 201.

likely that the average consumer could distinguish between the domestic and the imported product.

Approximately 75 percent of all clothespins imported into the United States are of wood spring variety. In 1977 and 1978, the People's Republic of China and the Republic of China (Taiwan) accounted for nearly 50 percent of total U.S. imports of clothespins. Other major exporters of clothespins to the United States are West Germany, Poland, and Romania. The wood spring clothespins from the People's Republic of China, Taiwan, and Hong Kong are generally smaller, and reportedly less durable, than their domestic and imported European counterparts, but nevertheless do compete because they are lower in price and serve identical functions.

In addition, the investigation revealed that the domestic industry, composed of three clothespin manufacturers in Maine and two in Vermont, is separately identifiable and subject to possible injury from clothespins imported from all sources. The imported products like and directly competitive with the output of this industry enter the United States under items 790.05, 790.07, and 790.08 of the TSUS, and these items define the scope of the investigation.

INCREASED IMPORTS

The first of the three criteria requires a finding that there are increased imports. The Trade Act provides, in section 201(b)(2)(C), that an increase in imports has occurred when the increase is "either actual or relative to domestic production." Thus, the requirement is satisfied when the increase is in actual or absolute terms or when the level of imports is increasing relative to domestic production even if it is declining in actual terms.

U.S. imports of clothespins increased in actual terms from 2.1 million gross in 1973 to 3.5 million gross in 1977, or by more than 60 percent. The ratio of imports to production increased from 40 percent in 1973 to 80 percent in 1977. The first criterion is clearly satisfied.

SERIOUS INJURY

The second criterion concerns the question of whether the domestic industry is suffering "serious injury or the threat thereof." The Trade Act does not define the term "serious injury," but instead provides guidelines in the form of economic factors which the Commission is to take into account. Section 201(b)(2) of the Trade Act provides that the Commission, in determining whether there is serious injury, is to take into account, "all economic factors which it considers relevant, including (but not limited to) * * * the significant idling of pro-

ductive facilities in the industry, the inability of a significant number of firms to operate at a reasonable level of profit, and significant unemployment or underemployment within the industry * * *." We have also considered the following economic factors: production and shipments, prices, and lost sales.

The information before us demonstrates that the economic health of the domestic industry has deteriorated in the past 5 years and that the industry is being seriously injured.

Capacity utilization.—The domestic industry experienced an extremely low rate of capacity utilization throughout the period of the investigation. The level of utilization of maximum production capacity fell from 43 percent in 1973 to 31 percent in 1977; during January-June 1978, the level of capacity utilization remained at 35 percent. Furthermore, capacity utilization for wood spring clothespins, the staple of the industry, declined from 54 percent in 1973 to 38 percent in 1977, and remained at 41 percent during January-June 1978.

Profit-and-loss experience.—In 1973, the domestic industry suffered an aggregate net loss of \$339,000; and in 1974 experienced a net profit of only \$7,000. This performance was primarily related to the wage and price controls then in effect. In 1975, the industry experienced a paradoxical year, as production and shipments decreased sharply, imports increased sharply, and the industry's profits of \$651,000 increased to their highest level of the 1973-77 period. However, this profit was the result of the after-effects of the sale of relatively inexpensive inventory built up in the period of wage and price controls. By 1977, aggregate net operating profit for all clothespin operations of the four domestic producers of wood spring clothespins fell sharply, to \$47,000, or by 93 percent compared with the profit in 1975. The ratio of net operating profit to net sales dropped from 8.7 percent in 1975 to 0.6 percent in 1977. Furthermore, in January-June 1978, the industry reported a net loss of \$330,000, or 4 times more than the aggregate net loss reported during January-June 1977. In addition, during January-June 1978, only two of the four reporting firms reported any profit, and the profit reported by one of the two profitable firms was marginal.

Employment.—The average number of production and related workers engaged solely in the production of clothespins declined irregularly from 429 employees in 1973 to 387 employees in 1977. The total number of person-hours worked in the production of clothespins followed a similar pattern, falling from 820,000 hours in 1973 to 728,000 hours in 1977. There

has been some increase in employment in 1978 because of the attempted inventory buildup at Forster for its new small wood spring clothespins. Workers in the areas where plants are located are heavily dependent on clothespin production for employment.

Production and shipments.—U.S. production of all clothespins dropped sharply from 5.3 million gross in 1973 to 4.3 million gross in 1977, or by 19 percent. U.S. producers' shipments also declined rapidly, falling from 5.4 million gross 1973 to 4.1 million gross in 1977, or by 23 percent.

Price suppression.—The People's Republic of China and Taiwan accounted for nearly 50 percent of all clothespins imported in 1977. The weighted average price of clothespins from both sources has declined sharply in the last several years, and they now are priced 50 to 70 cents per gross less than the clothespins produced by the three largest domestic producers. Imports from the other major foreign suppliers have also consistently undersold domestic clothespins, although the margin of underselling has not been as great. Because of this severe price competition from imports, U.S. producer's prices have been relatively stagnant since 1975 despite rising unit costs of production.

Lost sales.—Since price is a significant factor in the sale of clothespins, particularly to mass merchandisers, the severe underselling of the domestically produced clothespins by imported clothespins has resulted in lost sales to the domestic industry. The Commission's investigation revealed 21 instances of lost sales directly attributable to imports.

Considering all these factors, we find that serious injury exists within the meaning of the Trade Act. While employment is basically steady, all firms in the industry are operating well below capacity, and all but one are failing to make a reasonable level of profit. (The unique aspects of this one firm which is profitable cannot be discussed because of limits of confidentiality).

SUBSTANTIAL CAUSE

Section 201(b)(4) of the Trade Act defines the term "substantial cause" to mean "a cause which is important and not less than any other cause." Thus, increased imports must be both an "important" cause of injury and "not less than any other cause." Section 201(b)(2) further provides that in determining "substantial cause" the Commission "shall take into account all economic factors which it considers relevant, including (but not limited to) * * * an increase in imports (either actual or relative to domestic production) and a decline in the proportion

of the domestic market supplied by domestic producers."

As noted above, imports have increased both actually and relative to domestic production. Furthermore, the proportion of the domestic market supplied by imports increased from 28 percent in 1973 to 46 percent in 1977, while the U.S. producers' share of the market fell from 72 percent to 54 percent. The ability of imported clothespins to be sold for 50 to 70 cents less per gross than their domestic counterparts has not only enabled the foreign clothespins to increase their share of the domestic market, but has also been a major factor in causing price suppression among the U.S. producers in a period when the cost of producing clothespins was soaring. During this period, domestic producers' costs of manufacturing clothespins increased in such important categories as wood, spring wire, labor, and energy. The inability of the U.S. producers to raise their prices has contributed significantly to their declining profits.

We have examined other factors alleged to be substantial causes of serious injury to the domestic industry. In the earlier cases, under section 406 of the Trade Act, imports other than those from the People's Republic of China were clearly another cause, but those are encompassed here as part of all increased imports. Some concern was expressed about management problems and other nonimport-related losses. We have examined these matters but have found no other causation factors which even approach low-priced imports and their capture of one-half of the American market as a cause of serious injury.

Issued: December 15, 1978.

By order of the Commission:

KENNETH R. MASON,
Secretary.

IFR Doc. 78-35379 Filed 12-19-78; 8:45 am

[7020-02-M]

[332-102]

STUDY OF INTEGRATED CIRCUITS AND THEIR USE IN COMPUTERS

AGENCY: United States International Trade Commission.

ACTION: Institution of an investigation under the authority of section 332(b) of the Tariff Act of 1930, as amended (19 U.S.C. 1332(b)), to study trade in integrated circuits and their use in computers.

EFFECTIVE DATE: December 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Nelson Hogge or Mr. Ross Reyn-

olds, Machinery and Equipment Division, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436 (telephone: 202-523-0377, 523-0230, respectively).

SUPPLEMENTARY INFORMATION:

In response to a request from the Subcommittee on International Trade of the Committee on Finance and the Subcommittee on International Finance of the Committee on Banking, Housing and Urban Affairs, United States Senate, received November 13, 1978, the U.S. International Trade Commission instituted the above-captioned investigation. The investigation will be principally concerned with factors affecting the present and future competitive position of U.S. producers of computers and integrated circuits. The study will focus on conditions in international markets resulting from U. S. and foreign government trade policies. Cooperation of foreign suppliers will be encouraged.

The imported articles which are within the scope of this investigation are provided for in item 687.60 of the Tariff Schedules of the United States.

At the completion of its investigation, the Commission shall transmit a report to the Committee on Finance and the Committee on Banking, Housing and Urban Affairs of the United States Senate. The report will be released to the public (consistent with the treatment afforded confidential business information).

Written submissions. Interested persons may submit written statements. Any commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential business information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure. (19 C.F.R. 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. To be assured of consideration by the Commission, written statements should be submitted at the earliest practicable date, but not later than July 2, 1977. All such submissions should be addressed to the Secretary, United States International Trade Commission, 701 E Street NW., Washington, D. C. 20436.

Request for a hearing. Any interested person who believes that a public hearing should be held in connection with this investigation may, within 30 days, after the date of publication of this notice in the FEDERAL REGISTER, submit a request in writing to the Secretary of the Commission that a public hearing be held. All such requests

should state the reasons for such request and be addressed to the Secretary, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436

Issued: December 15, 1978.

By order of the Commission:

KENNETH R. MASON,
Secretary.

IFR Doc. 78-35378 Filed 12-19-78; 8:45 am

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS

Proposed Meetings

In order to provide advance information regarding proposed meetings of the ACRS Subcommittees and Working Groups, and of the full Committee, the following 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 November 20, 1978 (43 FR 54147). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the FEDERAL REGISTER 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. ACRS full Committee meetings begin at 8:30 a.m. and Subcommittee and Working Group meetings usually begin at 8:30 a.m. The exact time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee and Working Group meetings will start will be published approximately 15 days prior to each meeting. 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 1979 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone 202/634-3267, ATTN: Mary E. Vanderholt) between 8:15 a.m. and 5:00 p.m., EST.

SUBCOMMITTEE AND WORKING GROUP MEETINGS

*Regulatory Activities, January 3, 1979, (morning), Washington, DC. The

Subcommittee will review working papers and future regulatory guides; also, it will discuss pertinent activities which affect the current licensing process and/or reactor operations. Notice of this meeting was published October 20 and November 20, 1978, (43 FR 49080 and 54147, respectively).

**Spent Fuel Storage*, January 3, 1979 (afternoon), Washington, DC. The Subcommittee will review the proposed rule developed by the NRC on Licensing Requirements for the Storage of Spent Fuel in an Independent Spent Fuel Storage Installation (ISFSI). Notice of this meeting was published November 20, 1978 (43 FR 54147).

**Extreme External Phenomena*, January 9, 1979, Las Vegas, NV. The Subcommittee will review NRC sponsored research regarding seismic design of nuclear power plants. Notice of this meeting was published October 20 and November 20, 1978 (43 FR 49080 and 54147, respectively).

**Emergency Core Cooling Systems*, January 16, 1979, Washington, DC. The Subcommittee will meet to review NRC licensing activities related to the proposed revision of Appendix K to 10 CFR 50, the NRC audit of Code Quality Assurance Programs, the Standard Problem Program, a semiscale small break test, and other items of current interest.

**William H. Zimmer Nuclear Power Station, Unit 1*, January 17, 1979, Washington, DC. The Subcommittee will review the application of the Cincinnati Gas and Electric Company for a license to operate Unit 1 of this Station.

**Salem Nuclear Power Station, Unit No. 2*, January 24, 1979, rescheduled from December 19, 1978, Washington, DC. The Subcommittee will review the application of the Public Service Electric and Gas Company for a license to operate Unit No. 2 of this Station. Notice of this meeting was published October 20 and November 20, 1978 (43 FR 49080 and 54147, respectively).

**Architect-Engineer Balance of Plant*, January 26, 1979, rescheduled from December 18, 1978, Washington, DC. The Subcommittee will review the Fluor Power Services, Inc. Balance of Plant Standard Safety Analysis Report (BOPSSAR) and its relationship to the Babcock and Wilcox Standard Reference System B-SAR-205 for a preliminary design approval. Notice of this meeting was published October 20 and November 20, 1978 (43 FR 49080 and 54147, respectively).

**Power and Electrical Systems*, January 31, 1979, rescheduled from December 1, 1978, Washington, DC. The Subcommittee will review the potential adverse interactions through the interconnection of protection and safety systems with reactor control

systems described in RESAR-414. Notice of this meeting was published October 20 and November 20 (43 FR 49080 and 54147, respectively).

**Regulatory Activities*, February 7, 1979, Washington, DC. The Subcommittee will review working papers and future regulatory guides; also, it will discuss pertinent activities which affect the current licensing process and/or reactor operations. Notice of this meeting was published November 20, 1978 (43 FR 54147).

**Plant Arrangements*, February 7, 1979 (tentative), Washington, DC. The Subcommittee will continue its review of NRC Task Action Plan A-17, Systems Interactions in Nuclear Power Plants.

**Regulatory Activities*, March 7, 1979, Washington, DC. The Subcommittee will review working papers and future regulatory guides; also, it will discuss pertinent activities which affect the current licensing process and/or reactor operations.

**San Onofre Nuclear Generating Station, Units 2 and 3*, March 21-22, 1979, Los Angeles, CA. The Subcommittee will review the application of the Southern California Edison Company for a license to operate Units 2 and 3 of this Station.

**Palo Verde Nuclear Generating Station, Units 4 and 5*, March 27, 1979, Phoenix, AZ. The Subcommittee will review the application of the Arizona Nuclear Power Company for a permit to construct Units 4 and 5 of this Station.

ACRS FULL COMMITTEE MEETINGS

January 4-5, 1979—Rescheduled from January 4-6, 1979.

A. **Anticipated Transients Without Scram (ATWS)*—Provisions to mitigate consequences.

February 8-10, 1979—Agenda to be announced.

March 8-10, 1979—Agenda to be announced.

Dated: December 15, 1978.

JOHN C. HOYLE,
Advisory Committee
Management Officer.

[FR Doc. 78-35420 Filed 12-19-78; 8:45 am]

[7590-01-M]

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 4-5, 1979, in Room 1046, 1717 H Street NW, Washington, DC. This meeting of the ACRS was previously

noticed in the FEDERAL REGISTER on November 20, 1978, page 54146.

The agenda for the subject meeting will be as follows:

Thursday, January 4, 1979:

8:30 A.M.-9:30 A.M.: Executive Session (Open)—The Committee will hear and discuss the report of the ACRS Chairman regarding miscellaneous matters relating to ACRS activities. The Committee will also hear and discuss the report of its Subcommittee on Anticipated Transients Without Scram (ATWS).

Portions of this session will be closed as necessary to permit discussion of Proprietary Information related to ATWS.

9:30 A.M.-12:30 P.M.: Anticipated Transients Without Scram (Open)—The Committee will meet with representatives of the NRC Staff, light water reactor vendors, and the nuclear/utility industry to discuss proposed implementation of provisions to reduce the probability of and/or mitigate the consequences of ATWS.

Portions of this session will be closed as necessary to permit discussion of Proprietary Information related to this matter.

1:30 P.M.-4:30 P.M.: Meeting with NRC Staff (Open)—The Committee will meet with members of the NRC Staff to hear reports on and discuss recent operating experience and licensing actions and reports regarding generic matters related to nuclear regulation. These items will include plans for implementation of 40 CFR Part 190, *Environmental Radiation Protection for Nuclear Power Operations*, and the NRC-EPA Task Force Report (NUREG-0396)—*A Modified Planning Basis for the Development of State and Local Government Radiological Emergency Response Plans in Support of Light Water Nuclear Power Plants*.

4:30 P.M.-5:30 P.M.: Executive Session (Open)—The Committee will discuss its position and any related comments regarding resolution of Anticipated Transients Without Scram and other matters considered during this meeting.

Friday, January 5, 1979:

8:30 A.M.-10:45 A.M.: Meeting with NRC Staff (Open)—The Committee will meet with members of the NRC Staff to hear reports on and to discuss generic matters related to nuclear regulation. These matters will include a proposed NRC Regulatory Guide on Atmospheric Dispersion Models for Potential Accident Consequence Assessments at Nuclear Power Plants, and the report of the NRC Water Reactor Safety Research Code Selection Committee.

The future schedule for ACRS activities will also be discussed.

10:45 A.M.-12:30 P.M. and 1:30 P.M.-5:30 P.M.: Executive Session (Open)—The Committee will hear and discuss the reports of its Subcommittees on proposed revisions to NRC Regulatory Guides, and proposed criteria for Independent Spent Fuel Storage Installations.

The Committee will discuss its position and any related comments regarding matters considered during this meeting.

The Committee will discuss the qualifications of candidates proposed for appointment to the ACRS. Portions of this session will be closed as necessary to permit discussion of information the release of which would represent an undue invasion of personal privacy.

Procedures for the conduct of and participation in ACRS meetings were outlined in the FEDERAL REGISTER on October 4, 1978, page 45926. In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS Executive Director as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

I have determined in accordance with Subsection 10(d) P.L. 92-463 that it is necessary to close portions of this meeting as noted above to protect Proprietary Information (5 U.S.C. 552b(c)(4)) and to protect information the release of which would represent an unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

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 ACRS Executive Director, Mr. Raymond F. Fraley (telephone 202/634-3265), between 8:15 A.M. and 5:00 P.M. EST.

Dated: December 15, 1978.

JOHN C. HOYLE,
Advisory Committee
Management Officer.

[FR Doc. 78 35421 Filed 12-19-78; 8:45 am]

7590-01-M]

[Docket Nos. 50-237, etc.; Operating License Nos. DPR-19, etc.]

COMMONWEALTH EDISON CO.

Order Regarding Special Prehearing Conference

In the matter of Commonwealth Edison Co. (Dresden Station, Units 2 & 3, and Quad Cities Station, Units 1 & 2), Docket Nos.: 50-237, 50-249, 50-254, 50-265, Amendments to Facility Operating License Nos.: DPR-19, DPR-25, DPR-29, DPR-30.

This Board, by an Order docketed on December 4, 1978, gave notice that a Special Prehearing Conference in the above proceeding would be held on January 11, 1979, in Chicago, Illinois. In response to this notice the parties to this proceeding and the persons seeking to intervene in this proceeding (petitioners) jointly arranged and participated in a telephone conference on December 11, 1978, with the Chairman of the Board in order to discuss the Special Prehearing Conference.

During the telephone conference the parties and petitioners stated their belief that the business of the Special Prehearing Conference could be conducted more effectively if the Conference were postponed. The parties and petitioners requested additional time to discuss possible contentions, and they proposed a schedule for filing and responding to contentions which would enable the Board to have received substantially all argument on the contentions by the date of the Conference. According to the schedule proposed, petitioners' contentions shall be filed on December 29, 1978, responses to those contentions shall be filed on January 12, 1979, and responses to the responses shall be filed on January 26, 1979. Oral argument at the Conference could be focused on the precise issues which then remain.

For good cause shown the Special Prehearing Conference scheduled for January 11, 1979, is hereby cancelled and notice is hereby given that the Conference will be held at 10:00 a.m. on Thursday, February 1, 1979, in Room 2502, United States Courthouse and Federal Building, 219 South Dearborn Street, Chicago, Illinois.

In light of the change in the date of the Conference, the parties and petitioners are excused from the requirement that they report to the Board by December 15, 1978, the progress of their negotiations.

Dated at Madison, Wisconsin, December 13, 1978.

It is so ordered.

For the Atomic Safety and Licensing Board designated to rule on petitions for leave to intervene.

GARY L. MILHOLLIN,
Chairman.

[FR Doc. 78-35274 Filed 12-19-78; 8:45 am]

[7590-01-M]

[Docket Nos. 50-295 and 50-304]

COMMONWEALTH EDISON CO.

Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 40 and 37 to Facility Operating Licenses Nos. DPR-39 and DPR-48 issued to Commonwealth Edison Company (the licensee) which revised Technical Specifications for operation of the Zion Station Unit Nos. 1 and 2, located in Zion, Illinois. The amendments are effective as of the date of issuance.

These amendments allow the boron concentration in the pressurizer to be 200 ppm less than the reactor coolant loop boron concentration. These amendments also make two corrections in the Technical Specifications regarding the Isolation Valve Seal Water System and the Penetration Pressurization Systems.

The application for these amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated May 24, 1977 as supplemented September 27, 1978, (2) Amendments Nos. 40 and 37 to License Nos. DPR-39 and DPR-48, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 30th day of November, 1978.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors
Branch No. 1, Division of Operating Reactors.

[FR Doc. 78-35275 Filed 12-19-78; 8:45 am]

[7590-01-M]

[Docket No. 50-587; License No. XR-127]

GENERAL ELECTRIC CO.

Issuance of Facility Export License

Please take notice that no request for a hearing or a petition for leave to intervene having been filed following publication of notice of proposed action in the FEDERAL REGISTER on August 29, 1977 (Page 43459) and the Nuclear Regulatory Commission having found that:

(a) The application filed by General Electric Company, Docket Number 50-587, complies with the requirements of the Atomic Energy Act, as amended, and the Commission's regulations set forth in Title 10, Chapter 1, Code of Federal Regulations, and

(b) The reactor proposed to be exported is a utilization facility as defined in said Act and regulations, the Commission has issued License No. XR-127 to General Electric Company, San Jose, California, authorizing the export of a power reactor with a thermal power level of 2,894 megawatts to Energie Nucleaire De Kaiseraugst S.A. (ENK), Baden, Switzerland.

The export of the reactor to Switzerland is within the purview of the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland.

Dated at Bethesda, Md., December 12, 1978.

For the Nuclear Regulatory Commission.

GERALD G. OPLINGER,
Assistant Director, Export/
Import and International
Safeguards, Office of International Programs.

[FR Doc. 78-35276 Filed 12-19-78; 8:45 am]

[7590-01-M]

[Docket No. 50-285]

OMAHA PUBLIC POWER DISTRICT

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 43 to Facility Operat-

ing License No. DPR-40 issued to Omaha Public Power District which revised Technical Specifications for operation of the Fort Calhoun Station, Unit No. 1, located in Washington County, Nebraska. The amendment is effective as of its date of issuance.

The amendment revises the Technical Specifications to be consistent with the Cycle 5 fuel reload analysis and deletes Technical Specifications that permit partial insertion of Control Element Assemblies. This amendment also corrects typographical errors on Technical Specification pages ii and 2-66.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) and environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the applications for amendment transmitted by letters dated March 22, and August 7, 1978, as revised by letters dated October 31, November 7 and 27, 1978, (2) Amendment No. 43 to License No. DPR-40 and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Blair Public Library, 1665 Lincoln Street, Blair, Nebraska. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555; Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 5th day of December 1978.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors
Branch No. 4, Division of Operating Reactors.

[FR Doc. 78-35277 Filed 12-19-78; 8:45 am]

[7590-01-M]

[Docket Nos. 50-387, 50-388]

PENNSYLVANIA POWER & LIGHT CO. AND ALLEGHENY ELECTRIC COOPERATIVE, INC. (SUSQUEHANNA STEAM ELECTRIC STATION, UNITS 1 AND 2)

Order Scheduling Special Prehearing Conference

The special prehearing conference provided for in the Atomic Safety and Licensing Board's Memorandum and Order of October 26, 1978, will commence at 2:30 p.m., local time, on Monday, January 29, 1979 (and will continue on January 30, and, if necessary, January 31) in Courtroom No. 2, Federal Building and United States Courthouse, 197 South Main Street, Wilkes-Barre, Pennsylvania 18701.

In accordance with the provisions of 10 CFR 2.751a, and to the extent consistent with the nature of an operating license proceeding (see 10 CFR 2.760a), the conference will be held to:

- (1) Consider all intervention petitions to allow the Board to make such preliminary or final determinations as to the parties to the proceeding, as may be appropriate;
- (2) Permit identification of the key issues in the proceeding;
- (3) Take any steps necessary for further identification of the issues; and
- (4) Establish a schedule for further actions in the proceeding.

As further provided in the October 26, 1978 Memorandum and Order, those who have filed petitions for leave to intervene may amend or supplement their petitions by no later than Monday, January 15, 1979. The Applicants and NRC Staff are invited to respond to any such supplements. The responses must be in our hands by Friday, January 26, 1979.

As permitted by 10 CFR 2.715(a), and to the extent that time is available, the Board will hear oral limited appearance statements. It is our present intention to hear any such statements on Tuesday morning, January 30, 1979, beginning at 9 a.m.

It is so ordered.

The Atomic Safety and Licensing Board designated to rule on petitions for leave to intervene.

Dated at Bethesda, Md., this 14th day of December 1978.

CHARLES BECHHOEFER,
Chairman.

[FR Doc. 78-35278 Filed 12-19-78; 8:45 am]

[7590-01-M]

[Docket No. 50-244]

ROCHESTER GAS AND ELECTRIC CORP.

Issuance of Amendment to Provisional
Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 21 to Provisional Operating License No. DPR-18, issued to Rochester Gas and Electric Corporation (the licensee), which revised the Technical Specifications for operation of the R. E. Ginna Plant (the facility) located in Wayne County, New York. The amendment is effective as of its date of issuance.

The amendment changes the Technical Specifications to authorize a reduction in the pressurizer heatup rate from 200°F per hour to 100°F per hour, a reduction in the frequency of the tests for Low Nuclear Power 25% trip setpoint and elimination of refueling water storage tank outlet valve test requirements.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) and environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the applications for amendment dated September 16, 1977 and May 8, 1978, (2) Amendment No. 21 to License No. DPR-18, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Rochester Public Library, 115 South Avenue, Rochester, New York 14627. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 8th day of December, 1978.

For the Nuclear Regulatory Commission.

DENNIS L. ZIEMANN,
*Chief, Operating Reactors
Branch #2, Division of Operating
Reactors.*

[FR Doc. 78-35279 Filed 12-19-78; 8:45 am]

[7590-01-M]

[Docket Nos. 50-338, 50-339]

VIRGINIA ELECTRIC & POWER CO. (NORTH
ANNA POWER STATION, UNITS 1 & 2)Request For Enforcement Action To Revoke
Operating Licenses

Notice is hereby given that by letter dated November 1, 1978, the North Anna Environmental Coalition (NAEC) requested that the Commission revoke the operating licenses of the Virginia Electric & Power Company (VEPCO) for North Anna Power Station, Units 1 & 2. The NAEC requests license revocation as enforcement action against VEPCO for allegedly material false statements, in that VEPCO failed to report to the Commission until April 1978 information measured in August 1977 regarding the settlement of foundations at North Anna. This request is being treated under 10 CFR 2.206 of the Commission's regulations, and accordingly, action will be taken on the request within a reasonable time.

A copy of the request is available for inspection in the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555, and at the local public document rooms for the North Anna Power Station located at Louisa County Courthouse, Louisa, Virginia 23092, and University of Virginia, Alderman Library, Charlottesville, Virginia 22901.

Dated at Bethesda, Maryland, this 13 day of December 1978.

For the Nuclear Regulatory Commission.

JOHN G. DAVIS,
*Acting Director, Office
of Inspection and Enforcement.*

[FR Doc. 78-35273 Filed 12-19-78; 8:45 am]

[7590-01-M]

[Docket No. 50-397 OL]

WASHINGTON PUBLIC POWER SUPPLY SYSTEM
(WPPSS NUCLEAR PROJECT NO. 2)

Order Relative to a Prehearing Conference

Take notice, the rescheduled prehearing conference to consider petitions filed in this proceeding will be held in Courtroom G174, Federal Building, 825 Jadwin Avenue, Richmond, Washington, on January 11,

1979. The proceeding will commence at 9 a.m. (local time).

The public is invited to attend. No limited appearance statements will be heard at this particular conference.

Dated at Bethesda, Md., this 12th day of December 1978.

It is so ordered.

For the Atomic Safety and Licensing Board for the Review of Petitions.

ELIZABETH S. BOWERS,
Chairman.

[FR Doc. 78-35280 Filed 12-19-78; 8:45 am]

[3110-01-M]

OFFICE OF MANAGEMENT AND
BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on 12/12/78 (44 USC 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes:

The name of the agency sponsoring the proposed collection of information;

The title of each request received;

The agency form number(s), if applicable;

The frequency with which the information is proposed to be collected;

An indication of who will be the respondents to the proposed collection;

The estimated number of responses; the estimated burden in reporting hours; and

The name of the reviewer or reviewing division or office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice thru this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, (202-395-4529), or from the reviewer listed.

NEW FORMS

OFFICE OF MANAGEMENT AND BUDGET

Joint Funding Evaluation Questionnaire
Single-time
Former and current joint funding applicants

100 responses; 50 hours
Eisinger, Richard, 395-3214.

DEPARTMENT OF HEALTH, EDUCATION, AND
WELFARE

Health Resources Administration

Garment involvement and victim behavior in burn injury incidents
Single-time
Hospitalized burn victims
470 responses; 235 hours
Eisinger, Richard, 395-3214.

REVISIONS

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service
Food stamp mail issuance report
FNS-259
Quarterly
State & local food stamp mail issuance offices
10,800 responses; 8,100 hours
Ellett, Charles A., 395-5867

Farm and rural development administration
Application for rural housing assistance (non farm tract)
FMHA 410-4
On occasion
Individuals applying for FMHA loans
315,000 responses; 315,000 hours
Ellett, Charles A., 395-5867

Forest service
State and private accomplishment reporting system
FS-3100-7, 8, 3200-6, 3600-2, 3500-5, and 5200-17
Quarterly
State Forestry Agencies
530 responses; 1,060 hours
Budget review division, 395-4773

DEPARTMENT OF COMMERCE

Bureau of the Census
Men's Apparel
M-23B
Monthly
Men's apparel manufacturers
5,400 responses; 1,350 hours
Kincannon, C. Louis, 395-3772.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health
American Society for Microbiology
Manpower Survey
Single-time
Microbiological scientists
17,500 responses; 4,375 hours
Eisinger, Richard, 395-3214

UNITED STATES INTERNATIONAL TRADE COMMISSION

Producers' Questionnaire—Watch Movements
Annually
Domestic producers
18 responses; 108 hours
Geiger, Susan B., 395-5867

EXTENSIONS

DEPARTMENT OF COMMERCE

Bureau of the Census
Environmental Quality Control
Agency Compilation
EQC-1

Annually
Large Governments (Federal-State-Local)
300 responses; 100 hours
Kincannon, C. Louis, 395-3772

Maritime Administration
Application for Ship Mortgage and/or Loan Insurance.
MA-163
On occasion
Shipowners
50 responses; 4,000 hours
Kincannon, C. Louis, 395-3772

National Oceanic and Atmospheric Administration
Coast Pilot Report.
NOAA 77-6
on occasion.
Vessels oper. in U.S. Coastal, Intra-coas., Gr. Lk. Waters.
500 responses; 250 hours.
Kincannon, C. Louis, 395-3772

DEPARTMENT OF THE INTERIOR

Bureau of Mines
Gypsum
6-1218-Q
Quarterly
Gypsum producers.
184 responses; 123 hours
Ellett, Charles, A., 395-5867.

UNITED STATES INTERNATIONAL TRADE COMMISSION

Processed Mushrooms—Quarterly
Report on Production, Sales and Inventories
Quarterly
U.S. mushrms processing indus. of about 40 firms
160 responses; 160 hours
Geiger, Susan B., 395-5867.

DAVID R. LEUTHOLD,
*Budget and Management
Officer.*

[FR Doc. 78-35338 Filed 12-19-78; 8:45 am]

[3110-01-M]

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on December 13, 1978 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes:

The name of the agency sponsoring the proposed collection of information;
The titles of each request received;
The agency form number(s), if applicable;
The frequency with which the information is proposed to be collected;
An indication of who will be the respondents to the proposed collection;

The estimated number of responses; the estimated burden in reporting hours; and

The name of the reviewer or reviewing division or office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, (202-395-4529), or from the reviewer listed.

NEW FORMS

U.S. CIVIL SERVICE COMMISSION

Claim for Retroactive Pay Entitlement Under the Civil Service Reform Act of 1978
OPM 1367
On occasion
Federal employees annuitants/survivors.
20,000 responses; 10,000 hours
Marsha Traynham, 395-3773

VETERANS ADMINISTRATION

Election to Receive Pension under P.L. 95-588
21-8835 (NR), 21-8835A (NR)
Single-time
Veterans, widow(er)s and children
500,000 responses; 125,000 hours
Caywood, D. P., 395-3443

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service
Agricultural Foreign Investment Disclosure Act—Report (AFIDA)
ASCS-153
On occasion
Foreign per. having invest. in agric. land in U.S.
5,000 responses; 2,500 hours
Ellett, C. A., 395-6132

REVISIONS

NATIONAL SCIENCE FOUNDATION

Survey of Industrial Research and Development 1978
RD-1, MA-121
Annually
Large industrial corporations
1,550 responses; 6,100 hours
Off. of Federal Statistical Policy & Standard, 673-7956

DEPARTMENT OF COMMERCE

Bureau of Census
Glass Containers (Shipments, Production, and Stocks)
M-32G
Monthly
Glass container manufacturing establishments.
520 responses; 173 hours
C. Louis Kincannon, 395-3211

Bureau of Census
Wiring Devices and Supplies (Shipments)
MA-36K
Annually
Manufacturers of Wiring Devices.
400 responses; 534 hours
Off. of Federal Statistical Policy & Standard, 673-7956

EXTENSIONS

DEPARTMENT OF ENERGY

Bulk Terminal Stock of Finished Petroleum Products
EIA-88
Monthly
Petroleum bulk terminals
2,232 responses; 8,928 hours
Hill, Jefferson B., 395-5867

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service Agreement (Child Care Food Program)
FNS-344
On occasion
Institutions administered by FNS
6,000 responses; 6,000 hours.
Ellett, C. A., 395-6132

Food and Nutrition Service Application for participation—Child Care Center or Family Day Care Home
FNS-341
Annually
Institutions administered by FNS
6,000 responses; 6,000 hours
Ellett, C.A., 395-6132

Food and Nutrition Service Day Care Requirements for Non-Licensed Institutions (CCFP)
FNS-343
Annually
Institutions administered by FNS
450 responses; 900 hours
Ellett, C.A., 395-6132.

Food and Nutrition Service Application for Participation and Management Plan for Sponsoring Organizations (Child Care Food Program)
FNS-342
Annually
Institutions administered by FNS
2,000 responses; 6000 hours
Ellett, C.A., 395-6132

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse and Mental Health Administration
Abbreviated Version of Inventory of Mental Health Facilities
ADM-15-1A
Annually
State Mental Hospitals
295 responses; 99 hours

Richard Eisinger 395-3214
DAVID R. LEUTHOLD,
Budget and Management Officer.
[FR Doc. 78-35339 Filed 12-19-78; 8:45 am]

[8025-01-M]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #1521: Amendment #3]

TEXAS

Declaration of Disaster Loan Area

The above number Declaration (See FR 40583), amendment #1: (See 43 FR 43593) and amendment #2 (See 43 FR 48750) are amended by adding the following counties and adjacent counties within the State of Texas as a result of natural disasters as indicated:

County	Natural disasters(s)	Dates
Armstrong	Drought	1/1/78-8/23/78
Atascosa	Drought	1/1/78-8/29/78
Borden	Drought	5/1/78-9/1/78
Bosque	Drought	1/1/78-8/30/78
Brown	Drought	1/1/78-8/31/78
Callahan	Drought	1/1/78-9/11/78
Childress	Drought	1/1/78-9/11/78
Comanche	Drought	1/1/78-8/23/78
Concho	Drought	1/1/78-8/23/78
Coryell	Drought	1/1/78-8/30/78
Cottle	Drought	1/1/78-8/23/78
Do	Hall	7/26/78-8/10/78
Do	Hallstorm	9/17/78
Dawson	Drought	1/1/78-9/1/78
Delta	Drought	4/1/78-8/2/78
Eastland	Drought	1/1/78-9/11/78
Ector	Drought	1/1/78-8/6/78
Erath	Drought	1/1/78-9/11/78
Fannin	Drought	4/1/78-8/24/78
Fayette	Drought	1/1/78-8/30/78
Gray	Drought	1/1/78-8/23/78
Do	Hot and dry Winds.	6/15/78-7/29/78
Hamilton	Drought	1/1/78-9/1/78
Hartley	Drought	6/10/78-9/6/78
Hill	Drought	4/15/78-7/14/78
Houston	Drought	6/1/78-9/11/78
Johnson	Drought	1/1/78-7/14/78
Jones	Drought	9/1/77-8/23/78
Kent	Drought	1/1/78-9/6/78
Lampasas	Drought	1/1/78-8/31/78
Leon	Drought	1/1/78-9/6/78
Lynn	Drought	1/1/78-9/1/78
Martin	Drought	1/1/78-9/6/78
Do	Hallstorm	8/28/78
McCulloch	Drought	1/1/78-8/2/78
Midland	Drought	1/1/78-8/6/78
Mills	Drought	1/1/78-8/31/78
Nacogdoches	Drought	1/1/78-9/11/78
Rockwall	Drought	6/1/78-8/15/78
San Saba	Drought	1/1/78-8/31/78
Scurry	Drought	1/1/78-9/6/78
Sherman	Drought	6/10/78-9/6/78
Smith	Drought	4/1/78-9/11/78
Somervell	Drought	1/1/78-8/30/78
Stonewall	Drought	1/1/78-8/23/78
Do	Excessive Rain.	8/3/78-9/4/78
Terry	Drought	1/1/78-9/8/78
Do	Hallstorm	7/22/78
Titus	Drought	5/1/78-9/12/78
Caldwell	Drought	1/1/78-9/1/78
Ellis	Drought	5/1/78-9/18/78
Fisher	Drought	1/1/78-8/28/78
Gaines	Drought	1/1/78-9/14/78
Glasscock	Drought	1/1/78-9/30/78
Gregg	Drought	4/1/78-9/18/78
Hood	Drought	1/1/78-9/14/78
Howard	Drought	1/1/78-9/30/78

County	Natural disasters(s)	Dates
Lubbock	Drought	1/1/78-9/1/78
McLennan	Drought	1/1/78-9/13/78
McMullen	Drought	1/1/78-9/1/78
Van Zandt	Drought	6/15/78-8/18/78
Brazos	Drought	1/1/78-9/7/78
Briscoe	Drought	6/1/78-9/20/78
Carson	Drought	1/1/78-9/23/78
Do	Hail and high winds.	8/12/78-8/20/78
Collingsworth	Drought	6/8/78-9/16/78
Cooke	Drought	2/1/78-9/25/78
Dallas	Drought	6/4/78-9/26/78
Grimes	Drought	1/1/78-9/7/78
Henderson	Drought	6/1/78-8/31/78
Madison	Drought	1/1/78-9/7/78
Millam	Drought	1/1/78-9/15/78
Moore	Drought	1/1/78-9/23/78
Navarro	Drought	4/15/78-9/1/78
Potter	Drought	1/1/78-9/23/78
Randall	Drought	3/2/78-9/23/78
Rusk	Drought	6/1/78-9/23/78
Swisher	Drought	6/1/78-9/30/78
Bailey	Drought	1/1/78-9/1/78
Cameron	Excessive rain.	6/30/78-8/30/78
Hockley	Drought	1/1/78-9/30/78
Starr	Drought	4/11/78-9/15/78

All other information remains the same; i.e., the termination dates for filing applications for physical damage are close of business on March 6, 1979, and for economic injury until the close of business on June 6, 1979.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 28, 1978.

PATRICIA M. CLOHERTY,
Acting Administrator.

[FR Doc. 78-35226 Filed 12-19-78; 8:45 am]

[4710-07-M]

DEPARTMENT OF STATE

[CM-8/1371

ADVISORY COMMITTEE ON THE 1979 WORLD ADMINISTRATIVE RADIO CONFERENCE

Meeting

The Department of State announces that the Advisory Committee on the 1979 World Administrative Radio Conference (WARC) will meet from 10:00 a.m. to 4:00 p.m. on January 9, 1979, in Room 1105 of the State Department, 2201 C Street, N.W., Washington, D.C. This will be the fourth meeting of the full Committee. It will be a joint meeting with the members of the initial U.S. Delegation to the WARC.

The Committee assists in the formulation of U.S. Government positions for the conference which will be held in Geneva in September 1979. It reports to its Chairman, Mr. Glen O. Robinson, who also serves as Chairman to the U.S. Delegation to the WARC.

The agenda for the January 9 meeting will consist principally of a briefing on the U.S. draft proposals for the WARC.

Members of the general public may attend the meeting and join in the discussions, subject to instructions of the Chairman. Admittance of public observers will be limited to the seating available. It is requested that prior to January 9, members of the general public who plan to attend the meeting communicate their name and address to Mr. Wilson Dizard, WARC Delegation Staff, Office of International Communications Policy (EB/CTA/TD), Department of State, Washington, D.C. 20520. Mr. Dizard's telephone number is (Area Code 202) 632-2631.

Dated: December 11, 1978.

RUTH H. PHILLIPS,
*Executive Secretary, Advisory
Committee on the 1979 World
Administrative Radio Confer-
ence.*

[FR Doc. 78-35260 Filed 12-19-78; 8:45 am]

[7035-01-M]

**INTERSTATE COMMERCE
COMMISSION**

[Notice 761]

ASSIGNMENT OF HEARINGS

DECEMBER 15, 1978.

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. No amendments will be entertained after the date of this publication.

No. MC 102616 (Sub No. 942F), Coastal Tank Lines, Inc., now assigned for hearing on January 16, 1979, at Louisville, Kentucky and will be held in Room 635, Post Office Building.

No. MC 129701 (Sub No. 3), Jasper Furniture Forwarding, Inc., now assigned for hearing on January 15, 1979, at Louisville, Kentucky and will be held in Room 635, Post Office Building.

No. MC 111485 (Sub No. 19F), Paschall Truck Lines, Inc., now assigned for hearing on January 9, 1979, at Louisville, Kentucky and will be held in Room 635, Post Office Building.

No. MC 105782 (Sub No. 9F), Hughes Refrigerated Express, Inc., now assigned for hearing on January 9, 1979, at Orlando, Florida and will be held in the Marriott Hotel.

No. MC 103993 (Sub No. 931F), Morgan Drive-Away, Inc., now assigned for continued hearing on March 19, 1979 at Chicago, Illinois and will be held in Room 1319, Everett McKinley Dirksen Building.

No. MC 103993 (Sub No. 931F), Morgan Drive-Away, Inc., now assigned for continued hearing on May 7, 1979, at Chicago, Illinois and will be held in Room 1319, Everett McKinley Dirksen Building.

No. MC 56637 (Sub 14F), R.C.A. Truck Lines, Inc., now assigned for hearing on January 9, 1979, at Chattanooga, Tennessee and will be held in Holiday Inn, Downtown.

No. MC 20783 (Sub No. 111F), Tompkins Motor Lines, Inc., now assigned for hearing on January 9, 1979, at Tampa, Florida and will be held in Conference Room, Post Office Annex Building.

No. MC 119176 (Sub No. 19), The Squaw Transit Company, a Corporation, now assigned for hearing on Jan-

uary 29, 1979, at Kansas City, Missouri and will be held in Room 609, Federal Office Building.

No. MC 139495 (Sub No. 355F), National Carriers, Inc., now assigned for hearing on January 24, 1979, at Kansas City, Missouri and will be held in Room 609, Federal Office Building.

No. MC-F 13563, Central Transport, Inc.—Purchase (Portion)—C.P.T. Freight, Inc., No. MC-19311 (Sub-No. 45F), Central Transport Inc., now being assigned for hearing on February 6, 1979, (9 days), at Chicago, Illinois in a hearing room to be later designated.

No. MC 141898 (M1), Roberts Cartage of Ohio, Inc., now assigned for hearing on January 15, 1979, at Cleveland, Ohio and will be held in Room B-1, Federal Office Building.

No. MC 107107 (Sub No. 467F), Alterman Transport Lines, Inc., now assigned for hearing on January 22, 1979, at Tallahassee, Florida and will be held in Room 111, Fletcher Building.

No. MC-145137F, Eight Way Express, Inc., now being assigned for hearing on March 13, 1979, (1 day), at Chicago, Illinois in a hearing room to be later designated.

No. MC-118044 (Sub-No. 3F), Keshin Charter Service, Inc., now being assigned for hearing on March 14, 1979, (3 days), at Chicago, Illinois in a hearing room to be later designated.

No. MC-136635 (Sub-No. 6F), Universal Cartage, Inc., now being assigned for hearing on March 1979, (5 days), at Chicago, Illinois in a hearing room to be later designated.

No. MC 117119 (Sub No. 619), Willis Shaw Frozen Express, Inc., now assigned January 25, 1979, at Chicago, Illinois is cancelled transferred to Modified Hearing.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 78-35375 Filed 12-19-78; 8:45 am]

WEDNESDAY, DECEMBER 20, 1978

PART II



**DEPARTMENT OF
ENERGY**

**Economic Regulatory
Administration**

**OIL IMPORT
REGULATIONS**

**Amendments to Conform Oil Import
Regulations to Proclamation
No. 4629**

Regulations
1978
12
20
1978

[6450-01-M]

Title 10—Energy

CHAPTER II—DEPARTMENT OF ENERGY

[Docket No. ERA-R-78-24]

PART 213—OIL IMPORT REGULATIONS

Amendments to Conform Oil Import Regulations to Proclamation No. 4629

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is issuing this final rule to implement the terms of Presidential Proclamation 4629, which further amended Proclamation 3279. Proclamation 3279, as amended, provides for the long-term control of imports of petroleum and petroleum products through a system of licenses subject to fees.

On December 8, 1978, the Proclamation was amended by the President in three major respects:

1. The scheduled reduction in the quantity of fee-exempt imports into the East Coast of residual fuel oil was suspended through June 30, 1979;
2. The manner in which fee-exempt residual fuel oil licenses were distributed was permanently changed;
3. The extent to which customs duties could be utilized to reduce license fee obligations was restricted.

The final rule amends DOE's Oil Import Regulations to conform them to the terms of the Proclamation as it has been amended.

Some of the terms of the Proclamation are already in effect which requires that these regulations become effective immediately in order to avoid the confusion which would result if DOE's superseded regulations were not also amended. A hearing will be held, and public comments received, after the effective date of these regulations, in order to provide opportunity for public comment.

DATES: This final rule is effective on December 15, 1978. A hearing on this rule will be held on January 25, 1979, in Washington, D.C., as more fully described in section IV below. Requests to speak at that hearing must be received by January 17, 1979. Written comments on the rule may be submitted until January 23, 1979.

ADDRESSES: Comments and requests to speak should be addressed to: Department of Energy, Public Hearing Management, Room 2313 (Docket No. ERA-R-78-24, 2000 M Street, N.W., Washington, D.C. 20461.

The hearing will be held at the following location: Department of Energy, Room 2105, 2000 M Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Robert D. R. de Sugny, Department of Energy, Office of General Counsel, Room 5116, Federal Building, 12th & Pennsylvania Avenue, N.W., Washington, D.C. 20461, (202) 633-9380.

Robert R. Moore, Department of Energy, Economic Regulatory Administration, Office of Oil Imports, Room 6114, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254-8620.

William L. Webb, Department of Energy, Economic Regulatory Administration, Office of Public Information, Room B-110, 2000 M Street, N.W., Washington, D.C. 20461, (202) 634-2170.

Robert C. Gillette, Department of Energy, Economic Regulatory Administration, Office of Public Hearing Management, Room 2313, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254-5201.

SUPPLEMENTARY INFORMATION:

- I. Background.
- II. Amendments to the Regulations.
- III. Waivers of Comment Periods.
- IV. Comment Procedure.

I. BACKGROUND

Proclamation 3279, as amended, provides for the long-term control of imports of petroleum and petroleum products. Originally, imports were controlled through a system of quotas. In 1973 the Proclamation was amended to establish a system of licenses subject to the payment of fees. Existing quotas were continued in the form of fee-exempt allocations of licenses but were made subject to annual reductions, until their complete elimination by May 1980.

On December 8, 1978 the President signed Proclamation No. 4629 (43 FR 58077 (December 12, 1978)) which further amended Proclamation 3279 in three major respects:

(1) The quantity of District I residual fuel oil imports not subject to license fees was increased to the levels which had been originally established in 1973. This change was effectuated, by suspending the scheduled reduction in the quantity of such imports not subject to license fee through June 30, 1979. On July 1, 1979, the quantity of such imports not subject to license fees will revert to 20% of the levels originally established;

(2) The manner in which fee-exempt residual fuel oil import licenses are distributed was permanently amended

to permit anyone who desires to make such imports to apply for such licenses until June 30, 1979. After that date the Proclamation requires that the fee-exempt licenses be distributed on the basis of a person's actual average calendar day imports in the six calendar months preceding May 1, 1979;

(3) The provision in Section 3 of the Proclamation, which allows custom duties to be deducted from fees, was restricted. The former practice of aggregating duties in a manner which results in refunds of duties for imports which were fee-exempt, or which results in refunds of duties in excess of the fee which was actually paid on the same barrel, has now been specifically prohibited.

The terms of Proclamation 4629 supersede ERA's current Oil Import Regulations, 10 CFR Part 213, in several respects. The following section discusses the changes to Part 213 which we are hereby adopting to conform the regulations to the Proclamation as it is now in effect.

II. AMENDMENTS TO THE REGULATIONS

Sections 213.3 and 213.5, which contain provisions of uniform applicability relating to applications for licenses and the duration of allocation periods, are amended to reflect that allocations of residual fuel oil licenses are now controlled by special provisions contained in § 213.15. District I residual fuel oil allocation periods have in the past been for twelve months, beginning on May 1 of each year. The two allocation periods which the Proclamation established extend from November 1, 1978, through June 30, 1979, and July 1, 1979, through April 30, 1980. Section 213.15(a) is amended to provide for these allocation periods and dates. Applications for the initial allocation period are filed as specified in § 213.15 (c), (d), and (e), which are more fully described below. Applications for the second allocation period, which begins on July 1, 1979, must be filed by June 1 of that year as specified in § 213.15(g).

Section 213.15 is also amended to reflect the fact that Proclamation No. 4629 now allows all persons desiring to import residual fuel into District I to apply for licenses in the initial allocation period. Persons who have previously been issued an allocation pursuant to § 213.15 for the allocation period May 1, 1978, through April 30, 1979, are governed by the provisions of paragraph (c). That paragraph provides that the Office of Oil Imports will automatically issue, without application, an additional allocation to those current license holders. The amount of this additional allocation will be determined by reference to the imports made by the license holder during the period May 1, 1977,

through June 30, 1978. From that amount we will deduct both the amount of the allocation which they currently hold and the amount of any other allocation for such imports which the person has received through exception relief granted by the Office of Hearings and Appeals pursuant to Subpart D of Part 205 of the regulations. The amount of the additional allocation should therefore be a reasonably accurate estimate to a person's actual need for an allocation in excess of amounts which he has already received.

At any time that a person has made sufficient imports so that his remaining unused fee-exempt authority is reduced to, or below, 10% of the total quantity authorized by the allocations referred to in § 213.15(c)(1) (i.e., previously issued allocations pursuant to § 213.15, exception relief allocations, automatic additional allocations), the person may apply for a supplemental allocation in an amount equal to 10% of that total quantity, or 500,000 barrels, whichever is greater.

An example of how the provisions of paragraph (c) will operate is as follows:

If a person holds an allocation of five million barrels which was previously issued for the allocation period May 1, 1978 through April 30, 1979 pursuant to § 213.15 and he had also received an allocation to import one million barrels through exception relief granted by the Office of Hearings and Appeals, he would automatically receive an additional allocation under subparagraph (c)(1) if the sum of those two allocations was less than the amount the person imported in the period May 1, 1977 through June 30, 1978. If his imports had been seven million barrels during that period he would, therefore, automatically receive an additional allocation for one million barrels. If the person had not received an allocation pursuant to exception relief, he would automatically receive an allocation for two million barrels. In either case the total quantity which he is now authorized to import on a fee-exempt basis is seven million barrels. Once he has imported 6,300,000 barrels against those licenses, (.9 × 7,000,000) he is eligible to apply for and receive a supplemental license for 700,000 barrels which is 10% of the total quantity he was authorized to import under subparagraph (c)(1). After receiving the supplemental allocation the person would have unused allocations for 1,400,000 barrels and would not subsequently become eligible for a second supplemental license until he had made sufficient imports so that his remaining fee-exempt authority was one again reduced to 90% of the originally authorized level of 7,000,000 barrels. A

person may obtain an initial supplemental license by simply submitting the relevant facts, in writing, to the Director, Oil Imports. Subsequent requests for a supplemental license must be accompanied by copies of the Customs entry documents, 7501 or 7505, which reflect the imports made against the various licenses.

If a person's imports during the period from May 1, 1977 through June 30, 1978, are less than his present allocation, he would not automatically receive the additional license under subparagraph (c)(1) but would be eligible for the supplemental licenses under subparagraph (c)(2) in the same manner as outlined above. In such a case, the "total quantity which he is authorized to import" would be equal, of course, to his allocation previously issued pursuant to section 213.15.

Persons with previously issued allocations in an amount equal to or less than 2,500,000 barrels may find that if they must utilize 90% of their allocation before they are eligible for a supplemental allocation under subparagraph (c)(2), they will not have sufficient remaining fee-exempt authority to enter their next cargo(es). In such an event subparagraph (c)(3) allows such persons to elect to be treated under the provisions of paragraph (d) which otherwise apply to new importers. Once an election is made to be treated under paragraph (d), that person may not re-elect to be treated under paragraph (c). Persons making such an election will be bound by the 500,000 barrel fee-exempt authority limit of that paragraph which will be calculated by taking into account any other unused and outstanding allocations that person holds.

Persons who have not previously received an allocation pursuant to § 213.15 for the allocation period May 1, 1978, through June 30, 1979 may apply, by letter, for an allocation pursuant to paragraph (d). This section allows such persons to receive an allocation for 500,000 barrels which will be increased by additional allocations under subparagraph (d)(2) upon submission of Customs entry documents indicating that actual imports have been made. Such persons will therefore have, in effect, a continuing authority to import 500,000 barrels on a fee-exempt basis until June 30, 1979. Persons who have not previously received an allocation pursuant to § 213.15 but who have received an allocation pursuant to exception relief are also covered by the terms of paragraph (d) as are persons who elect to be so governed pursuant to subparagraph (c)(3).

An emergency provision is set forth in paragraph (e) to provide for the remote possibility that someone's fee-exempt authority might be less than

the cargo carried by some supertankers, or the cargoes carried by smaller tankers arriving simultaneously.

In the final allocation period, which is from July 1, 1979 through April 30, 1980, the Proclamation requires that allocations of residual fuel oil not subject to license fees be distributed on the basis of a person's actual average calendar day imports during the period November 1, 1978 through April 30, 1979. Section 213.15 of the regulations has been amended to reflect this change by the adoption of a paragraph (g) which contains a formula for determining each person's allocation during the final allocation period based on their actual imports.

Because the allocation of residual fuel oil licenses not subject to fee during the final allocation period will be based upon an "applicant's actual imports," which is defined to mean entries made against that person's licenses, importers of residual fuel oil are strongly encouraged by ERA to apply for and utilize their own licenses rather than make arrangements for other license-holders to import residual fuel oil for them. Otherwise such persons will not be eligible to receive the benefits to which they would otherwise be entitled in the final allocation period.

The final change in the regulations necessitated by Proclamation 4629, is the treatment of duty refunds. Prior to Proclamation 4629, it was possible to interpret Proclamation No. 3279, as amended, to allow for aggregations of reductions or refunds of fees for duties paid, regardless of whether such duties were paid on fee-paid or fee-exempt imports. This interpretation permitted refunds of duties in excess of the fee which was actually paid on the import, and it also permitted refunds even if no fee had been paid on a particular entry if there were fees paid on other entries. The Proclamation now specifically forbids such practices, and the change is reflected in section 213.35. A refund or a reduction in fees on imports made on or after December 17, 1978, must be calculated with respect to each entry, and the license used for that entry, prior to cumulating the total refund or reduction due. If the entry is made against a fee-exempt license *no refund or reduction for that entry may be claimed on the Monthly Remittance Advice, FEA P114-M-O, notwithstanding printed instructions on the forms to the contrary*. The forms will be revised as soon as possible in order to accurately reflect these changes.

Refunds or reductions for duties on imports made prior to December 17, 1978, may continue to be calculated in the manner allowed by these regulations prior to this amendment. This means that "duty banks" accumulated

due to fee-exempt imports made prior to December 17, 1978, may continue to be deducted for up to six months under the provisions previously in effect. However, no additional duties on imports made on or after December 17, 1978 may be added to the "duty bank."

It should be noted in connection with any questions which arise as to whether or not a particular cargo that is in the process of being imported is affected by the Proclamation or the amendments, that the rule, as clarified in a regulation issued in 1975, is that the date on which an import is deemed to be "made" or "entered" is determined by when:

an acceptable entry for consumption (CF 7501) is filed, the date on which an acceptable withdrawal from warehouse from consumption is filed (CF 7505), or the date of release from Customs custody for immediate delivery, whichever occurs first. 40 FR 6048 (April 9, 1975)

III. WAIVERS OF COMMENT PERIODS

Pursuant to Section 501(e) of the Department of Energy Organization Act, we have determined that compliance with the requirements of Section 501(b), which requires a 30-day public comment period prior to promulgation of a regulation, would be likely to cause serious harm or injury to the public health, safety, and welfare. This decision was based on the following factors:

(1) Presidential Proclamation 4629 has superseded our regulations in several important respects. A delay of 30 days before the implementation of conforming regulations would leave the public without guidance as to the manner in which the amendments contained in the Proclamation would be administered and consequently lead to confusion which would delay the import of necessary petroleum and petroleum products.

(2) The current unsettled nature of the international oil market makes it imperative to avoid any confusion or delay in such imports.

(3) The discretion being exercised in this rulemaking is minimal.

Accordingly, we hereby waive the requirements of Section 501(b).

The 60-day public comment period required for proposed rulemakings pursuant to Executive Order 12044, entitled "Improving Government Regulations" (43 FR 12661 (March 23, 1978)) and DOE's implementing regulations, has been waived for the same reasons by the Deputy Secretary (see Appendix to this rule).

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are soliciting public comments and will hold a public hearing as outlined below.

Based on the comments received, we will determine whether further revisions to the conforming amendments adopted today are needed.

IV. PUBLIC HEARING AND COMMENT PROCEDURES

A. WRITTEN COMMENTS

You are invited to participate in this rulemaking by submitting written views, data or arguments with respect to the regulations set forth in this notice. Comments should be submitted to the address indicated in the "Addresses" section of this notice and should be identified on the outside envelope with the designation "Oil Import Regulations" and the ERA docket number in the title of this notice. Fifteen copies should be submitted. All comments received by DOE will be available for public inspection in the DOE Reading Room, Room GA-152 Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., e.s.t., Monday through Friday.

Any information considered by the person furnishing it to be confidential must be so identified and submitted in writing, one copy only. We reserve the right to determine the confidential status of the information and to treat it according to our determination.

B. PUBLIC HEARING

1. *Request Procedure.* The time and place for the hearing are indicated in the "Dates" and "Addresses" sections of this notice. If necessary to present all testimony, the hearing will be continued at 9:30 a.m. of the first business day following the date of the hearing shown above.

Any person may make a written request for an opportunity to make an oral presentation at the hearing. You should be prepared to describe the interest concerned; if appropriate, to state why you are a proper representative of a group or class of persons that has such an interest; and to give a concise summary of the proposed oral presentation. You should also provide us with a phone number where you may be contacted through the day before the hearing.

Each person selected to be heard will be so notified before 4:30 p.m., e.s.t., January 19, 1979 and must submit 100 copies of his or her statement to Public Hearing Management, Room 2214, 2000 M Street, N.W., Washington, D.C., before 4:30 p.m., e.s.t., on January 17, 1979.

2. *Conduct of the Hearing.* We reserve the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of

each presentation may be limited, based on the number of persons requesting to be heard.

An ERA official will be designated to preside at the hearing. This will not be a judicial or evidentiary-type hearing; only those conducting the hearing may ask questions and persons presenting statements will not be cross-examined. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

You may submit questions to be asked of any person making a statement at the hearing to the Office of Public Hearing Management at the above address before 4:30 p.m., e.s.t., 1978. You may also submit any questions, in writing, to the presiding officer of the hearing at the time of the hearing. The ERA, or the presiding officer if the question is submitted at the hearing, will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by the ERA and made available for inspection at the DOE Freedom of Information Office, Room GA-152, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of a transcript from the reporter.

As required by section 7(a)(1) of the Federal Energy Administration Act of 1974, as amended, a copy of this notice was submitted to the Administrator of the Environmental Protection Agency (EPA) for his comments concerning the impact of this proposal on the quality of the environment. In a letter dated December 14, 1978, the EPA stated they did not foresee these actions having an unfavorable impact on the quality of the environment.

A copy of this notice was also submitted to the Federal Energy Regulatory Commission in accordance with section 404(a) of the Department of Energy Organization Act. The Commission has determined that this notice did not significantly affect any function within the jurisdiction of the Commission.

(Department of Energy Organization Act, Pub. L. 95-91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267; Trade Expansion Act of

1962, as amended, Pub. L. 87-794; Presidential Proclamation No. 3279, as amended.)

In consideration of the foregoing, Part 213 of Chapter II, Title 10 of the Code of Federal Regulations, is amended as set forth below, effective upon issuance.

Issued in Washington, D.C., December 15, 1978.

DAVID J. BARDIN,
*Administrator, Economic
Regulatory Administration.*

1. Section 213.3 is revised in paragraphs (c) and (d) to read as follows:

§ 213.3 Allocation periods.

(c) Except as provided in § 213.10, § 213.15, and paragraphs (a) and (b) of § 213.28, allocations will be made for periods of twelve months beginning May 1 of each year.

(d) Allocation periods for allocations made pursuant to § 213.10, § 213.15 and paragraphs (a) and (b) of § 213.28 shall be as provided for in that section.

2. Section 213.5 is revised in paragraph (b) to read as follows:

§ 213.5 Applications for allocations and licenses.

(b) Applications pursuant to § 213.10 and § 213.15 shall be filed as provided for in those respective sections. Applications pursuant to § 213.29 and § 213.30 may be filed at any time.

3. Section 213.15 is revised to read as follows:

§ 213.15 Allocations of residual fuel oil—District I.

(a) This section provides for the making of import allocations not subject to license fee for the allocation period beginning November 1, 1978, and ending June 30, 1979, and the allocation period beginning July 1, 1979, and ending April 30, 1980, of imports into District I of residual fuel oil to be used as fuel in District I.

(b) To receive an import allocation not subject to license fee pursuant to this section, in the allocation period November 1, 1978, through April 30, 1979, a person must either have an allocation which was previously issued for the period May 1, 1978, through April 30, 1979, pursuant to this section or file a letter of application with the Director of Oil Imports, as prescribed in paragraph (d) of this section.

(c)(1) For the allocation period November 1, 1978, through June 30, 1979, licenses previously issued pursuant to § 213.15 for the allocation period May

1, 1978, through April 30, 1979, may continue to be utilized according to their terms except that the expiration date of such licenses is hereby extended to June 30, 1979. Persons having such licenses shall automatically receive an additional allocation not subject to license fee in an amount (provided that it is a positive number) equal to the quantity of residual fuel oil which they imported during the period May 1, 1977, through June 30, 1978, minus both the quantity of the allocation previously received pursuant to § 213.15 for the period May 1, 1978, through April 30, 1979, and any quantities authorized by allocations received through exception relief granted by the Office of Hearings and Appeals, pursuant to Subpart D of Part 205 of the regulations, for the period May 1, 1978 through April 30, 1979, for imports of residual fuel oil into District I to be used as fuel in District I.

(2) When a person to whom an allocation was previously issued pursuant to § 213.15 for the allocation period May 1, 1978 through April 30, 1979 has imported 90% of the total quantity which he is authorized to import under the allocations referred to in subparagraph (1), the person may apply by letter for a supplemental allocation in an amount equal to 10% of that total quantity, or 500,000 barrels, whichever is greater. A person may apply for other supplemental allocations under this subparagraph upon submission to the Director of Oil Imports of copies of Customs entry documents, 7501 or 7505, as appropriate, indicating that the applicant does not hold unused and outstanding allocations in an amount in excess of 10% of the total quantity which he is authorized to import under the allocations previously referred to in subparagraph (1). An additional copy of Customs entry documents need not be submitted where it has previously been submitted or where the entry has been reported on the FEA-P114-M-O "Monthly Remittance Advice" or its successor ERA form.

(3) Persons to whom an allocation was previously issued pursuant to § 213.15 for the allocation period May 1, 1978 through April 30, 1979 in an amount equal to or less than 2,500,000 barrels may elect at any time during the allocation period November 1, 1978 through June 30, 1979, to be governed by the terms of paragraph (d) instead of subparagraph (c)(2); provided, that the person has made sufficient imports so that the total remaining quantity which he is authorized to import under the allocations referred to in subparagraph (c)(1) is less than 250,000 barrels.

(d)(1) For the allocation period November 1, 1978, through June 30, 1979,

persons seeking an import allocation not subject to license fee pursuant to this section who have not previously received an allocation issued pursuant to § 213.15 for the allocation period May 1, 1978 through April 30, 1979, must file a letter of application with the Director certifying the projected imports of the applicant during the allocation period and the basis for such projection. The Director shall issue an allocation and license in that amount, up to a maximum of 500,000 barrels; provided, that the Director may require additional evidence of the applicant's projected imports where it is not apparent from the face of the application that actual imports are planned.

(2) Persons receiving an allocation pursuant to subparagraph (1) of this paragraph, or who elect to be treated under this paragraph pursuant to subparagraph (c)(3), may receive an additional allocation in an amount equal to any actual quantities of residual fuel oil imported into District I to be used as fuel in District I upon the submission of additional letters of application accompanied by Customs entry documents, 7501 or 7505, as appropriate.

(e)(1) For the allocation period November 1, 1978 through June 30, 1979, persons to whom an allocation was previously issued pursuant to § 213.15 for the allocation period May 1, 1978 through April 30, 1979, and persons to whom an allocation has been issued pursuant to paragraph (d) of this section, may apply for an emergency allocation, in the amount of their needs, but not to exceed 500,000 barrels, in the event such a person's unused and outstanding allocations are less than the amount being imported by that person

(i) on a single vessel scheduled to arrive within thirty days of the date of the application; or

(ii) on a series of vessels scheduled to arrive within a seven day period and that seven day period will occur completely within thirty days of the date of the application.

(2) Applications under this paragraph shall be accompanied by such documentation as the Director may deem necessary to ascertain that the requisite facts exist (such as copies of contracts between charter parties), and that the applicant does not hold sufficient fee-exempt licenses to permit entry.

(3) Licenses issued pursuant to this paragraph will be expressly conditioned on their being used in accordance with the facts submitted in support of the application for the emergency allocation.

(f) The Director of Oil Imports shall suspend the issuance of allocations provided for in subparagraph (c)(2) and paragraphs (d) and (e) of this sec-

tion if such additional allocations would exceed the limits established by the Proclamation.

(g)(1) For the allocation period July 1, 1979, through April 30, 1980, persons seeking an import allocation pursuant to this section must file an application with the Director by June 1, 1979. Each eligible applicant under this paragraph shall receive an allocation for the period in accordance with the following formula:

[Applicant's actual imports of residual fuel oil into District I to be used as fuel in District I for the period from November 1, 1978, through April 30, 1979 ÷ Total of all applicant's imports of residual fuel oil into District I to be used as fuel in District I for the period from November 1, 1978, through April 30, 1979] × [580,000 B/D] × [305 Days]

(2) For the purposes of this paragraph "applicant's actual imports" means entries made against that applicant's licenses for imports into District I of residual fuel oil to be used as fuel in District I.

(h) No allocation made pursuant to this section may be sold, assigned or otherwise transferred. Licenses issued under allocations made pursuant to this section shall permit the importation only of residual fuel oil into District I for use as fuel oil in District I.

4. Section 213.35 is amended in paragraph (a)(9) and paragraph (d)(2)(i) to read as follows:

§ 213.35 Allocations and fee-paid licenses for imports of crude oil, unfinished oils, and finished products.

(a) * * *

(9) An importer of record who holds a license not issued upon prepayment, may reduce the payments made pursuant to paragraph (c) on a monthly basis, by sums equal to the sums collected by way of net duties paid to the United States Customs Service, on imports made on or after December 17, 1978, *provided*, that said importer certifies the amount of net duties paid; *provided further*, that where the applicable duty paid on a barrel of crude oil, unfinished oil, or finished product exceeds the amount of the fee paid with respect to that barrel, the reduction shall not exceed the amount of the fee nor may any excess duty be used to reduce or refund the fee on any other barrel. With respect to imports made prior to December 17, 1978, reduction in payments for net duties paid on such shipments may continue to be made in accordance with the regulations in effect at that time.

(d) * * *
(2) * * *

(i) In the case of licenses issued upon prepayment, for payment to the importer of record, on a monthly basis, of sums equal to the sums collected by way of net duties paid to the U.S. Customs Service, on imports made on or after December 17, 1978, *provided*, that said importer certifies the amount of net duties paid; *provided further*, that where the applicable duty paid on a barrel of crude oil, unfinished oil, or finished product exceeds the amount of the fee paid with respect to that barrel, the reduction shall not exceed the amount of the fee nor may any excess duty be used to reduce or refund the fee on any other barrel. With respect to imports made prior to December 17, 1978, reduction in payments for net duties paid on such shipments may continue to be made in accordance with the regulations in effect at that time.

APPENDIX

WAIVER OF THE PROVISIONS OF EXECUTIVE ORDER NO. 12044 ON "IMPROVING GOVERNMENT REGULATIONS" AND THE DEPARTMENT OF ENERGY'S IMPLEMENTING REGULATIONS

Pursuant to the authority vested in me by the Department of Energy Organization Act (Pub. L. 95-91) and the Department's regulations which implement the terms of Executive Order No. 12044 on "Improving Government Regulations" I hereby waive all of the rulemaking procedures contained in the Executive Order and implementing regulations with respect to a rule which conforms the Oil Import Regulations contained in 10 CFR Part 213 to the terms of Proclamation No. 4629 and which implements the terms of that Proclamation. I base this waiver on the following factors:

(1) Presidential Proclamation 4629 has superseded DOE's regulations in several important respects. Waiting for 60 days before implementing conforming regulations would leave the public without guidance as to the manner in which the amendments contained in the Proclamation would be administered and consequently lead to confusion which would delay the import of necessary petroleum and petroleum products;

(2) The current unsettled nature of international oil markets makes it imperative to avoid any confusion or delay in such imports;

(3) Because the rule merely implements the terms of Proclamation 4629, the discretion being exercised in this rulemaking is minimal.

Issued in Washington, D.C., December 14, 1978.

JOHN F. O'LEARY,
Deputy Secretary,
Department of Energy.

[FR Doc. 78-35487 Filed 12-18-78; 3:36 pm]

WEDNESDAY, DECEMBER 20, 1978

PART III



**DEPARTMENT OF
TRANSPORTATION**

**Federal Highway
Administration**

**NATIONAL MAXIMUM
SPEED LIMIT; MAXIMUM
VEHICLE SIZE AND
WEIGHT**

**Certification of Speed Limit
Enforcement**

**FOR
ORDER**

[4910-22-M]

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER G—ENGINEERING AND TRAFFIC OPERATIONS

[FHWA Docket No. 78-41]

PART 658—NATIONAL MAXIMUM SPEED LIMIT; MAXIMUM VEHICLE SIZE AND WEIGHT

Certification of Speed Limit Enforcement; Amendment

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This emergency regulation implements procedures required under Section 205 of the Surface Transportation Assistance Act of 1978 amending 23 U.S.C. 154 which establishes criteria for judging each State's level of compliance with the fifty-five mile-per-hour national maximum speed limit.

DATES: This emergency regulation is effective December 20, 1978. Comments must be received on or before March 20, 1979.

ADDRESS: Anyone wishing to submit written comments may do so, preferably in triplicate, to FHWA Docket No. 78-41, Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, D.C. 20590. All comments and suggestions received will be available for examination at the above address between 7:45 a.m. and 4:15 p.m. ET, Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Dave Baldwin, Office of Traffic Operations, 202-426-1993; or David C. Oliver, Office of the Chief Counsel, 202-426-0825, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590.

SUPPLEMENTARY INFORMATION: On November 6, 1978, the President signed into law the Surface Transportation Assistance Act of 1978, Pub. L. 95-599, 92 Stat. 2689. Section 205 of the Act amends Section 154 of Title 23, U.S.C., establishing criteria against which to judge each State's level of compliance with the fifty-five mile-per-hour National Maximum Speed Limit. Whether a State is to be subject of a sanction, or made eligible for an incentive award, will depend on the value it reports for the percent of motor vehicles exceeding 55 miles per hour on its public highways posted at 55 miles per hour. In a significant change from the speed monitoring procedures used through FY 78, the legislation now requires that beginning with the 12-month period ending September 30, 1979, the "percent exceeding 55" figure, reported with each State's annual certification of speed limit enforcement, shall be based on

the speeds of all vehicles, or a representative sample of all vehicles. This requirement is in contrast to the "free-flow vehicle" concept which has been the basis of the speed monitoring program to date.

Implementation of the new legislation will require substantial modifications to 23 CFR 658.7. These modifications will be processed as a significant regulation in accordance with existing DOT procedures governing regulation revision, where there will be full opportunity for input and comment interested parties.

Of critical importance at the present time is that the new compliance and data collection criteria are by law to apply to the data currently being collected. In order to provide the States with modified speed monitoring procedures as quickly as possible, the following revision to 23 CFR 658.7 is being issued as an Emergency Regulation. This revision, which will be effective on issuance, will apply only to the speed monitoring program to be used by the States during the 12 months ending September 30, 1979. Concurrent with the publication of this regulation revision, FHWA field offices will be provided copies of the document "Interim Speed Monitoring Procedures," which explains in further detail the concepts and procedures discussed in the revision.

In consideration of the foregoing, 23 CFR 658.7(d) is revised to read as follows:

§ 658.7 Certification of speed limit enforcement

(d) The percentage of motor vehicles exceeding fifty-five miles per hour, based on the speeds of all vehicles or a representative sample of all vehicles. The figure for each State shall be determined in the following manner.

(1) The basic data from which the required value is developed, will continue to be collected using the "free-flow" vehicle concept that has been in effect since September 1975.

(2) The percent of vehicles exceeding 55 miles per hour determined from the "free-flow" data shall be adjusted by a conversion factor developed through supplemental data collection in order to generate a figure representative of all traffic. The conversion factor shall be developed using supplemental speed data collected via one of the following three methods:

(i) *Use of automatic speed recording or speed classifying machines.* Using this method, data should be collected at a minimum of two locations on each of the four or five highway types during the third and fourth quarter of Fiscal Year 1979. As a minimum, data should be collected for the same period and cover the same traffic as that from which the "free-flow" data are collected.

(ii) *Supplemental radar data.* This method would require the commit-

ment of additional personnel and equipment in order to monitor all vehicles during the same time period that "free-flow" data are being collected. This effort would be required at a minimum of two locations per highway type during the third and fourth quarters of Fiscal Year 1979.

(iii) *Supplemental radar data—sampling the traffic stream.* Where traffic volumes are large enough to make radar monitoring of all vehicles impractical, a sampling of the traffic stream may be monitored. This method would involve monitoring every n^{th} vehicle in the traffic stream ("n" to be determined by site geometrics, i.e., number of lanes, traffic volumes and data recording capability). If volumes warrant, data may be collected by lane, by 15-minute time periods, for the duration of "free-flow" collection period. As a minimum, this method would be used at two locations per highway type during the third and fourth quarters of Fiscal Year 1979.

(3)(i) The conversion factor for each highway type will be developed by relating the figures for "percent exceeding 55" derived from the dual monitoring conducted at the stations of the specified highway type for each quarter with supplemental monitoring.

A_i = % exceeding 55, free flow, on road type "i"

P_i = % exceeding 55, all vehicles on road type "i"

i = road types, 1 through 5

Calculate P_i and A_i for each of the dual data collection sessions in a quarter, and average the values to obtain a quarterly value for each road type. For each quarter calculate the conversion factor for each highway type " F_i " as follows: $F_i = P_i/A_i$.

(ii) For each highway type, the FY 1979 value for F_i will be obtained by averaging the quarterly values. The annual value for "free-flow" percent exceeding 55 will be multiplied by the final F_i value for each highway type to determine the "all traffic" figure.

(4) To obtain the final statewide figure for "percent exceeding 55," the values determined in paragraph (d)(3) of this section for each highway type will be weighted by the proportionate amount of statewide vehicle-mile of travel (VMT) for that highway type, then added.

(23 U.S.C. 154; § 205 of the Surface Transportation Assistance Act of 1978, Pub. L. 95-599, 92 Stat. 2689; 49 CFR 1.48(b))

NOTE.—The Federal Highway Administration has determined that this document contains a significant proposal according to the criteria established by the Department of Transportation pursuant to E.O. 12044. An analysis of the potential costs, benefits and impacts of this document is contained in the public docket and is available for inspection.

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