Vol. 44—No. 15
1-22-79
PAGES
4431-4644

FEDERAL REGISTER

MONDAY, JANUARY 22, 1979

highlights

COAL RESEARCH
DOE/ERO proposes to establish procedures for selection of university laboratories for program participation; comments by 3-19-79; hearing 2-23-79 (Part VII of this issue) 4632

STATE ENERGY CONSERVATION PLANS
DOE proposes to amend program guidelines; comments by 2-21-79; hearing on 2-14-79 (Part II of this issue) 4562

EMERGENCY ENERGY CONSERVATION PROGRAM
CSA revises Fiscal Year '79 Crisis Intervention Program; effective 1-22-79 4480

POWERPLANTS
DOE/FERC proposes criteria for determining design capacity; comments by 1-30-79 4500

NONDISCRIMINATION ON BASIS OF HANDICAP
USDA proposes standards for programs and activities receiving Federal financial assistance; comments by 4-23-79 (Part VI of this issue) 4620

FUNGICIDES
EPA establishes tolerance for thiabendazole in animal feed; effective 1-22-79 4467
EPA establishes temporary tolerances for thiabendazole in or on rice grain and rice straw 4537

DANGEROUS CARGOES
DOT/CG updates rules on waterfront facilities; effective 1-22-79 (Part VIII of this issue) 4642

RURAL RENTAL HOUSING
USDA/FmHA amends rules on obligation of loan funds; effective 1-21-79 4434

FmHA INSURED LOANS
USDA/FmHA amends rules on ordering credit reports for individual loan applicants and borrowers; effective 1-22-79 4431
USDA/FmHA revises chattel service regulations; effective 1-22-79; comments by 3-23-79 4436

TRAINING OF EXPANDED FUNCTION DENTAL AUXILIARIES
HEW/PHS sets program requirements (3 documents) 4471, 4475, 4478

AIRCRAFT
DOT/FAA issues advance notice of proposed rulemaking on general operating and flight rules; comments by 4-23-79 (Part III of this issue) 4572

CONTINUED INSIDE

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR notice 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/OHMO	USDA//FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
CSA	MSPB*/OPM*		CSA	MSPB*/OPM*
	LABOR			LABOR
	HEW/FDA			HEW/FDA

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

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

***NOTE: As of January 1, 1979, the Merit Systems Protection Board (MSPB) and the Office of Personnel Management (OPM) will publish on the Tuesday/Friday schedule. (MSPB and OPM are successor agencies to the Civil Service Commission.)**

federal register
Area Code 202 Phone 523-5240

Published daily, Monday through Friday (no publication on Saturdays, Sundays, or on official Federal holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C., Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

The FEDERAL REGISTER provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive orders and Federal agency documents having general applicability and legal effect, documents required to be published by Act of Congress and other Federal agency documents of public interest. Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless earlier filing is requested by the issuing agency.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for $5.00 per month or $50 per year, payable in advance. The charge for individual copies is 75 cents for each issue, or 75 cents for each group of pages as actually bound. Remit check or money order, made payable to the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER.

INFORMATION AND ASSISTANCE

Questions and requests for specific information may be directed to the following numbers. General inquiries may be made by dialing **202-523-5240.**

FEDERAL REGISTER, Daily Issue:

Subscription orders (GPO)	202-783-3238
Subscription problems (GPO)	202-275-3054
"Dial - a - Reg" (recorded summary of highlighted documents appearing in next day's issue).	
Washington, D.C.	202-523-5022
Chicago, Ill	312-663-0884
Los Angeles, Calif	213-688-6694
Scheduling of documents for publication.	202-523-3187
Photo copies of documents appearing in the Federal Register.	523-5240
Corrections	523-5237
Public Inspection Desk	523-5215
Finding Aids	523-5227
Public Briefings: "How To Use the Federal Register."	523-5235
Code of Federal Regulations (CFR)	523-3419 523-3517
Finding Aids	523-5227

PRESIDENTIAL PAPERS:

Executive Orders and Proclamations.	523-5233
Weekly Compilation of Presidential Documents.	523-5235
Public Papers of the Presidents	523-5235
Index	523-5235

PUBLIC LAWS:

Public Law numbers and dates	523-5266 523-5282
Slip Law orders (GPO)	275-3030
U.S. Statutes at Large	523-5266 523-5282
Index	523-5266 523-5282
U.S. Government Manual	523-5230
Automation	523-3408
Special Projects	523-4534

HIGHLIGHTS—Continued

SHORE, HURRICANE, TIDAL AND LAKE FLOOD PROTECTION

DOD/EC provides policies on extent of Federal project participation; effective 1-15-79 (Part IV of this issue) 4594

AM RADIO

FCC proposes ways to increase clear channel broadcast station assignments; comments by 4-9-79; reply comments by 5-9-79 4502

AMATEUR RADIO SERVICE

FCC terminates proceeding on license renewal and modification procedures 4516

CIVIL AIR PATROL STATIONS

FCC permits use of F2 emissions on frequencies 143.9 and 148.15 MHz; effective 2-23-79 4489

SHIPBOARD RADIOTELEGRAPH STATIONS

FCC amends rules on communication with amateur stations; effective 2-23-79 4488

AIRCRAFT RADIO STATIONS

FCC authorizes "broadcasts in the blind" on certain frequencies; effective 2-23-79 4489

AUTOMOTIVE FUEL ECONOMY PROGRAM

DOT/NHTSA issues an extension of comment deadline, an invitation of financial assistance applications, and a cancellation of a public meeting on the annual report to Congress 4547

AID-TO-FISHERIES

Commerce/NOAA declares "conditional fishery" status for Atlantic groundfish; effective 1-22-79 4494

COMMODITIES

CFTC authorizes brokers to execute "good-til-cancelled" orders for customers; effective 1-22-79 4465

TREASURY NOTES

Treasury invites tenders for securities of January 31, 1981 4548

PRIVACY ACT OF 1974

President's Commission on Pension Policy proposes procedures for maintaining a system of records, and allowing individual access to the records; comments by 2-21-79 4496

GOVERNMENT IN THE SUNSHINE ACT

U.S. Metric Board adopts procedures for public meetings; effective 12-15-78 4462

MEETINGS—

DOD: Defense Intelligence Agency Advisory Committee, 2-28-79 4523
Wage Committee, 3-6, 3-13, 3-20, and 3-27-79 4523
AF: USAF Scientific Advisory Board Research and Geophysics Panel, 2-12 and 2-13-79 4523
DOE: National Petroleum Council, Refinery Flexibility Committee, Refinery Capability Task Group, 2-6 and 2-23-79 4523

DOT/NHTSA: Alleged defects in Fiat 850 and 124 model automobiles for 1970-1974, 2-21-79 4546
Automotive technology, advanced, 2-13 and 2-14-79 4547
FCC: Radio Technical Commission for Marine Services, Special Committee No. 70, 2-6-79 4539
HEW: Model Adoption Legislation and Procedures Advisory Panel, 2-5, 2-6 and 2-7-79 4541
Justice: U.S. Circuit Judge Nominating Commission, Eighth Circuit Panel, 2-17 3-9 through 3-11-79 4543

SEPARATE PARTS OF THIS ISSUE

Part II, DOE 4562
Part III, DOT/FAA 4572
Part IV, DOD/EC 4594
Part V, ICC 4606
Part VI, USDA 4620
Part VII, DOE/ERO 4632
Part VIII, DOT/CG 4642

contents

AGRICULTURAL MARKETING SERVICE

Notices

Stockyards; posting and depost-ing:
Cowtown Horse Auction, Calif., et al 4517

AGRICULTURE DEPARTMENT

See also Agricultural Marketing Service; Farmers Home Administration.

Proposed Rules

Nondiscrimination:
Handicapped in federally assisted programs 4620

AIR FORCE DEPARTMENT

Notices

Meetings:
Scientific Advisory Board 4523

ARMY DEPARTMENT

See Engineers Corps.

CENTRAL INTELLIGENCE AGENCY

Notices

Privacy Act; systems of records.. 4518

COAST GUARD

Rules

Waterfront facilities explosives handling:
Editorial corrections..... 4642

COMMERCE DEPARTMENT

See Economic Development Administration; Industry and Trade Administration; National Oceanic and Atmospheric Administration.

COMMODITY FUTURES TRADING COMMISSION

Rules

Customer protection rules:
"Good-'til-cancelled" orders; execution by brokers..... 4465

COMMUNITY SERVICES ADMINISTRATION

Rules

Emergency energy conservation program, crisis intervention program 4480

CONSUMER PRODUCT SAFETY COMMISSION

Notices

Meetings; Sunshine Act (2 documents) 4553

DEFENSE DEPARTMENT

See also Air Force Department; Engineers Corps.

Rules

Charters:
Assistant Secretary of Defense (Atomic Energy)..... 4469
Assistant Secretary of Defense (Program Analysis and Evaluation) 4470

Notices

Meetings:
Defense Intelligence Agency Advisory Committee 4523
Wage Committee..... 4523

ECONOMIC DEVELOPMENT ADMINISTRATION

Notices

Imports determination petitions:
Bell Handbags, Inc., et al 4522

ENERGY DEPARTMENT

See also Energy Research Office; Federal Energy Regulatory Commission.

Proposed Rules

State energy conservation plans; program guidelines 4562

Notices

Meetings:
National Petroleum Council... 4523

ENERGY RESEARCH OFFICE

Proposed Rules

Coal research laboratories program, university:
Selection and designation policies and procedures; hearing 4632

ENGINEERS CORPS

Rules

Water resource policies and authorities; Federal participation in shore, hurricane, and tidal and lake flood protection 4594

ENVIRONMENTAL PROTECTION AGENCY

Rules

Animal feeds:
Thiabendazole 4467

Notices

Environmental statements; availability, etc..
Agency statements, weekly receipts..... 4533
Pesticide applicator certification and interim certification; State plans:
Massachusetts 4536
Pesticide registration, cancellation; etc..
N-Maleimide 4537
Pesticides, temporary tolerances:
Thiabendazole 4537

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Notices

Meetings; Sunshine Act 4553

FARMERS HOME ADMINISTRATION

Rules

Account servicing:
Routine; group type loans..... 4435
Applications; receiving and processing:
Credit reports; individual loan applicants and borrowers 4431
Loan and grant program (group):
Self-help technical assistance; grant fund obligation..... 4435
Rural housing loans and grants:
Rental projects; loan fund obligations..... 4434
Rural housing sites; loan fund obligations 4435
Security servicing and liquidations:
Chattel security; final rule; inquiry..... 4436

Notices

Cooperative agreement with NSPA; gratuitous services 4517

FEDERAL AVIATION ADMINSTRATION

Rules

Airworthiness directives:
Cessna 4459
Piper..... 4460
Teledyne 4461
Restricted area; correction 4462
Transition areas 4462

Proposed Rules

Air traffic operating and flight rules..... 4572

FEDERAL COMMUNICATIONS COMMISSION

Rules

Organization and functions:
Office of Science and Technology, Chief Scientist, name change 4485
Radio services, special:
Aviation services, "broadcasts in the blind" frequency..... 4489
Aviation services, Civil Air Patrol stations; frequency modulated telegraphy signals 4489
Land mobile services, private; reporting requirements; effective date 4492
Maritime services, shipboard stations communication with amateur stations..... 4488

Radio stations, table of assignments:
California 4486

Proposed Rules

Radio broadcasting:
Clear Channel broadcasting in standard broadcast band 4502
Radio services, special:
Amateur radio service, renewal and modification of license procedures 4516
Television stations, table of assignments:
California; extension of time .. 4501

Notices

Hearings, etc..
Aeronautics, Inc., et al 4538
Crone, Eugene H 4538
Meetings:
Marine Services Radio Technical Commission 4539
Television translator applications ready and available for processing 4539

FEDERAL DEPOSIT INSURANCE CORPORATION

Notices

Meetings; Sunshine Act (2 documents) 4553, 4554

FEDERAL ELECTION COMMISSION

Notices

Meetings; Sunshine Act (2 documents) 4555

FEDERAL ENERGY REGULATORY COMMISSION

Proposed Rules

Powerplant and Industrial Fuel Use Act of 1978; powerplant design capacity, criteria 4500

Notices

Hearings, etc..
Alabama Power Co 4524
Columbia Gas Transmission Corp. et al 4524
Florida Gas Transmission Co.. 4525
Georgia Power Co 4526
Metropolitan Edison Co 4527
Northern Natural Gas Co 4528
Northern States Power Co 4530
Northwest Pipeline Corp 4531
Southern Natural Gas Co 4532
Transcontinental Gas Pipeline Corp 4532
Virginia Electric & Power Co.. 4532

FEDERAL HOME LOAN BANK BOARD

Notices

Meetings; Sunshine Act 4555

FEDERAL INSURANCE ADMINISTRATION

Rules

Flood insurance; communities eligible for sale:
Arizona et al 4469

FEDERAL MARITIME COMMISSION

Notices

Agreements filed, etc 4540

FEDERAL RAILROAD ADMINISTRATION

Notices

Petitions for exemptions, etc..
Chicago, Rock Island & Pacific Railroad 4545

FEDERAL TRADE COMMISSION

Rules

Prohibited trade practices:
Nelson Bros. Furniture Corp.; correction 4465

Proposed Rules

Consent orders:
Aldens, Inc.; correction 4497
Federated Department Stores, Inc 4497
Motor vehicles, used sale of; availability of economic articles 4499

Notices

Meetings; Sunshine Act 4555

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

See also Public Health Service.

Notices

Meetings:
Model Adoption Legislation and Procedures Advisory Panel 4541

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

See Federal Insurance Administration.

INDUSTRY AND TRADE ADMINISTRATION

Notices

Scientific articles; duty free entry:
University of Illinois et al., correction 4522

INTERIOR DEPARTMENT

See Land Management Bureau.

INTERNATIONAL TRADE COMMISSION

Notices

Import investigations:
Precision resistor chips 4542

INTERSTATE COMMERCE COMMISSION

Rules

Conduct standards 4606

Notices

Fourth section applications for relief 4550
Hearing assignments 4550
Motor carriers:
Permanent authority applications; correction (2 documents) 4549
Temporary authority applications 4550
Temporary authority applications; correction 4549
Transfer proceedings 4551
Railroad operation, acquisition, construction, etc.:
Chicago South Shore & South Bend Railroad 4552

JUSTICE DEPARTMENT

Notices

Meetings:
Circuit Judge Nominating Commission, U.S 4543
Privacy Act; systems of records 4542

LAND MANAGEMENT BUREAU

Proposed Rules

River areas; special recreational permits, allocations and transfers; extension of time 4501

Notices

Organization and functions:
Alaska State Office, Anchorage, Alaska; relocation 4542

LEGAL SERVICES CORPORATION

Notices

Meetings; Sunshine Act 4555

METRIC BOARD

Rules

Sunshine Act; implementation .. 4462

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

Rules

Vehicle classification; definition of "automobile" in fuel economy standards 4492

Notices

Automotive fuel economy program; report to Congress; extension of time, etc 4547
Meetings:
Advanced automotive technology 4547
Motor vehicle defect proceedings; petitions, etc..
Fiat Motors of North America, Inc., Fiat 850 and 124, 1970-74 model years 4546
Motor vehicle safety standards; exemption petitions, etc.:
Vespa of America Corp 4547

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Rules

Atlantic groundfish, financial aid program procedures, conditional fisheries 4494

NUCLEAR REGULATORY COMMISSION

Rules

Practice rules:
Domestic licensing proceedings; time provisions computation, clarification 4459

Notices

Applications, etc..
Arkansas Power & Light Co. (2 documents) 4543, 4544
Wisconsin Public Service Corp. et al 4544
Meetings; Sunshine Act (2 documents) 4555

PENSION POLICY, PRESIDENT'S COMMISSION

Proposed Rules

Privacy Act; implementation 4496

POSTAL RATE COMMISSION

Notices

Mail classification schedule, 1978; prehearing conference:
Parcel post proposal 4544

PUBLIC HEALTH SERVICE

Rules

Grants:
Dental auxiliaries; training programs (2 documents) 4475, 4478
Auxiliary dental team practice, multiple; training programs... 4471

RAILROAD RETIREMENT BOARD

Notices

Meetings; Sunshine Act 4556

SECURITIES AND EXCHANGE COMMISSION

Rules

Interpretative releases:
Management investment companies; registration and reporting system forms 4466

SOCIAL SECURITY NATIONAL COMMISSION

Notices

Meetings; Sunshine Act 4556

TEXTILE AGREEMENTS IMPLEMENTATION COMMITTEE

Notices

Wool and man-made fiber textile products from Romania; import restraint level 4523

TRANSPORTATION DEPARTMENT

See Coast Guard; Federal Aviation Administration; Federal Railroad Administration; National Highway Traffic Safety Administration; Urban Mass Transportation Administration.

TREASURY DEPARTMENT

Notices

Treasury notes of January 31, 1981; invitation for tenders 4548

URBAN MASS TRANSPORTATION ADMINISTRATION

Rules

Urbanized areas, reporting requirements; correction 4493

list of cfr parts affected in this issue

The following numerical guide is a list of the parts of each title of the Code of Federal Regulations affected by documents published in today's issue. A cumulative list of parts affected, covering the current month to date, follows beginning with the second issue of the month.

A Cumulative List of CFR Sections Affected is published separately at the end of each month. The guide lists the parts and sections affected by documents published since the revision date of each title.

1 CFR

PROPOSED RULES:
470 4496

7 CFR

1801 4431
1822 (3 documents) 4434, 4437
1861 (2 documents) 4435, 4437
1864 4437
1866 4437
1872 4437
1910 4431
1930 4437
1933 4438
1941 4437
1943 4437
1955 4437
1962 4437

PROPOSED RULES:
15b 4620

10 CFR

2 4459

PROPOSED RULES:
320 4632
420 4562

14 CFR

39 (3 documents) 4459-4461
71 (2 documents) 4462
73 4462

14 CFR—Continued

PROPOSED RULES:
91 4572

15 CFR

500 4462

16 CFR

13 4465

PROPOSED RULES:
13 (2 documents) 4497
455 4499

17 CFR

166 4465
239 4466
249 4466
274 4466

18 CFR

PROPOSED RULES:
285 4500

21 CFR

561 4467

24 CFR

1914 4468

32 CFR

364 4469
366 4470

33 CFR

126 4642
282 4504

42 CFR

57 (3 documents) 4471, 4475, 4478

43 CFR

PROPOSED RULES:
8370 4501

45 CFR

1061 4480

47 CFR

0 4485
73 4486
83 4488
87 (2 documents) 4489
90 4492

PROPOSED RULES:
73 (2 documents) 4501, 4502
97 4516

49 CFR

523 4492
630 4493
1000 4606

50 CFR

251 4494

reminders

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

Rules Going Into Effect Today

Commerce/NOAA—Atlantic herring; fishery management plan; vessel permits 60474; 12-28-78

EPA—Air pollution control, State implementation plans:
California (5 documents) 59487-59491; 12-21-78
Maryland 59492; 12-21-78

FCC—FM broadcast stations; table of assignments: Fairfield, Ark 59069; 12-19-78
FM broadcast stations; table of assignments: Klamath Falls, Oreg. and Weed, Calif 59068; 12-19-78
Private land mobile radio services; simplifying certain procedures for filing applications 59070; 12-19-78

HUD/FHC—Loose fill insulation pneumatically installed (dry) in wall cavities; requirements 59838; 12-22-78

Interior—Consulting services and management studies and services; contracts 59842; 12-22-78

ICC—Practice rules; price competition among practitioners 59502; 12-21-78

List of Public Laws

NOTE: No public laws have been received by the Office of the Federal Register for assignment of law numbers and inclusion in this listing.

CUMULATIVE LIST OF CFR PARTS AFFECTED DURING JANUARY

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during January.

1 CFR

Ch. I 5
305 1357

PROPOSED RULES:

470 4496

3 CFR

MEMORANDUMS:

December 30, 1978 1075
January 4, 1979 1933

PROCLAMATIONS:

4547 (See Proc. 4631) 1
4631 1
4632 1697
4633 2563

EXECUTIVE ORDERS:

November 12, 1838 (Revoked in part by PLO 5655) 1980
8743 (Amended by EO 12107) 1055
8744 (Amended by EO 12107) 1055
9230 (Amended by EO 12107) 1055
9384 (Revoked by EO 12113) 1953
9712 (Amended by EO 12107) 1055
9830 (Amended by EO 12107) 1055
9932 (Amended by EO 12107) 1055
9961 (Amended by EO 12107) 1055
10000 (Amended by EO 12107) 1055
10242 (Amended by EO 12107) 1055
10422 (Amended by EO 12107) 1055
10450 (Amended by EO 12107) 1055
10459 (Amended by EO 12107) 1055
10530 (Amended by EO 12107) 1055
10540 (Amended by EO 12107) 1055
10549 (Revoked by EO 12107) 1055
10550 (Amended by EO 12107) 1055
10552 (Amended by EO 12107) 1055
10556 (Amended by EO 12107) 1055
10561 (Revoked by EO 12107) 1055
10577 (Amended by EO 12107) 1055
10641 (Amended by EO 12107) 1055
10647 (Amended by EO 12107) 1055
10717 (Amended by EO 12107) 1055
10763 (Amended by EO 12107) 1055
10774 (Amended by EO 12107) 1055
10804 (Amended by EO 12107) 1055
10826 (Amended by EO 12107) 1055
10880 (Amended by EO 12107) 1055
10903 (Amended by EO 12107) 1055
10927 (Amended by EO 12107) 1055
10973 (Amended by EO 12107) 1055
10982 (Amended by EO 12107) 1055
11022 (Amended by EO 12106) 1053
11103 (Amended by EO 12107) 1055
11171 (Amended by EO 12107) 1055
11183 (Amended by EO 12107) 1055
11203 (Amended by EO 12107) 1055
11219 (Amended by EO 12107) 1055
11222 (Amended by EO 12107) 1055
11228 (Amended by EO 12107) 1055
11264 (Amended by EO 12107) 1055
11315 (Amended by EO 12107) 1055
11348 (Amended by EO 12107) 1055
11355 (Amended by EO 12107) 1055
11422 (Amended by EO 12107) 1055

3 CFR—Continued

11434 (Amended by EO 12107) 1055
11438 (Amended by EO 12107) 1055
11451 (Amended by EO 12107) 1055
11478 (Amended by EO 12106) 1053
11480 (Amended by EO 12106) 1053
11482 (Revoked by EO 12110) 1069
11490 (Amended by EO 12107) 1055
11491 (Amended by EO 12107) 1055
11512 (Amended by EO 12107) 1055
11521 (Amended by EO 12107) 1055
11534 (Revoked by EO 12110) 1069
11552 (Amended by EO 12107) 1055
11561 (Amended by EO 12107) 1055
11570 (Amended by EO 12107) 1055
11579 (Amended by EO 12107) 1055
11589 (Amended by EO 12107) 1055
11603 (Amended by EO 12107) 1055
11609 (Amended by EO 12107) 1055
11636 (Amended by EO 12107) 1055
11639 (Amended by EO 12107) 1055
11648 (Amended by EO 12107) 1055
11721 (Amended by EO 12107) 1055
11744 (Amended by EO 12107) 1055
11787 (Amended by EO 12107) 1055
11817 (Amended by EO 12107) 1055
11830 (Amended by EO 12106) 1055
11849 (Revoked by EO 12110) 1069
11890 (Amended by EO 12107) 1055
11895 (Amended by EO 12107) 1055
11899 (Amended by EO 12107) 1055
11935 (Amended by EO 12107) 1055
11938 (Amended by EO 12107) 1055
11948 (Superseded by EO 12110) 1069
11955 (Amended by EO 12107) 1055
11971 (Revoked by EO 12110) 1069
11973 (Revoked by EO 12110) 1069
11998 (Revoked by EO 12110) 1069
12004 (Amended by EO 12107) 1055
12008 (Amended by EO 12107) 1055
12014 (Amended by EO 12107) 1055
12015 (Amended by EO 12107) 1055
12027 (Amended by EO 12107) 1055
12043 (Amended by EO 12107) 1055
12049 (Amended by EO 12107) 1055
12067 (Amended by EO 12107) 1055
12070 (Amended by EO 12107) 1055
12076 (Amended by EO 12111) 1071
12089 (Amended by EO 12107) 1055
12105 (Amended by EO 12107) 1055
12106 1053
12107 1055
12108 1065
12109 1067
12110 1069
12111 1071
12112 1073
12113 1955
12114 1957

5 CFR

Ch. I 3440, 3943
210 3440
213 ..... 1359-1362, 1963, 2565, 3943
307 3943
308 3446
315 3441

5 CFR—Continued

316 3943
330 3945
430 3447
432 3442
550 ..... 2565, 3945
752 3444
1200 3946
1201 3946
1202 3954
1203 3954
1204 3954
1205 3954
1206 3954
2400 5

6 CFR

705 1077
706 ..... 1346, 1963

7 CFR

2 2565
15 1362
210 1362
225 ..... 8, 3955
227 3955
245 1363
250 3955
354 1364
401 ..... 29, 749
402 1963
403 1964
404 1964
406 1965
408 1965
409 1966
410 1967
411 1967
412 1365
413 1968
414 1968
417 1969
722 2567
795 2567
907 ..... 1077, 2353, 3669
910 ..... 30, 1366, 2567, 3956
928 ..... 30, 3669
971 2165
1421 ..... 2353, 3454, 3456, 3459, 3461, 3463, 3465, 3670, 3673, 3680, 3685, 3691, 3692, 3697
1427 3466
1701 1366
1801 4431
1804 1701
1809 1701
1822 ..... 1701, 4434, 4437
1861 ..... 1702, 4435, 4437
1864 4437
1866 4437
1872 ..... 1702, 4437
1904 1701
1910 4431
1930 4437
1933 4435

7 CFR—Continued

1941 4437
1943 4437
1945 1702
1955 4437
1962 4437
1980 1720
2024 1721
2880 3253

PROPOSED RULES:

Ch. IX 1750
15b 4620
210 1379
246 2114
989 47
1062 1741
1065 3989
1421 ..... 1116, 1380
1446 1380
1701 1381

9 CFR

11 1558
73 ..... 1368, 3956
79 1368
94 2568

PROPOSED RULES:

91 2600
92 1552
445 3719
447 3719

10 CFR

2 4459
20 2569
21 2569
35 1722
73 2569
205 3021
210 3936
211 ..... 3418, 3467, 3936
212 ..... 3256, 3942
430 1970
440 31
515 761
1004 1908

PROPOSED RULES:

Ch. I 2158
50 3719
140 1751
205 4346
210 4346
211 892
212 ..... 892, 1888
213 1896
320 4632
420 4562
430 ..... 49, 2399
455 1580
500 3721
501 3721
502 3721
503 3721
505 3721
508 1694
790 1568
791 4418

12 CFR

1 762
226 ..... 767, 3257
262 3957
265 1725
304 3258
545 3470

PROPOSED RULES:

215 893
226 1116
505 2178
701 ..... 60, 63, 895, 3722

13 CFR

121 ..... 34, 1725
130 1369
305 3959

14 CFR

21 2362
27 2362
29 2362
36 3031
39 ..... 36, 37, 1078-1082, 1726, 2363, 2367, 2377, 3032, 3701, 3703, 4459-4461
47 ..... 38, 1726
71 ..... 39, 40, 300, 1085-1087, 1726, 3032, 3704, 4462
73 ..... 1088, 4462
75 ..... 40, 300
91 2362
97 ..... 41, 2378
241 ..... 1970, 3471
291 3960
250 2165
385 3704
1216 1089

PROPOSED RULES:

1 1322
27 3250
29 3250
39 ..... 1120, 1741, 2399
43 3250
47 63
61 3250
71 ..... 68, 1120-1122, 1322, 3723
73 68
91 ..... 1322, 3250, 4572
105 1322
121 3250
127 3250
133 3250
135 3250
208 2179
221 1381
239 896
288 2179
302 1381
399 ..... 1381, 2179, 3723

15 CFR

30 1971
371 ..... 43, 1093
373 ..... 1095, 1971
374 44
376 1099
377 ..... 44, 1973
500 4462
930 3705

15 CFR—Continued

PROPOSED RULES:

Subtitle A 896
931 3230

16 CFR

13 ..... 3033, 3259, 4465
456 2569
600 3259
1302 792
1303 792
1630 2168

PROPOSED RULES:

1 1753
13 ..... 899, 2182, 2600, 3989, 4497
419 69
450 1123
455 ..... 914, 4499
461 ..... 2602, 3495
1209 3989
1608 1981
1610 1981
1611 1981

17 CFR

1 ..... 1918, 3706
4 ..... 1918, 3706
166 4465
200 3473
210 3960
239 4466
240 ..... 1727, 1973, 1974, 2144, 3033
249 ..... 3033, 4466
274 4466

PROPOSED RULES:

240 ..... 1754, 1981
270 3376

18 CFR

1 2380
154 1100
286 2381

PROPOSED RULES:

281 ..... 3052, 3725
285 4500
708 2956

19 CFR

159 ..... 1372, 1728, 2570, 3473-3478

20 CFR

651 1688
654 1688

PROPOSED RULES:

675 4366
676 4372
677 4402
678 4410
679 4412

21 CFR

2 3960
14 ..... 1975, 2571
81 45
101 3963
131 3964
182 3963
184 3963
436 1374
455 1374
510 3966

21 CFR—Continued

520 ..... 1375, 3966
524 3966
546 1976
561 4467
601 1544
610 1544
1308 2169

PROPOSED RULES:

20 2932
109 3990
145 1983
175 ..... 69, 3993
189 3993
310 3994
510 1983
522 ..... 1381, 3306
556 1381

22 CFR

42 1730

PROPOSED RULES:

211 1123

23 CFR

637 2170

PROPOSED RULES:

420 2400
635 69

24 CFR

10 1606
200 ..... 2383, 2384, 3035
203 1336
300 ..... 3035, 3036
886 1731
888 ..... 2571, 3908, 3912
891 3036
1914 ..... 792, 2572, 2574, 4468
1915 ..... 794, 801, 815
1917 ..... 841–870, 1976, 1977, 2184, 2185, 3037–3047, 3261–3273, 3479–3490

PROPOSED RULES:

805 2502
865 1600
1917 ..... 1134–1177, 1382–1411, 1985, 3496–3512

25 CFR

251 46

26 CFR

1 ..... 870, 1102, 1104, 1376, 4128
5 ..... 871, 1106
9 4144
31 1109
37 1110
54 1978
141 1978

PROPOSED RULES:

1 ..... 1178, 1180, 1412, 1985, 2602, 4148
7 1985
31 1181

27 CFR

PROPOSED RULES:

4 2603
5 2603
7 2603

28 CFR

0 3273
2 ..... 3404, 3405, 3407, 3408

PROPOSED RULES:

2 3306
511 2978
512 2978
513 2978
522 2978
524 2978
527 2978
540 2978
543 2978
544 2978
545 2978
546 2978
549 2978
550 2978
551 2978
552 2978
570 2978
571 2978
572 2978

29 CFR

1601 4429
1608 4422
2400 3967
2610 3971
2701 2575

PROPOSED RULES:

1913 3994
1202 1181
1206 1181
1601 3513
1910 2604
2200 1762
2201 1762

30 CFR

48 1979

PROPOSED RULES:

Ch. VII 1355, 1989
49 1536
55 2604
56 2604
57 2604
250 3513
252 3524

31 CFR

316 3372
332 3364

PROPOSED RULES:

1 1414

32 CFR

45 3972
166 3049
364 4469
366 4470
644 3168
2103 2384

33 CFR

117 ..... 1112, 2386
126 4642
282 4594

33 CFR—Continued

PROPOSED RULES:

110 2606
161 2401
165 3882

35 CFR

253 1731

36 CFR

1 3491
7 3491
21 2577

PROPOSED RULES:

219 2606
222 914
231 914

38 CFR

PROPOSED RULES:

21 1181

39 CFR

111 3050
224 2386

PROPOSED RULES:

111 3056
310 ..... 915, 1762
320 ..... 915, 1762
3001 2606

40 CFR

51 3274
60 ..... 2578, 3491
65 ..... 1377, 1731, 1732, 2387, 2388, 2579–2585, 3285–3287
86 2960
434 2586
1500 873
1501 873
1504 873
1506 874
1508 874

PROPOSED RULES:

51 2608
52 ..... 1189, 1989, 1990, 2614, 3739, 3740
65 ..... 1193–1199, 1415, 1416, 1762, 1764, 2402, 2615, 3057, 3527, 3528, 3996
81 2617
162 1991
180 ..... 1764, 3529, 3740
720 2242

41 CFR

Ch. 1 2388
Ch. 101 1378
9-1 2556
101-38 874
109-1 986
109-14 995
109-25 995
109-26 997
109-27 997
109-28 997
109-29 1002
109-30 1002
109-36 1002

41 CFR—Continued

109-38 1003
109-39 1016
109-42 1017
109-43 1018
109-44 1021
109-45 1022
109-46 1026
109-48 1026
109-50 1026
109-51 1029

PROPOSED RULES:

101-47 ..... 70, 3058

42 CFR

52h 3980
57 ..... 4471, 4475, 4478
405 ..... 2592, 2593, 3288, 3980, 3984
460 2594

PROPOSED RULES:

405 2618
476 3058

43 CFR

20 4320

PROPOSED RULES:

2740 2620
2910 2620
3800 2623
8370 4501

PUBLIC LAND ORDERS:

2720 1340
4100 2172
5043 (Revoked in part by PLO 5656) 3706
5655 1980
5656 3706

45 CFR

1061 4480
2012 2099

PROPOSED RULES:

Ch. I 3732
116 3530
116a 3530
116d 3530
122a 2403
123 3996
158 3530
160c 3996
161b 2403
161c 2404
161e 2404

45 CFR—Continued

PROPOSED RULES—Continued

161n 2404
162 1994
183 2404
184 3997
193 3997
205 2404
206 2404
1067 1200

46 CFR

34 2391
76 2392
95 2392
162 2393
167 2394
193 2394
530 2595

PROPOSED RULES:

251 3997
510 1418
531 1418
544 915

47 CFR

0 4485
1 3290
13 1733
73 ..... 1733, 1737, 1738, 3412, 3707, 4486
81 3290
83 ..... 3290, 4488
87 4489
90 4492

PROPOSED RULES:

Ch. I 3997
1 3307
15 ..... 924, 3656, 3660, 3661, 3663
18 3999
63 1764
64 1764
73 ..... 1765, 3732, 4501, 4502
90 3736
97 4516

48 CFR

PROPOSED RULES:

2 70
8 70
17 70

49 CFR

1 2395
171 3707
173 3707

49 CFR—Continued

178 1739
218 2174
523 4492
531 ..... 3708, 3710
630 4493
1000 4606
1033 ..... 874-879, 1739, 3711-3718
1041 3295
1047 3295
1056 ..... 879, 2595
1082 3295
1100 3987
1111 ..... 883, 2177
1201 3493
1249 1740
1253 2396
1322 2595

PROPOSED RULES:

Ch. II 925
Ch. X 1994, 3531
29 1765
127 1856
171 1879
172 ..... 1767, 1852
173 ..... 1767, 1852
174 1883
175 1883
176 1883
177 1886
178 1767
215 1419
531 3737
1001 3739
1100 2407
1201 1995
1207 2407
1240 2407

50 CFR

Ch. II 1113
17 3636
18 ..... 2540, 2597
20 2597
32 2396
216 2547
251 4494
260 3296
611 1115
651 ..... 885, 2397
671 1115

PROPOSED RULES:

20 2629
23 ..... 3384, 3385
26 1433
34 3999
285 1201
662 1434

FEDERAL REGISTER PAGES AND DATES—JANUARY

Pages	*Date*	*Pages*	*Date*	*Pages*	*Date*
1-748	Jan. 2	1955-2163	9	3253-3449	16
749-1070	3	2165-2351	10	3451-3668	17
1071-1355	4	2353-2562	11	3669-3942	18
1357-1696	5	2563-3019	12	3943-4430	19
1697-1954	8	3021-3252	15	4431-4644	22

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.

[3410-07-M]

Title 7—Agriculture

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER A—GENERAL REGULATIONS

SUBCHAPTER I—APPLICATIONS

[FmHA Instruction 1910-B]

PART 1801—RECEIVING AND PROCESSING APPLICATIONS

PART 1910—GENERAL

Subpart B—Credit Reports

Subpart B—Credit Reports (Individual)

AMENDMENT

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations to redesignate and expand regulations for ordering credit reports for individual loan applicants and borrowers. The action is taken to update the regulation. The intended effect of the action is to provide procedures for ordering credit reports consistent with recent changes in the contracts with credit reporting companies.

EFFECTIVE DATE: January 22, 1979.

FOR FURTHER INFORMATION CONTACT:

Frank Colon, (202) 447-4808.

SUPPLEMENTARY INFORMATION: The FmHA amends its regulations to redesignate Subpart B, "Credit Reports," of Part 1801, "Receiving and Processing Applications," of Subchapter A, "General Regulations," as a new Subpart B, "Credit Reports (Individual)," of Part 1910, "General," of Subchapter I, "Applications," Chapter XVIII, Title 7 of the Code of Federal Regulations. The new Subpart B of Part 1910 expands the summary previously published in the FEDERAL REGISTER. It also provides all pertinent information consistent with the current fiscal year contracts for credit reports services for individual loan applicants and borrowers.

It is the policy of this Department that rules pertaining to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This new Subpart B of Part 1910, however, is not published for proposed rulemaking since the purpose of this amendment is to redesignate and expand the regulation and to provide the Agency's field staff with information consistent with the provisions of existing contracts. Exhibit A is not published as the information is extracted from the list of contracts let by the Department of Housing and Urban Development. However, this list of credit report contractors is available in any FmHA office.

Accordingly, Chapter XVIII is amended as follows:

1. Part 1801 and Subpart B are hereby deleted and reserved.

2. A new Subpart B is added to Part 1910 and reads as follows:

Subpart B—Credit Reports (Individual)

TABLE OF CONTENTS

Sec.
1910.51 Purpose.
1910.52 General.
1910.53 Policy.
1910.54 Definitions.
1910.55 Contractor bureau requirements.
1910.56-1910.57 [Reserved]
1910.58 When to order credit reports.
1910.59 Circumstances requiring credit reports.
1910.60 Processing order tickets.
1910.61 Invoicing and payments.
1910.62 Loan documentation procedure.
1910.63 Unsatisfactory contractor performance.
1910.64 Confidential handling of credit reports.
1910.65-1910.100 [Reserved]
Exhibit A—Credit Report Contractors, Current Prices, and Geographical Coverage (Available in any FmHA office).[1]
Exhibit B—Request for Factual Data Report [1]
Exhibit C—Factual Data Report on Borrower [1]
Exhibit D—Sample Format, Confidential Report on Computer Form 100 [1]
Exhibit E—Sample Format, Confidential Report on Computer Form 2000.[1]

[1]Exhibit A—Credit Report Contractors, Current Prices, and Geographical Coverage, Exhibit B—Request for Factual Data Report, Exhibit C—Factual Data Report on Borrower, Exhibit D—Confidential Report on Computer Form 100, and Exhibit E—Confidential Report on Computer Form 2000 are filed as part of the original document and are available at any FmHA office.

PART 1910—GENERAL

Subpart B—Credit Reports (Individual)

§ 1910.51 Purpose

This Subpart prescribes the policies and procedures for obtaining individual type credit reports. Credit reports will be ordered for servicing existing loans or to determine the eligibility of applicants requesting Farmers Home Administration (FmHA) insured loans.

§ 1910.52 General.

(a) FmHA has joined with other Government agencies in obtaining credit reports from credit reporting companies which are under contract with the Department of Housing and Urban Development (HUD), Federal Housing Administration. HUD issues the invitation for bids and makes contract awards in behalf of HUD, Veterans Administration (VA), and FmHA on a fiscal year basis. While many contracts are let by HUD, not all are used by FmHA, therefore, County Supervisors are cautioned to order only from those firms listed in Exhibit A of this Subpart. Furthermore, special reports, supplemental employment reports, commercial credit reports, and special services, such as authorizing a contractor to obtain credit information by telephone, are not authorized.

(b) Credit reports may be ordered under the provisions of this Subpart only by FmHA employees.

(c) Exhibit A of this Subpart lists the names and addresses of credit bureaus (contractors), selected by FmHA from the HUD list of contractors, to be used for ordering credit reports, the areas covered by each, and the applicable fees.

(d) Regardless of the amount of the fee charged the Government, the cost charged the approved applicant for each credit report is $12. (This figure will not be used in verifying amounts invoiced.)

(e) The Finance Office will furnish each County and State Office with address rosters of the Credit Bureau Re-

ports, Inc., (CBR) affiliate bureaus serving their areas. Addresses of CBR affiliates in other states may be requested from the National Office when needed.

(f) Whenever Exhibit A does not list a contractor for a particular town or area, § 1910.4 of Subpart A of this Part will be followed for investigating the loan application or the County Supervisor may request, through the State Director, that the National Office establish a contract source for that town or area.

(g) Exhibit B is a sample format of an order ticket which is printed by and at the expense of the contractor and supplied to County Offices. CBR order ticket forms are supplied to the County Office through the Finance Office. If additional CBR order tickets are needed, they may be requisitioned from the Finance Office in accordance with Subpart C, Part 2024, Subchapter R of this Chapter (FmHA Instruction 2024-C). Order ticket forms of firms other than CBR may be ordered from the nearest local office of the contractor. Order tickets of one contractor must not be used to order credit reports from another. Only FmHA employees may use these order tickets. They will not be supplied to brokers, lenders, packagers, etc.

(h) Exhibits C, D, and E show the type of credit information that contractors must furnish on manual and computerized forms.

§ 1910.53 Policy.

A credit report will be obtained whenever the County Supervisor determines that credit information from a credit report would be helpful or needed to determine the eligibility of a loan applicant. The need for a credit report will be determined in accordance § 1910.58 of this Subpart, and § 1822.12(d), Subpart A, Part 1822, Subchapter B of this Chapter (paragraph XII D of FmHA Instruction 444.1), concerning a co-signer. Whenever possible, an "individual" credit report will be ordered as opposed to the more costly "joint" report.

§ 1910.54 Definitions.

(a) "Report period" is the 2-year period before the date the credit report is prepared.

(b) "Basic report" is a report that does not include supplemental or antecedent information and which contains all credit and public record information available covering no less than a two year period.

(c) "Supplemental Credit Reference Report" is a report which is required when the applicant lives in the bureau's reporting area but, because of shopping patterns, credit references are located in another bureau's reporting area.

(d) "Antecedent Report" is a previous residence report required when the minimum two year up-to-date credit coverage is not available in the bureau's reporting territory. The report contains information from another bureau located in an area outside of the area covered by the reporting bureau.

(e) "Individual Report" is a report providing information on one person only.

(f) "Joint Report" is a report providing information on both spouses (partners in marriage).

(g) "Order ticket" is the form used for ordering a credit report.

(h) "Special services" are any services which are not included in § 1910.54 (b), (c), and (d) of this Subpart and which will result in additional cost.

(i) For the purpose of this regulation, "Repository" is an entity engaged in gathering, recording, and updating information relative to the credit history of individuals in an area. The area covered may encompass several towns, cities, counties, or parts of counties.

§ 1910.55 Contractor bureau requirements.

(a) Unless the contract states otherwise, the contractor must provide *ALL* credit and public record information available for the report period as defined in § 1910.54(a) of this Subpart.

(b) The contractor must provide all information specified in Exhibit C, D, or E, except that employment information need not be reported.

(c) The contractor must make appropriate certifications regarding check and/or source of public records reporting and credit record history.

(d) The trade or credit history portion of the report must cover a minimum of two years brought up-to-date. Accounts must be rated to indicate past and current payment records and original amount, monthly installment, and unpaid balance of the debt. All additional available account information must be furnished. The contractor must clear bank, savings and loan, and credit union accounts and clear all local references indicating the date the account was cleared. The contractor should contact the applicant for interview purposes to obtain any additional information necessary to provide a quality report.

(e) Public record information must be obtained by special check of public records or, as an equivalent, from accumulated and regularly filed records of a qualified legal reporting service. All items of public record information must be reported except that adverse items are to be excluded as provided under paragraph 605 of the Fair Credit Reporting Act. For purposes of these contracts all adverse items may be excluded which outdate the report by seven years.

(f) Reports which do not require antecedent information shall be delivered by the contractor within eight working days of receipt of the order or twelve working days when antecedent information is required.

§ 1910.56–1910.57 [Reserved]

§ 1910.58 When to order credit reports.

The County Supervisor will determine the need and be responsible for ordering credit reports. Credit reports will be ordered from the contract source serving the area in which the applicant resides *when available information indicates that the applicant will likely be eligible for a loan,* except that reports usually will not be ordered when:

(a) A currently indebted FmHA borrower applies for a loan.

(b) An applicant resides in a remote area from which a credit report would be ineffective.

(c) The applicant's needs can be met with a small loan and the County Supervisor determines on the basis of available information that the applicant likely does not have debts other than those reported on the application.

(d) A current and reliable credit report has been delivered directly to FmHA by the reporting bureau rather than a third party. Packagers of Section 502 Rural Housing (RH) loan applications *will not* be encouraged to provide credit reports. Packagers may, however, at their discretion, order a credit report to be mailed directly to the FmHA office by the credit report source but FmHA will not pay for or collect fees from an applicant to pay for the report ordered by a packager.

(e) Available information indicates that a loan will not be made.

§ 1910.59 Circumstances requiring credit reports.

Pursuant to the Equal Credit Opportunity Act (ECOA), credit bureaus will maintain credit information in three different forms on a married couple: individual accounts on each spouse, joint accounts covering both spouses, and undesignated accounts (those accounts not designated by the credit grantor as either individual or joint accounts). The order ticket therefore, must designate the individual(s) on whom the report is to be prepared.

(a) "Individual" credit report: An "individual" report will be ordered in all cases other than that described in § 1910.59(b) of this Subpart. A separate order ticket will be prepared for each person for whom an "individual" report is requested.

(b) "Joint" credit report: When applicants are husband and wife, a

"joint" report will be ordered if the income of both is needed to make a sound loan.

§ 1910.60 Processing order tickets.

Order tickets will be processed as follows:

(a) An original and 2 copies will be prepared, except that an extra copy will be furnished when requested by a credit bureau. The original and copy(ies) will be sent to the credit bureau servicing the place of residence of the applicant and 1 copy will be kept in the applicant's file.

(b) All appropriate entries on the order ticket will be completed. Extra entries for "special services", which would result in additional costs, are prohibited.

(c) The "former names," "address" and "how long residence" blocks must be completed. If an applicant has resided less than two years at the present address, the previous address block must be completed so that the contractor will know where to obtain an antecedent report.

(d) USDA/FmHA should appear on the order ticket with State and County Office Code, applicant's social security number, if available, and loan fund code. Loan fund codes are listed in Exhibit A of FmHA Instruction 450.1 (available in any FmHA Office). If an applicant is to receive more than one type of loan, use the loan fund code for the largest loan.

§ 1910.61 Invoicing and payments.

(a) Optional procedure #1:

(1) Contractor returns a copy of the order ticket (with billing detail block filled in) to the County Office with each credit report.

(2) County Office personnel verify the billing data against the schedule of charges shown in Exhibit A of this Subpart. If the report is acceptable and the billing data correct, the "Receipt" certification block on the order ticket is completed and it is sent to the Finance Office.

(3) The credit report approval date and cost is posted to the order ticket copy kept in the applicant's file.

(4) Contractor sends a monthly statement to the Finance Office with one copy of each order ticket attached. Through a computer process, these order tickets are matched with those certified as received (mentioned in paragraph (a)(2) of this section) and payment is made accordingly.

(b) Optional procedure #2:

(1) Contractor sends a monthly invoice to the County Office with a copy of the order ticket attached to support each credit report charge.

(2) County Office personnel verify the billing data against the schedule of charges shown in Exhibit A of this Subpart. If acceptable, a stamp or hand written certification and signature is placed on the invoice to the effect that services were satisfactorily rendered and that it is approved for payment. The invoice with attachments is then sent to the Finance Office.

(3) The credit report approval date and cost is posted to the order ticket copy kept in the applicant's file.

§ 1910.62 Loan Documentation procedure.

(a) When a loan is approved and a loan check will be issued by the Finance Office, a $12.00 charge will be included in the loan if only one credit report was ordered and received. The "YES" block will be checked in space 12 of Form 440-1, "Request for Obligation of Funds." If two or more credit reports were ordered and received, no funds will be included in the loan for credit reports and the "NO" block will be checked in space 12 of Form FmHA 440-1. In this case the County Supervisor will also indicate in the instructions to the closing official the amount to be collected for credit reports ($12 per credit report) from the applicant at loan closing. The credit report fees collected will be promptly forwarded to the County Supervisor to be remitted to the Finance Office in accordance with § 1910.62(d) of this Subpart. When an applicant receives more than one loan, the County Supervisor will indicate that a credit report was ordered on only the loan fund analysis form that coincides with the type of loan that was indicated on the original order ticket. When Form FmHA 440-41, "Disclosure Statement for Loans Secured by Real Estate," Form FmHA 440-58, "Estimate of Settlement Costs," or Form FmHA 440-59, "Settlement Statement," is required, the County Supervisor will enter the cost of the credit report on these forms in accordance with instructions contained in the appropriate Forms Manual Issue (FMI).

(b) When a loan is approved and a loan check will not be issued by the Finance Office, the cost to the applicant for the credit report ($12.00 per credit report) will be collected at the time of loan closing by the designated loan closing official. In such cases, the credit report fee will be handled in accordance with § 1910.62(d) of this Subpart.

(c) When a loan is not approved, when an approved loan will never be closed, or when a servicing case is involved, the credit report fee will be paid by the Finance Office.

(d) Any funds collected for the payment of credit reports will be handled in accordance with FmHA Instruction 451.2 (available in any FmHA Office). The loan fund code should appear on the "Schedule of Remittances." Loan fund codes are listed in Exhibit A of FmHA Instruction 450.1. Such payments will not reduce the amount due on the borrower's loan indebtedness.

§ 1910.63 Unsatisfactory contractor performance.

Late, incomplete, or inadequate credit reports should be brought to the attention of the Contracting Officer in the Business Services Division of the National Office. If preferred, the County Supervisor may, through the State Office, notify the credit bureau's parent office of any unsatisfactory performance of their local bureau.

§ 1910.64 Confidential handling of credit reports.

Under the terms of current contracts, a credit report shall be furnished to FmHA County Supervisors upon request. The confidential information furnished to FmHA shall be used as an aid in conducting business and is based on information obtained by the credit bureau from sources deemed reliable. Disclosures of information contained in the credit report to the consumer will be made by the credit bureau making the report as required by the Fair Credit Reporting Act, Public Law 91-508, except that FmHA must make credit reports available to the subject of the report in response to a request made under the Privacy Act of 1974. Requests from credit parties, including credit bureaus, concerning information about FmHA borrowers or applicants will be handled in accordance with the provisions of FmHA Instruction 2018-F.

§ 1910.65-1910.100 [Reserved]

NOTE.—Exhibit A—Credit Report Contractors, Current Prices, and Geographical Coverage, Exhibit B—Request for Factual Data Report, Exhibit C—Factual Data Report on Borrower, Exhibit D—Confidential Report on Computer Form 100, and Exhibit E—Confidential Report on Computer Form 2000 are filed as part of the original document and are available at any FmHA office.

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

Pursuant to the National Environmental Policy Act of 1969 (424 SC 4321 et seq.), the Farmers Home Administration has prepared an Environmental Impact Assessment for these amended rules and has determined that they do not constitute a major Federal action significantly affecting the quality of the human environment, and an Environmental Impact Statement is not required.

(7 U.S.C. 1989; 5 U.S.C. 301, delegation of authority by the Secretary of Agriculture, 38 FR 14944-14948, 7 CFR 2.23; delegation of authority by the Secretary for Rural Development, 38 FR 14944-14952, 7 CFR 2.70.)

Dated: December 14, 1978.

A. JENNINGS ORR,
Acting Administrator,
Farmers Home Administration.

[FR Doc.79-2116 Filed 1-19-79; 8:45 am]

[3410-07-M]

SUBCHAPTER B—LOANS AND GRANTS PRIMARILY FOR REAL ESTATE PURPOSES

[FmHA Instruction 444.5]

PART 1822—RURAL HOUSING LOANS AND GRANTS

Subpart D—Rural Rental Housing Loan Policies, Procedures, and Authorizations

AMENDMENT

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding the obligation of loan funds for Rural Rental Housing loans. The intended effect of this action is to decrease the amount of time involved in obligating loan funds for rental projects. In doing this a more accurate status of obligations will be available for planning purposes. This action is taken as a part of an administrative action regarding loan obligations.

EFFECTIVE DATE: January 21, 1979.

FOR FURTHER INFORMATION CONTACT:

Paul R. Conn, (202) 447-7207.

SUPPLEMENTARY INFORMATION: Various sections of Subpart D, Part 1822, Chapter XVIII, Title 7 in the Code of Federal Regulations are amended to use sexually neutral terms, connect references, provide for the FmHA's recent internal reorganization and allow the State Director to telephone the Finance Office Check Request Station and request that loan funds for a particular project be obligated. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption of 5 U.S.C. 553 with respect to such rules. This amendment, however, is being published effective as a final rule. A copy of the Impact Statement prepared by FmHA is available at the FmHA National Office in Washington, DC. Publication for comment is unnecessary because this amendment is revising the internal procedure for the obligation of funds. This determination was made by Russell Gibler, Loan Officer, Room 5336.

Therefore, various §§ of Part 1822, Subpart D are amended as follows:

§ 1822.93 [Amended]

1. In § 1822.93, paragraph (a), line 4, change "Subpart B of Part 1810" to "Part 1901, Subpart A."

2. In § 1822.93, paragraphs (b)(2)(i), (i)(A), (B) and (C) are amended and (b)(2)(i)(D), (E) and (F) are added and read as follows:

§ 1822.93 Loan approval.

* * * * *

(b) *Loan approval action.*

* * * * *

(2) *Approval or disapproval of a loan.*

(i) *Approval.* When a loan is approved:

(A) The approval official will prepare and sign Form FmHA 440-1 in an original and two copies. The State Director or a designee will telephone the Finance Office Check Request Station requesting that loan and/or grant funds for a particular project be obligated.

(B) Immediately after contacting the Finance Office, the requesting official will furnish the requesting office's security identification code. Failure to furnish the security code will result in the rejection of the request for obligation. After the security code is furnished, all information contained on Form FmHA 440-1 will be furnished the Finance Office. Upon receipt of the telephone request for obligation of funds, the Finance Office will record all information necessary to process the request for obligation in addition to the date and time of request.

(C) The individual making the request will record the date and time of request and sign Form FmHA 440-1 in section 37.

(D) The Finance Office will terminally process telephone obligation requests. Those requests for obligation received before 2:30 p.m. Central Time will be processed on the date of the request. Requests received after 2:30 p.m. Central Time to the extent possible will be processed on the date received; however, there may be instances, in which a request will be processed on the next working day.

(E) Each working day the Finance will notify the State Office by telephone of all projects for which funds were reserved during the previous night's processing cycle and the date of obligation. If funds cannot be reserved for a project, the Finance Office will notify the State Office that funds are not available within the State allocation. The obligation date will be 6 working days from the date the request for obligation is processed in the Finance Office. The Finance Office will mail to the State Offices Form FmHA 440-57, "Acknowledgment of Obligated Funds/Check Request," confirming the reservation of funds with the obligation date inserted as required by item No. 9 on the FMI for Form FmHA 440-57.

(F) After notification by the Finance Office that the funds have been reserved, the original only of Form FmHA 442-14 will be mailed to the Finance Office. Forms FmHA 440-1 for those obligations requested by telephone *will not* be mailed to the Finance Office. Immediately after notification by telephone of the reservation of funds for not-for-profit organizations and public bodies, the State Director will call the Information Division in the National Office as required by FmHA Instruction 2015-C. Notice of approval to the applicant will be accomplished by mailing the applicant's signed copy of Form 440-1 on the obligation date. The State Director or the State Director's designee will record the actual date of application notification on the original of Form FmHA 440-1 and include the original of the form as a permanent part of the County Office project file with a copy in the State Office file.

3. In § 1822.93, paragraph (b)(2)(ii), lines 6 and 7, change "County Supervisor" to "District Director."

4. In § 1822.93, paragraph (b)(3)(i), lines 2 and 3 delete the phrase "and Form FmHA 440-1, (copy)." and change the comma after "(original)" in line 2 to a period.

5. In § 1822.93, paragraph (b)(3)(iii), line 1, change "County" to "District."

(42 U.S.C. 1480; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70)

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

Dated: January 10, 1979.

GORDON CAVANAUGH,
Administrator,
Farmers Home Administration.

[FR Doc. 79-2161 Filed 1-19-79; 8:45 am]

[3410-07-M]

[FmHA Instruction 444.8]

PART 1822—RURAL HOUSING LOANS AND GRANTS

Subpart G—Rural Housing Site Loan Policies, Procedures, and Authorizations

AMENDMENT

AGENCY: Farmers Home Administration, USDA.

ACTION: Final Rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding the obligation of loan funds for Rural Housing Site loans. The intended effect of this action is to decrease the amount of time involved in obligating loan funds for rural housing site projects. In doing this a more accurate status of obligations will be available for planning purposes. This action is taken as a result of an administrative improvement to the obligation process.

EFFECTIVE DATE: January 21, 1979.

FOR FURTHER INFORMATION CONTACT:

Paul R. Conn, (202) 447-7207.

SUPPLEMENTARY INFORMATION: §§ 1822.271 and 1822.272 of Subpart G, Part 1822, Chapter XVIII of Title 7 in the Code of Federal Regulations are amended to use sexually neutral terms, connect references, provide for FmHA's internal reorganization and allow the State Director to telephone the Finance Office Check Request Station and request that loan funds for a particular project be obligated and to make other additional changes. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption of 5 U.S.C. 553 with respect to such rules. This amendment, however, is being published effective as a final rule. A copy of the Impact Statement prepared by FmHA is available at the FmHA National Office in Washington, D.C. Publication for comment is unnecessary because this amendment is reviewing the internal procedure for the obligation of funds. This determination was made by Russell Gibler, Loan Officer, Room 5331.

As amended § 1822.271 reads as follows:

§ 1822.271 [Amended]

1. In § 1822.271, paragraph (f), line 4, change the first two words, "County Supervisor's" to "District Director's."

2. In § 1822.271, paragraph (g)(2), lines 9 and 10, delete the words "he may have."

3. In § 1822.271, paragraph (g)(3), line 4, change "County Supervisor with his" to "District Director with any."

4. In § 1822.271, paragraph (g)(4), line 2, change "him" to "The State Director."

5. In § 1822.271, paragraph (g)(5), lines 4 and 5, change "County Supervisor" to "District Director."

6. § 1822.272 is revised to read:

§ 1822.272 Approval or disapproval of a loan.

The provisions of paragraph (b)(2) of § 1822.93 Subpart D of this Part will be followed.

(42 U.S.C. 1480; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70)

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

Dated: January 10, 1979.

GORDON CAVANAUGH,
Administrator,
Farmers Home Administration.

[FR Doc. 79-2162 Filed 1-19-79; 8:45 am]

[3410-07-M]

SUBCHAPTER E—ACCOUNT SERVICING

[FmHA Instructions 451.3 and 451.5]

PART 1861—ROUTINE

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration amends its regulations regarding the servicing of group type loans. The intended effect of this action is to consolidate and reduce the number of forms required to service loans. This action is taken as a result of an administrative decision.

EFFECTIVE DATE: January 22, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Lynn L. Pickinpaugh, 202-447-5044.

SUPPLEMENTARY INFORMATION: The Farmers Home Administration amends various sections of Subparts C and F of Part 1861, Chapter XVIII, Title 7 in the Code of Federal Regulations by changing the number and title of an FmHA Form used for servicing loans, and by changing a reference from one Part to another. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This regulation, however, is being published as a final rule. A copy of the Impact Statement prepared by FmHA is available in the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room, 6316, Washington, D.C. 20250.

Publication for comment is unnecessary because the actions taken are simply the substitution of one form number for another and a change in reference from one Part to another. Also, because the change of forms will increase service to the public and decrease the Government's cost of providing this service, any delay in changing program regulations would result in a delay in using the new form which would be contrary to the public interest. This determination was made by Mr. Lynn L. Pickinpaugh, Director, Production Loan Division, Farmers Home Administration. This regulation has not been determined significant under the USDA criteria implementing Executive order 12044.

Therefore, Part 1861 is amended as follows:

§ 1861.46 [Amended]

1. In subpargraph (i) (2) of § 1861.46, line 7, change "460-6, 'Release (UCC States)'" to "462-12, 'Statements of Continuation, Partial Release, Assignment, etc'."

§ 1861.84 [Amended]

2. In paragraph (d)(1) of § 1861.84, line 5, change "§ 1871.8" to "§ 1962.17," in line 10 change "§ 1871.13" to "§ 1962.27" and in lines 13 and 14, change "460-6 'Partial Release (UCC States)' to 462-12, Statements of Continuation, Partial Release, Assignment, etc."

(7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301; Sec. 10 Pub. L. 93-357, 88 Stat. 392; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70; delegation of authority by Director, OEO 29 FR 14764, 33 FR 9850.)

Dated: December 22, 1978.

GORDON CAVANAUGH,
Administrator,
Farmers Home Administration.

[FR Doc. 79-2160 Filed 1-19-79; 8:45 am]

[3410-07-M]

SUBCHAPTER J—REAL PROPERTY

[FmHA Instruction 1933-I]

PART 1933—LOAN AND GRANT PROGRAM (GROUP)

Subpart I—Self-Help Technical Assistance

AGENCY: Farmers Home Administration, USDA.

ACTION: Final Rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations regarding the obligation of grant funds for Self-Help Technical Assistance Grants. The intended effect of this action is to decrease the amount of time involved in obligating grant funds for Technical Assistance grant projects. In doing this a more accurate status of obligations will be available for planning purposes. This action is taken as a result of an administrative improvement in the obligation process.

EFFECTIVE DATE: January 21, 1979.

FOR FURTHER INFORMATION CONTACT:

Paul R. Conn, (202) 447-7207.

SUPPLEMENTARY INFORMATION: §§ 1933.414 and 1933.416 of Subpart J, Part 1933, Chapter XVIII, Title 7 in the Code of Federal Regulations are amended to allow the State Director to telephone the Finance Office Check Request Station and request that grant funds for a particular project be obligated. Changes have also been made to reflect the administrative reorganization. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption of 5 U.S.C. 553 with respect to such rules. This amendment, however, is being published effective as a final rule. A copy of the Impact Statement prepared by FmHA is available at the FmHA National Office in Washington, D.C. Publication for comment is unnecessary because this amendment is revising the internal procedures for the obligation of funds. This determination was made by Russell Gibler, Loan Officer, Room 5331.

Sections 1933.414 and 1933.416, are amended as follows:

§ 1933.414 [Amended]

1. In § 1933.414, paragraph (a), line 5, change "County Supervisor" to "District Director."

2. In § 1933.414, paragraph (b)(1), lines 1 and 2, change "County Supervisor" to "District Director."

3. In § 1933.416, paragraph (b) is amended to read as follows:

§ 1933.416 Approval and closing.

* * * * *

(b) *Approval of grant.*

The provisions of paragraph (b)(2)(i) of § 1822.93 Subpart D of Part 1822 Subchapter B of this chapter will be followed.

(42 U.S.C. 1480; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70)

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

Dated: January 10, 1979.

GORDON CAVANAUGH,
Administrator,
Farmers Home Administration.

[FR Doc. 79-2166 Filed 1-19-79; 8:45 am]

[3410-07-M]

[FmHA Instructions 1930-A and 1962-A]

CHATTEL SERVICING REGULATIONS

Redesignation and Revision

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule with comments requested.

SUMMARY: The Farmers Home Administration is redesignating and revising its chattel servicing regulations. The intended effect of this action is to simplify the regulations. This action is being taken as a result of an administrative restructuring of its program regulations.

DATES: Effective date: January 22, 1979. However, comments must be received on or before March 23, 1979.

ADDRESSES: Submit written comments to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6316, Washington, D.C. 20250. All written comments made pursuant to this notice will be available for public inspection at the address given above.

FOR FURTHER INFORMATION CONTACT:

Mr. Lynn L. Pickinpaugh, 202-447-5044.

SUPPLEMENTARY INFORMATION: The Farmers Home Administration amends its regulations by deleting Part 1930 Subpart A, establishing a new subpart A Part 1962, in Chapter XVIII, Title 7, in the Code of Federal Regulations and by making corresponding reference changes.

In addition to redesignation, the following changes are made for clarification or to include provisions of the Agricultural credit Act of 1978:

1. Authorize the use of Form FmHA 462-12, "Statement of Continuation, Partial Release, Assignment, etc." in lieu of FmHA Forms 460-7, "Termination Statement"; 460-6, "Release (U.C.C. States)"; 462-7, "Continuation Statement"; and Form FmHA 462-12, "Continuation of Termination Statement."

2. Section 1962.26 authorizes the County Supervisor to use Form FmHA 462-12 to correct minor errors in a Financing Statement.

3. Section 1962.30 (a) authorizes the subordination of chattel liens securing operating loans for any authorized operating loan purposes.

4. Section 1962.30 (c) restricts the approval of a subordination of a chattel lien securing an EM loan to the State Director if the State Director approved the EM loan.

5. Section 1962.34 paragraphs (a) and (b) establish the interest rate for transfers to eligibles and ineligibles at the current interest rate except for applicants eligible for limited resource loans, the interest rate will be 5 percent.

6. Section 1962.34 (c) deletes reference to the effect of wife's signature.

7. Section 1962.49 (a)(2) increases the maximum amount of claim that will not be referred to the OGC from $400 to $600.

8. Section 1962.49 (a)(3)(4) transfers responsibility for accelerating a borrower's account and sending converters' demand letters from the District Director to the County Supervisor.

9. Section 1962.49 (c)(2) emphasizes the need for FmHA to thoroughly investigate and obtain the information necessary to account for security property and the preparation of requests for legal action before requesting the assistance of the Office of Investigation.

10. The requirement for the County Supervisor to report the amount of other credit used by borrowers who do not receive a subsequent OL is deleted.

11. The requirement for the County Committee to certify the amounts of loans to be assumed by an eligible applicant is deleted.

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comments notwithstanding the exemption in 5 U.S.C. 533 with respect to such rules. This regulation, however, is being published as a rule, with a request for comments, since the purpose of the change is to restructure existing regulations and incorporate provisions of the Agricultural Credit Act of 1978. Also, due to the demand for loans and the financial condition of farmers, any delay in issuing the regulations would be contrary to the public interest. The only substantive changes are those authorized by the Agricultural Credit Act of 1978. Any other change is the reorganization and redesignation of present regulations.

The Agency is, however, interested in receiving public comments which

should be submitted to the address given above.

Accordingly, Part 1930, Subpart A, is deleted, the new Subpart A of Part 1962 is added, and all cross reference changes are made as follows:

SUBCHAPTER B—LOANS AND GRANTS PRIMARILY FOR REAL ESTATE PURPOSES

PART 1822—RURAL HOUSING LOANS AND GRANTS

1. In Subpart A, Exhibit E, paragraph 8 (b) (2), last line, change "§ 1871.22" to "Part 1962 Subpart A". In paragraph 8 (c) (3) (i), third line, change "§ 1871.22 (c)" to "Part 1962 Subpart A".

SUBCHAPTER E—ACCOUNT SERVICING

PART 1861—ROUTINE

§ 1861.1 [Amended]

2. In § 1861.1 (b) (2), change the reference from "Part 1930, Subpart A" to "§ 1962.48 (b) of Subpart A of Part 1962".

3. In § 1861.8 (a), change the reference from "Part 1930, Subpart A" to "§ 1962.27 of Subpart A of Part 1962".

PART 1864—DEBT SETTLEMENT

§ 1864.2 [Amended]

4. In § 1864.2, paragraphs (d) and (k) change the reference from "Part 1930, Subpart A" to "Part 1962 Subpart A".

§ 1864.17 [Amended]

5. In § 1864.17 (a) (1) change the reference from "Part 1930 Subpart A" to "Part 1962, Subpart A".

PART 1866—FINAL PAYMENT ON LOANS SECURED BY REAL ESTATE

§ 1866.1 [Amended]

6. In § 1866.1 (b) (1), change the reference from "Subpart A of Part 1930" to "Part 1962 Subpart A".

SUBCHAPTER F—SECURITY SERVICING AND LIQUIDATIONS

PART 1872—REAL ESTATE SECURITY

§§ 1872.11, 1872.14, 1872.15, 1872.17 and 1872.22 [Amended]

7. In §§ 1872.11 (b), 1872.14, 1872.15 (c), 1872.17 (e) and 1872.22, change the reference from "Subpart A of Part 1930" to "Part 1962 Subpart A".

SUBCHAPTER I—LOAN AND GRANT PROGRAMS (INDIVIDUAL)

PART 1930—BORROWER PROPERTY SECURITY SERVICING (INDIVIDUAL)

Subpart A—[Reserved]

8. Part 1930, Subpart A [Deleted and Reserved].

SUBCHAPTER K—PROPERTY MANAGEMENT

PART 1955—REAL ESTATE AND CHATTEL PROPERTIES

§ 1955.15 [Amended]

9. In § 1955.15 (d) (15) (i) change the reference from "Subpart A of Part 1930" to "§ 1962.49 (e) of Subpart A of Part 1962".

SUBCHAPTER L—LOAN AND GRANT MAKING

PART 1941—OPERATING LOANS

§ 1941.42 [Amended]

10. In § 1941.42, change the reference from "Subpart A of Part 1930" to "Part 1962 Subpart A".

PART 1943—FARM OWNERSHIP AND SOIL AND WATER

§ 1943.19 [Amended]

11. In § 1943.19(c)(5), change the reference from "Subpart A of Part 1930" to "Part 1962 Subpart A".

§ 1943.42 [Amended]

12. In § 1943.42, change the reference from "Subpart A of Part 1930" to "Part 1962 Subpart A".

§ 1943.69 [Amended]

13. In § 1943.69(c)(7), change the reference from "Subpart A of Part 1930" to "Part 1962 Subpart A".

§ 1943.92 [Amended]

14. In § 1943.92, change the reference from "Subpart A of Part 1930" to "Part 1962 Subpart A".

§ 1943.119 [Amended]

15. In § 1943.119(d)(6), change the reference from "Subpart A of Part 1930" to "Part 1962 Subpart A".

§ 1943.142 [Amended]

16. In § 1943.142, change the reference from "Subpart A of Part 1930" to "Part 1962 Subpart A".

SUBCHAPTER N—SECURITY SERVICING

17. Part 1962, "Personal Property", is added to Subchapter N and Subchapter A, "Servicing and Liquidation of Chattel Security" is added and reads as follows:

PART 1962—PERSONAL PROPERTY

Subpart A—Servicing and Liquidation of Chattel Security

Sec.

1962.1 Purpose.
1962.2 Policy.
1962.3 Authorities and responsibilities.
1962.4 Definitions
1962.5 Security instruments.
1962.6 Liens and assignments on chattel property.
1962.7 Securing unpaid balances on unsecured loans.
1962.8 Liens on real estate for additional security.
1962.9 Liens on chattel property as security for a real estate loan.
1962.10-1962.11 [Reserved]
1962.12 Marking ASCS peanut and tobacco marketing cards.
1962.13 Lists of borrowers given to business firms.
1962.14 Account and security information in UCC cases.
1962.15-1962.16 [Reserved]
1962.17 Releasing chattel security.
1962.18 Accounting for security.
1962.19 Claims against Commodity Credit Corporation (CCC).
1962.20-1962.21 [Reserved]
1962.22 Amendments of consents and releases or suspensions of assignments.
1962.23 Releases of liens on wool and mohair marketed by consignment.
1962.24 Notice of termination of security interest to purchasers of farm products under consents or assignments upon payment in full.
1962.25 Release of FmHA's interest in insurance policies.
1962.26 Correcting errors in security instruments.
1962.27 Termination or satisfaction of chattel security instruments.
1962.28 Assignment of notes and security instruments.
1962.29 Payment of fees and insurance premiums.
1962.30 Subordination and waiver of FmHA liens on chattel security.
1962.31-1962.33 [Reserved]
1962.34 Transfer of chattel security and EO property and assumption of debts.
1962.35-1962.39 [Reserved]
1962.40 Liquidation.
1962.41 Sale of chattel security or EO property by borrowers.
1962.42 Repossession, care, and sale of chattel security or EO property by the County Supervisor.
1962.43 Liquidation of chattel security or EO property by other parties.
1962.44 Distribution of liquidation sales proceeds.
1962.45 Reporting sales.
1962.46 Deceased borrowers.
1962.47 Bankruptcy and insolvency.
1962.48 Setoffs.
1962.49 Civil and criminal cases.
1962.50 [Reserved]

Exhibit A—Memorandum of Understanding Between Commodity Credit Corporation and Farmers Home Administration.
Appendix 1—Furnishing Notice or Information to Commodity Credit Corporation.
Exhibit B—Memorandum of Understanding and Blanket Commodity Lien Waiver.

AUTHORITY: 7 U.S.C. 1989; 42 U.S.C. 2942; 5 U.S.C. 301; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70; delegations of authority by Dir., OEO, 29 FR 14764, 33 FR 9850.

Subpart A—Servicing and Liquidation of Chattel Security

§ 1962.1 Purpose.

This subpart delegates authorities and gives procedures for servicing, care, and liquidation of Farmers Home Administration (FmHA) chattel security, Economic Opportunity (EO) loan property, and note only loans.

§ 1962.2 Policy.

(a) Chattel security, EO property and note only loans will be serviced to accomplish the loan objectives and protect to FmHA's financial interest. To accomplish these objectives, security will be serviced in accordance with the security instruments and related agreements, including any authorized modifications: *Provided,* The borrower has reasonable prospects of accomplishing the loan objectives, properly maintains and accounts for the security, and otherwise satisfactorily meets the loan obligations including repayment.

(b) If the objectives of Paragraph (a) of this section cannot be met, or if the chattel security must be liquidated for other reasons, the security will be liquidated promptly to protect FmHA's financial interest. Normally, the borrower will dispose of chattel security and EO property at a public or private sale. However, when this cannot be done, the County Supervisor will take possession of and sell chattel security in accordance with this subpart.

§ 1962.3 Authorities and responsibilities.

(a) *Redelegation of authority.* Authority will be redelegated to the maximum extent possible consistent with program requirements and available resources. The State Director, District Director and County Supervisor are authorized to redelegate, in writing, any authority delegated to them in this subpart to any employee determined by them to be qualified.

(b) *Responsibilities*—(1) *FmHA personnel.* The State Director, District Director and County Supervisor are responsible for carrying out the policies and procedures in this subpart.

(2) *Borrower.* The borrower is responsible for repaying the loans, maintaining, protecting, and accounting to FmHA for all chattel security, and complying with all other requirements specified in promissory notes, security instruments, and related documents.

§ 1962.4 Definitions.

(a) *Abandonment.* Voluntary relinquishment by the borrower of control of security or EO property without providing for its care.

(b) *Acquired chattel property.* Former security or EO property of which FmHA has become the owner (See § 1955.20 of Subpart A of Part 1955 of this chapter).

(c) *Chattel property.* Crops; livestock; fish; farm, business, and recreational equipment; supplies; farm products; other personal property; and fixtures.

(d) *Chattel security.* Chattel property covered by FmHA financing statements and security agreements, chattel mortgages, and other security instruments. As used in this Subpart, the term "security" also means "chattel security" when appropriate.

(e) *Civil action.* Court proceedings to protect FmHA's financial interests such as obtaining possession of property from borrowers or third parties, judgments on indebtedness evidenced by notes or other contracts or judgments for the value of converted property, or judicial foreclosure. Bankruptcy and similar proceedings to impound and distribute the bankrupt's assets to creditors and probate and similar proceedings to settle and distribute estates of incompetents or of decedents under a will, or otherwise, and pay claims of creditors are not included.

(f) *Criminal action.* Prosecution by the United States to exact punishment in the form of fines or imprisonment for alleged violations of criminal statutes. These include but are not limited to violations such as:

(1) Unauthorized sale of security with intent to defraud;

(2) Purchase of security with intent to defraud and without payment of the purchase price to FmHA;

(3) Falsification of assets or liabilities in loan applications;

(4) Application for a loan for an authorized purpose with intent to use and use of loan funds for an unauthorized purpose;

(5) Decision after obtaining a loan to use and using the funds for an unauthorized purpose and then making false statements regarding their use;

(6) By scheme, trick, or other device, covering up or concealing misuse of funds or unauthorized dispositions of security or EO property or other illegal actions; or

(7) Any other false statements or representations relating to FmHA matters. To establish that a criminal act was committed by selling EO property, it is necessary to show that the borrower, at the time the loan agreement, or the check on the supervised bank account was signed, intended to sell the property in violation of the loan agreement. The Federal criminal statute of limitations bars institution of criminal action five years after the date the act was committed. When actions by borrowers represent minor deviations from the policies expressed in FmHA regulations, such actions are not considered criminal violations for the purposes of this Subpart. Examples of such minor deviations are failure of the borrower to account properly for nominal amounts derived from the sale of security or for minor items of security. However repeated, unauthorized disposition of even minor items by the borrower will be considered criminal violations.

(g) *Default.* Failure of the borrower to observe the agreements with FmHA as contained in notes, security instruments, and similar or related instruments. Some examples of default or factors to consider in determining whether a borrower is in default are when a borrower:

(1) Is delinquent, and the borrower's refusal or inability to pay on schedule, or as agreed upon, is due to lack of diligence, lack of sound farming or other operation, or other circumstances within the borrower's control.

(2) Ceases to conduct farming or other operations for which the loan was made or to carry out approved changed operations.

(3) Has disposed of security or EO property without FmHA approval, has not cared properly for such property, has not accounted properly for such property or the proceeds from its sale, or taken some action which resulted in bad faith or other violations in connection with the loan.

(4) Has progressed to the point to be able to obtain credit from other sources, and has agreed in the note or other instrument to do so but refuses to comply with that agreement.

(h) *EO property.* Nonsecurity chattel property purchased, refinanced, or improved with EO loan funds.

(i) *EO property essential for minimum family living needs.* Nonsecurity chattel or real property required to provide food, shelter, or other necessities for the family or to produce income without which the family would not have such necessities. This includes livestock, poultry, or other animals used as food or to produce food for the family or to produce income for minimum essential family living needs; modest amounts of real property needed for family shelter or to produce food or income for minimum essential family living needs, and items such as equipment, tools, and motor vehicles, which are of minimum value and are essential for family living needs or to produce income for that purpose. Any such item of a value in excess of the minimum need may be sold and a portion of the sale proceeds used to purchase a similar item of less value to meet such need. The remainder of the proceeds will be paid on the EO loan.

(j) *FmHA.* The United States of America, acting through the Farmers Home Administration and its predecessor administrative agencies.

(k) *Foreclosure sale.* Act of selling security either under the "Power of Sale" in the security instrument or through court proceedings.

(l) *Liquidation.* The act of selling security or EO property to close the loan when no further assistance will be given; or instituting civil suit against a borrower to recover security or EO property or against third parties to recover security or its value or to recover amounts owed to FmHA; or filing claims in bankruptcy or similar proceedings or in probate or administrative proceedings to close the loan.

(m) *Office of the General counsel (OGC).* The Regional Attorneys, Attorneys-in-Charge, and National Office staff of the Office of the General Counsel of the United States Department of Agriculture.

(n) *Purchase money security interest.* Special type of security interest which, if properly perfected, takes priority over an earlier-perfected security interest. A security interest is a purchase money security interest to the extent that it is taken by the seller of the collateral to secure all or part of its purchase price or by a lender who makes loans or is obligated to make loans or otherwise gives value to enable the debtor to acquire the particular collateral or obtain rights in it. Such value must be given not later than the time the debtor acquires the collateral or obtains rights in it.

(o) *Repossessed property.* Security or EO property in FmHA's custody, but still owned by the borrower.

§ 1962.5 Security instruments.

County Supervisors are responsible for maintaining security instruments that will cover all security, including replacements, increases, and other after-acquired property, and for obtaining additional security as needed. They will execute continuation, extension, or renewal of security instruments as needed to protect FmHA's security interests.

(a) *Financing statement.* An FmHA Financing Statement is effective as notice for 5 years from the date of filing. A new statement needs to be taken and filed only if the debt is to be secured by property not described specifically or by type, or by crops growing or to be grown, or fixtures located or to be located on land not described on the filed statement.

(b) *Continuing the financing statement.* A filed statement must be continued to notify third parties after the original 5-year period. Form FmHA 462-12, "Statements of Continuation, Partial Release, Assignment, Etc." must be filed within 6 months before the end of the original 5-year period. On filing Form FmHA 462-12, the filed Financing Statement is effective for 5 more years after the date to which the original filing was effective. Successive Continuation Statements may be filed to continue the notice to third parties. A lien search is unnecessary provided the Continuation Statement is properly filed. Form FmHA 462-11, "Request for Continuation Statement Filing Fee," may be used to notify the borrowers to continue the Financing Statement and to submit the amount of the filing fee.

(v) *Security agreement.* A new security agreement will be taken when:

(1) Property not covered by specific description or the printed language of the previous security agreement is to serve as security for the debt; or

(2) It is necessary to obtain or maintain a security interest in crops; or

(3) It is necessary to supplement the security agreement to obtain an asset for security. A State supplement will be issued when considered necessary by the State Director and OGC to further explain the situations requiring the taking of an additional security agreement. Such additional security agreement usually will be taken at about the time of the annual inspection of the security required by § 1962.18 of this Subpart; or

(4) An initial Operating (OL) loan or Emergency (EM) loan is made to an applicant, including a paid-in-full OL or EM borrower.

(d) *Chattel mortgage.* In those States which require the use of chattel mortgages, such a mortgage may be extended or renewed by obtaining a new chattel mortgage or by using a form approved for this purpose by OGC. However, it is preferable to renew or extend chattel mortgages by obtaining new ones unless there are intervening liens or other legal reasons. A State supplement will be issued stating the actions to follow to ensure that:

(1) FmHA liens and their priority are maintained by renewing or extending security instruments or by obtaining new instruments.

(2) Lien searches are made as necessary to determine that FmHA will obtain the required priority of liens.

§ 1962.6 Liens and assignments on chattel property.

(a) *Chattel property not covered by FmHA lien.* (1) When additional chattel property not presently covered by an FmHA lien is available and needed to protect FmHA's interest, the County Supervisor will obtain one or more of the following:

(i) A lien on such property.

(ii) An assignment of the proceeds from the sale of agricultural products when such proceeds are not covered by the lien instruments.

(iii) An assignment of other income, including Agricultural Conservation Program payments.

(2) When a current loan is not being made to a borrower, a crop lien will be taken as additional security when the County Supervisor determines in individual cases that it is needed to protect FmHA interests. However, a crop lien will not be taken as additional security for Farm Ownership (FO), Rural Housing (RH), Labor Housing (LH), and Soil and Water (SW) loans. When a new security agreement or chattel mortgage is taken, all existing security items will be described on it.

(b) *Lien search.* When a lien is taken on chattel property not covered by an FmHA lien, a lien search will be made. It will not be needed, however, if crops or other chattel property are covered by a filed FmHA Financing Statement but not by on FmHA security agreement or assignment of income. The search will be made at a time which will assure that FmHA obtains the desired lien on chattel property as set forth by a State supplement.

(c) *Assignment of wheat certificates payments and feed grain payments.* Borrowers may assign Agricultural Stabilization and Conservation Service (ASCS) price support and certificate payments under ASCS wheat and feed grain programs.

(1) *Obtaining assignments.* Assignments will be obtained as follows:

(i) In selected cases in counties agreed to by FmHA State Directors and ASCS State Committees,

(ii) Only when it appears necessary to collect the FmHA operating-type loans,

(iii) Only for the crop year for which FmHA operating-type loans are made, and

(iv) For the full amount of the wheat certificate payment and an advance and/or final feed grain payment.

(2) *Selecting counties.* State Directors will inform ASCS State Committees of the counties in which FmHA desires to obtain assignments from borrowers. When counties have been agreed to by FmHA State Directors and ASCS State Committees, the State Directors will notify the appropriate County Supervisors about obtaining the assignments. The County Supervisors then will:

(i) Determine, at the time of loan processing for indebted borrowers and new applicants, who must give assignments and obtain them not later than loan closing. Special efforts will be made to obtain the bulk of assignments before the sign-up period for enrolling in the annual Feed Grain and Wheat set aside programs.

(ii) Obtain assignments from selected borrowers on Form FmHA 462-8,

"Wheat and Feed Grain Programs—Assignments."

(3) *Determining payments.* Under the Agricultural Act of 1970, the per bushel rates of payments to participating producers are determined in part by the average market prices for corn, grain sorghums, barley, and wheat during the first 5 months of the respective marketing years. Preliminary payments, at specified rates for corn, grain sorghums, and barley and at 75 percent of the estimated final rate for wheat, will be made promptly after July 1. Final payments, if any, will be made after determining the rates of payment.

(4) *Releasing assignments and handling checks.* (i) The County Supervisor will inform the ASCS County Office that it is releasing its assignment whenever a borrower pays FmHA the amount due for the year on the operating-type loan debt or pays the debt in full.

(ii) Checks obtained as a result of an assignment will be made jointly to the producer and FmHA. Such checks may be endorsed by both parties and scheduled as a payment or payments to FmHA, or endorsed and released, including partial release, to the borrower if the borrower has paid FmHA the amount due for the year on the operating-type loan or has paid the debt in full.

§ 1962.7 Securing unpaid balances on unsecured loans.

The County Supervisor will take a lien on a borrower's chattel property in accordance with § 1962.6 of this Subpart if it is necessary to rely on such property for the collection of the borrower's unsecured indebtedness, or if it will assist in accomplishing loan objectives.

§ 1962.8 Liens on real estate for additional security.

The County Supervisor may take the best lien obtainable on any real estate owned by the borrower, including any real estate which already services as security for another loan. Such liens will be taken only when the existing security is not adequate to protect FmHA interests, and the borrower has substantial equity in the real estate to be mortgaged, and taking such mortgage will not prevent making an FmHA real estate loan, if needed, later.

(a) *Documentation.* Before taking real estate as additional security for an FmHA loan, the following information will be put in the running record:

(1) Facts justifying the real estate lien;

(2) An estimate of the present market value of the real estate to be mortgaged (no appraisal of the property to be mortgaged is needed);

(3) A brief description of any existing liens on the property and the unpaid balance on the debts secured by such existing liens; and

(4) Name of the titleholder and how title of the property is held. (Title evidence is not required.)

(b) *Forms.* Form FmHA 427-1 (State), "Real Estate Mortgage for ———" will be used for each real estate lien taken as additional security unless a State Supplement requires a form of mortgage comparable to that which secures the existing loans. The notes evidencing the FmHA loans for which the additional security will be taken will be described in the same mortgage.

§ 1962.9 Lien on chattel property as security for a real estate loan.

Form FmHA 440-15, "Security Agreement (Insured Loans to Individuals)," and Form FmHA 440A25, "Financing Statement (carbon-interleaved)," or Form FmHA 440-25, "Financing Statement," as appropriate, will be used in Uniform Commercial Code (UCC) States. State supplements may provide for using other forms in Louisiana, Puerto Rico, Guam, American Samoa and the Northern Mariana Islands.

§§ 1962.10-1962.11 [Reserved]

§ 1962.12 Marking ASCS peanut and tobacco marketing cards.

The County Supervisor will mark ASCS marketing cards for all borrowers who have peanut or tobacco crops under lien to FmHA.

(a) *Marking cards.* Just before ASCS prepares the cards, the FmHA County Office will give the appropriate ASCS County Office lists of the names and addresses of FmHA borrowers whose cards are to be marked and inform the office that FmHA will mark the cards of each borrower whose name is on the list before delivery. After FmHA determines that the cards are ready for delivery, the County Supervisor or someone designated by the County Supervisor will go to the ASCS County Office and:

(1) Stamp or insert "FmHA lien" in script in indelible ink on the cards for peanuts and tobacco, except flue-cured and burley tobacco, wherever decided by the FmHA County Supervisor and the ASCS County Office Manager.

(2) Stamp or insert "FmHA lien" in script in indelible ink on borrower's Form MQ 76, "Tobacco Marketing Card," for flue-cured and burley tobacco. The stamp will be placed on the left at the bottom of the signature strip under "Tobacco Marketing Card."

(3) If the borrower satisfies the lien or repays the amount due the current year, stamp "canceled" across "FmHA lien" followed on the same line by the name of the official making the cancellation and the date.

(b) *Notice to borrowers.* The County Supervisor will inform borrowers of marking arrangements, including the requirements for canceling the lien notice on the card.

(c) *Notice to buyers.* Whenever possible, the County Supervisor will explain these arrangements personally to buyers (warehousemen and dealers in the case of tobacco) in the area. The County Supervisor will also explain that the lien notice on the cards is not in place of the notice given by filed or recorded lien instruments but is a courtesy and is to provide them with readily available current information. However, this information may not always be accurate and commodities covered by a card not stamped "FmHA lien" may still be subject to an FmHA lien. If too many buyers are in the area to enable the County Supervisor to make such a personal explanation, the County Supervisor may write them a letter explaining the arrangements.

§ 1962.13 Lists of borrowers given to business firms.

List of borrowers whose chattels or crops are subject to an FmHA lien may be made available to business firms in a trade area, such as salesbarns and warehouses, that buy chattels or crops or sell them for a commission. The County Supervisor will give these lists to any such firm on its request. These lists will exclude those borrowers whose only crops for sale require ASCS marketing cards.

(a) The list will contain the statement: "The crop and chattel liens or financing statements of the Farmers Home Administration are recorded or filed as required by law. This list of borrowers is furnished only as a convenience. It may be incomplete or inaccurate as of any particular date. The fact that a name is not on this list does not necessarily mean that the Farmers Home Administration does not have security interest in or lien on the crops, livestock, and other chattels."

(b) Lists will be sent by Form FmHA 462-3, "List of Farmers Home Administration Borrowers," or the County Supervisor may consider it advisable to personally deliver and explain the form and list to the buyers. The County Supervisor will update all lists that have been distributed by notifying buyers in writing, on Form FmHA 462-14, "Change in List of Farmers Home Administration Borrowers," at least every 3 months, of the names of borrowers to add and to delete.

§ 1962.14 Account and security information in UCC cases.

Within 2 weeks after receipt of a written request from the borrower, FmHA must inform the borrower of the security and the total unpaid balance of the FmHA indebtedness covered by the Financing Statement.

(a) If FmHA fails to provide the information, it may be liable for any loss caused the borrower and, in some States, other parties, and also may lose some of its security rights. The UCC provides that the borrower is entitled to such information once every 6 months without charge, and that FmHA may charge up to $10 for each additional statement. However, FmHA provides them without charge. The requested information goes on Form FmHA 462-10, "Farmers Home Administration's Answer to Request for Information."

(b) Although the UCC only requires FmHA to give information pursuant to the borrower's written request, FmHA will also answer oral requests. Furthermore, the UCC does not prohibit giving this information to others who have a proper need for it, such as a bank or another creditor contemplating advancing additional credit to the borrower.

§§ 1962.15–1962.16 [Reserved]

§ 1962.17 Releasing chattel security.

Chattel security may be released only when release will not be to the financial detriment of FmHA. Borrowers will be strictly accountable to FmHA for the proper use of proceeds from the sale of security. Insurance proceeds derived from the loss of security will be treated the same as sale proceeds. The authority to release security for FmHA loans is different for basic security than for normal income security.

(a) *Basic security.* Basic security is all equipment (including fixtures in UCC States) and foundation herds and flocks, securing FmHA loans which serve as a basis for the farming or other operation outlined in Form FmHA 431-2, "Farm and Home Plan," Form FmHA 431-3, "Family Budget," or Form FmHA 431-4, "Business Analysis Nonagricultural Enterprise," and replacement of such property. It also includes animals sold as a result of the normal culling process, unless the borrower has replacements that will keep numbers and production up to planned levels and animals or birds sold when a borrower plans to significantly reduce the basic livestock herd or flocks. County Supervisors may release basic security when the property has been sold or exchanged for its present market value, and the proceeds are used for one or more of the following purposes:

(1) To apply to the debts owed to FmHA which are secured by liens on the property sold.

(2) To purchase from the proceeds of the sale, or to acquire through exchange, property more suitable to the borrower's needs. The new property, together with any proceeds applied to the indebtness, will have security value to FmHA at least equal to that of the lien formerly held by FmHA on the old property and subject to the following:

(i) UCC cases. Under the after-acquired property provisions of the security agreement, the new propety, except fixtures, will be subject to the security interest of FmHA provided the financing statement on file and the security agreement cover the class of property. Therefore, new security instruments will not be needed.

(A) However, if either the financing statement or security agreement does not cover such property, a new instrument will be taken.

(B) Since the after-acquired property clause in the security agreement does not cover fixtures, a new security agreement would have to be taken for them. A new financing statement also will have to be taken and filed unless the existing filed financing statement covers fixtures by class and describes the land on which the new fixtures are or are not to be located.

(ii) Chattel mortgage cases. The new property is made subject to a lien in favor of FmHA by the execution of a new security instrument (or by operation of the "replacement" or "after-acquired property" clauses in lien instruments in accordance with State supplements).

(iii) Time of taking new security instruments. New security instruments are taken at the time of the acquisition of the new property referred to in paragraphs (a) (2) (i) and (ii) of this section. In individual cases, however, County Supervisors may delay as long as 1 year or until new instruments are necessary for other reasons, whichever is earlier, when adequate security will continue to exist. Security is considered adequate it its value, as determined by a chattel appraisal of the borrower's chattel property remaining under lien to FmHA, is substantially greater than the amount of the debt.

(3) To make payments to other creditors having liens on the property sold which are superior to the liens of FmHA. However, any amount remaining after payments to the other creditors will be used in accordance with subparagraphs (a) (1) and (2) of this section.

(4) To pay costs to preserve the security because of an emergency or catastrophe, when the need for funds cannot be met through an FmHA loan, or an FmHA loan cannot be made in time to prevent the borrower or FmHA from suffering a substantial loss.

(b) *Normal income security.* This is all security not considered basic security including crops, livestock, poultry, products, and other property covered by FmHA liens which are sold in operating the farm or other business. County Supervisors may release normal income security when the property has been sold or exchanged for its present market value and the proceeds are used for one or more of the following purposes:

(1) To pay debts owed to FmHA.

(2) To pay farm and home or other operating expenses provided for in tables of Form FmHA 431-2, Form FmHA 431-3, or Form FmHA 431-4.

(3) To pay necessary farm and home or other operating expenses shown as debts in the financial statement on Form FmHA 431-2 or Form FmHA 431-3 and to be paid during the year as shown by the debt payment table, provided these debts were incurred in the production, harvesting, or marketing of crops, livestock, poultry or products sold during the year or were for family subsistence for that year.

(4) To pay an amount not more than the equivalent of 1 year's income taxes and social security taxes.

(5) To make payments to other creditors having liens on the property sold which are superior to FmHA liens.

(6) To pay annual installments on debts owed on essential real estate to creditors other than FmHA. These amounts must be reasonable when related to the normal rental charge for similar real estate in the area, and there should be assurance that the borrower will keep the real estate at least for the next year.

(7) To make reasonable payments on debts owed to other creditors for essential home equipment and passenger automobiles provided for in the debt payment tables of Form FmHA 431-2 or Form FmHA 341-3 or approved revisions. Such debts ordinarily will be considered for payment only after the full amount agreed on for the year has been paid to FmHA. However, reasonable amounts may be paid to other creditors first if failure to make payments to other creditors when due would result in the borrower's losing possession of essential home equipment or passenger automobile, and the loss would require the borrower to replace the property or to go to substantial additional expense to continue the operation.

(8) To make payments on debts on harvesting equipment such as cotton pickers, corn pickers, combines, forage harvesters, and so forth in addition to paying essential harvesting expenses provided an OL or EM loan for the

crop year did not include funds for the payment of depreciation on such equipment, and the total amount released for such payments and harvesting costs, plus any loan funds advanced for harvesting costs, is not more that the amount that would be required during the crop year on a custom basis to harvest the crops using the harvesting equipment.

(9) To make payments on debts owed to other creditors and to make purchases or to meet expenses not otherwise covered in this section provided:

(i) Debt payments, purchases, or expenses are included in Form FmHA 431-2, Form FmHA 431-3, or Form FmHA 431-4;

(ii) Sufficient income will be available to pay an amount equivalent to that scheduled on the notes to fall due during the year, plus the amount agreed on for any delinquencies, on FmHA debts secured by liens on chattel property; and

(iii) Debt payments, purchases, or expenses are essential for the borrower to obtain or keep necessary equipment or to continue a sound operation.

(10) To pay costs required to preserve the security because of an emergency or catastrophe, when the need for funds cannot be met through an FmHA loan or an FmHA loan cannot be made in time to prevent the borrower or FmHA from suffering a substantial loss.

(11) To permit crops serving as security for FmHA loans to be fed to livestock when the County Supervisor determines that this disposal is preferable to direct marketing of the crops, provided a lien or assignment is obtained on the livestock or livestock products.

(12) When livestock is consumed by the borrower's family for subsistance.

(c) *Distribution of income from normal income security.* On finding that the amount of income originally planned for the year will not be received, the County Supervisor will determine, in consultation with the borrower, how to use income that is available or will become available during the remainder of the planned year as shown on Forms FmHA 431-2 or FmHA 431-4. If other creditors have liens on the property from which the normal income is received, they also must be consulted. Priorities in distributing the income that will be available are as follows:

(1) Pay necessary farm, home, and other expenses planned for payment by cash as incurred.

(2) Prorate repayments on credit advanced for necessary farm, home, and other operating expenses to FmHA and other creditors.

(3) Make planned payments on other debts as shown in Table K of Form FmHA 431-2 or Table H of Form FmHA 431-3. However, minimum payments may be made on such debts along with the payment of cash farm, home, and other operating expenses on credit advanced for such purposes when necessary to enable the borrower to keep essential property.

(d) *Plans as basis for releasing chattel security.* Release of both basic and normal income security will be based on information about the borrower's operations as shown on Form FmHA 431-2, Form FmHA 431-3, or Form FmHA 431-4, as appropriate.

(1) If plans have been developed for the borrower's current crop or business year, the release will be based on them.

(2) If no recent plans have been made with the borrower, the release will be based on the County Supervisor's knowledge of the borrower's current operations, plus inquiry and documentation of the facts about the borrower's present operation in the running case record.

(e) *Release of valueless junior lien.* State Directors may release junior FmHA liens on chattels and crops serving as security for FmHA loans when such property has no present or prospective security value or enforcement of the FmHA lien would be ineffectual or uneconomical. The following information will be documented in the running case record:

(1) The present market value of the chattels or crops, as determined by the County Supervisior, on which FmHA has a valueless junior lien.

(2) The names of the prior lienholders, amount secured by each prior lien, and the present market value of any property which serves as security for the amount. The value of all property serving as security for amounts owed to prior lienholders must be considered to determine whether the junior FmHA lien has any present or prospective value.

(f) *Release of lien because of mutual mistake.* Chattel property serving as security for FmHA loans may be released by the State Director when the lien on such property was obtained through a mutual mistake.

(g) *Release of lien because of no evidence of indebtedness.* The County Supervisor may release the lien on chattel property when there is no evidence of an existing indebtedness secured by the lien in the records of the FmHA County, State, or Finance Office.

(h) *Release of lien on chattel property held as security for a real estate loan.* The State Director may release an interest in chattels acquired in accordance with § 1962.9.

(i) *Release forms.* The County Supervisor may execute releases covering specific items of property. If a security interest under the UCC is involved, Form FmHA 462-12, will be used in accordance with the Forms Manual Insert (FMI) to release such property from that interest. If chattel mortgages are involved, Form FmHA 460-1, "Partial Release," or other approved form will be used. If Forms FmHA 462-12 or FmHA 460-1 are not legally sufficient, other forms approved by OGC will be used. Releases need not be executed unless requested by a borrower or by an interested third party.

§ 1962.18 Accounting for security.

(a) *Accounting by County Supervisor.* The County Supervisor is responsible for maintaining a current record of each borrower's security. When the borrower acquires additional items of chattel property which will be described on subsequent security instruments, descriptions of these items will be recorded on the work copy of the security agreement or the file copy of the chattel mortgage, as appropriate. The original of the security agreement should *not* be altered. Chattel security should be inspected annually for borrowers who are delinquent or who have been indebted for less than 1 full crop year. The County Supervisior will make other inspections as needed to:

(1) Verify the borrower possesses all the security,

(2) Determine security is properly maintained, and

(3) Supplement security instruments.

(b) *Accounting by borrower.* The borrower must account for all security and will be instructed regarding its care, maintenance, and disposition when a loan is made and as often afterward as necessary. When borrowers sell security, the sale will be made subject to the FmHA lien. The property and proceeds will remain subject to the lien until the lien is released or the sale is approved by the County Supervisor and the proceeds are used for one or more of the purposes stated in § 1962.17. Purchasers of security who inquire should be informed that the property is subject to FmHA's lien and will remain subject to it until they deliver any proceeds in cash to the County Supervisor or make checks payable jointly to the borrower and FmHA and the check has cleared. Form FmHA 462-2, "Written Consent to Sell and Statement of Conditions on Which Lien Will be Released," will be used by the County Supervisor to give written consent to sell when borrowers or purchasers request such a statement before the date of sale.

(c) *Recording disposition of security.* Dispositions of basic and normal income security will be recorded on Form FmHA 462-1, "Record of the Disposition of Security Property," as soon as information is available. Security which is disposed of will include items sold, exchanged, or lost through

death, theft, destruction, or deterioration and livestock consumed by the family.

(1) For normal income security, the uses made of the sale proceeds will be recorded in sufficient detail to relate them readily to the appropriate tables in Form FmHA 431-2, Form FmHA 431-3, or Form FmHA 431-4. However, these entries are not required on Form FmHA 462-1 when:

(i) The borrower is not delinquent on any FmHA debts and has paid the amount agreed on for the year; or

(ii) Farm products such as milk, eggs, or wool are sold and are accounted for on Form FmHA 441-18, "Consent to Payment of Proceeds from Sale of Farm Products," Form FmHA 441-25, "Assignment of Proceeds from the Sale of Dairy Products and Release of Security Interest," Form FmHA 441-8, "Assignment of Proceeds from the Sale of Products," or the farm and home plan shows that no payments are to be made on FmHA debts from the farm product(s) listed on the named forms.

(2) Employees having release authority will approve or disapprove the release on Form FmHA 462-1.

(3) Recording or not recording disposition of security does not release the FmHA lien on the security.

(d) *Reporting improper disposition of security.* When the borrower fails to account properly for security, the County Supervisor will report the facts in writing promptly to the State Office.

§ 1962.19 Claims against Commodity Credit Corporation (CCC).

This section is based on a Memorandum of Understanding between CCC and FmHA (see Exhibit A of this Subpart). The memorandum sets forth the procedure to follow when producers sell or pledge to CCC as loan collateral under the Price Support Program, commodities on which FmHA holds a prior lien, and when the proceeds, or an agreed amount from them, are not remitted to FmHA to apply against the producer's indebtedness to FmHA. In addition to the procedures outlined in Exhibit A, the following apply:

(a) *County Office action.* (1) Claims will not be filed with CCC until it is determined that the amount involved cannot be collected from the borrower. Therefore, after preliminary notice is given of this fact to CCC by the State Director the County Supervisor will make immediate demand on the borrower for the amount of the CCC loan or the portion of it which should have been applied to the borrower's account. If payment is made, the State Director will be notified.

(i) If payment is not made, the County Supervisor will determine whether or not the case should be liquidated in accordance with § 1962.40. Any liquidation action will be taken immediately. If the borrower has no property from which recovery can be made through liquidation or, if after liquidation, an unpaid balance remains on the indebtedness secured by the commodity pledged or sold to CCC, the County Supervisor will make a full report to the State Director on Form FmHA 455-1, "Request for Legal Action," with a recommendation that a claim be filed against CCC. However, if the indebtedness is paid through liquidation action, the State Director will be notified by memorandum.

(ii) If the facts do not warrant liquidation action, the State Director will be notified, and a recommendation will be made that no claim be filed against CCC.

(2) On receiving information from the State Director that CCC has called the borrower's loan, the County Supervisor will act to protect FmHA's interest with respect to the commodity if CCC is repaid.

(b) *State Office action.* (1) The State Director, on receipt of reports and recommendations from the County Supervisor, will:

(i) If in agreement with the County Supervisor's recommendation not to file a claim against CCC or if notice is received that the indebtedness has been paid, forward notice to CCC.

(ii) If in agreement with the County Supervisor's recommendation to file a claim against CCC, refer the case to OGC with a statement of facts.

(iii) If OGC determines that FmHA holds a prior lien on the commodity and the amount due on its loan is not collectible from the borrower, send CCC a copy of the OGC memorandum with a complete statement of facts supporting the claim through the applicable ASCS office or notify CCC if the OGC memorandum does not support FmHA's claim.

(2) The State Director will notify the County Supervisor promptly on receiving information from CCC that the borrower's loan is being called.

(3) If collection cannot be made from the borrower or other party (see paragraph 5 of Exhibit A of this subpart), the State Director will give CCC the reasons. FmHA will then be paid by CCC through the applicable ASCS office.

§§ 1962.20-1962.21 [Reserved]

§ 1962.22 Amendments of consents and releases or suspensions of assignments.

(a) *Amendment of Form FmHA 441-18, "Consent to Payment of Proceeds from Sale of Farm Products."* The County Supervisor may temporarily amend this form to permit borrowers to use all or a part of proceeds from the sale of products in emergencies and in other justifiable circumstances. Such action, however, must not be to the financial detriment of FmHA and the funds must be used for the purposes stated in § 1962.17 (a) and (b). Form FmHA 462-9, "Temporary Amendment of Consent to Payment of Proceeds From Sale of Farm Products," will be used for this purpose. The borrower's file will show the purpose of and justification for the amendment. The County Supervisor will see that payments are made in accordance with the orignial consent when the temporary amendment period expires.

(1) When a Form FmHA 441-18 has been executed and the amount of the payment to FmHA needs to be decreased for other than a temporary period, or increased for any period, a new Form FmHA 441-18 will be executed.

(2) If Form FmHA 441-18 has been executed for a particular product and FmHA is no longer looking to the proceeds from that product for payment on the FmHA indebtedness, the purchaser should be advised by letter as follows: "The Farmers Home Administration (FmHA) is not presently looking to the proceeds from the sale of (name of product) covered by the 'Consent to Payment of Proceeds from the Sale of Farm Products' executed by (name and address of borrower) and accepted by you on (date). Therefore, until further notice, you may discontinue making payments to FmHA for such product."

(3) If Form FmHA 441-18 has not been executed for a particular product becasue FmHA is not expecting payment from the proceeds of such product, but the purchaser of the product inquires about payment, a letter should be written to the purchaser as follows: "The Farmers Home Administration (FmHA) has a security interest in the (name of product) being sold to you by (name and address of borrower), but at the present time is not looking to the proceeds from the sale of that product for payment on the debt owed to this agency. Therefore, until further notice, it will not be necessary for you to make payment to FmHA for such product."

(b) *Assignments.* (1) The County Supervisor may release, reduce, or temporarily suspend assignments including crop insurance assignments and permit borrowers to use such proceeds including those received as checks made payable jointly to the borrower and FmHA. This authority is the same as that provided in paragraph (a) of this section. The County Supervisor will see that suspended, reduced, or released assignments are reinstated, or new assignments are obtained when needed.

(2) All suspensions, reductions, or releases of assignments will be made on forms approved by OGC. The original will be forwarded directly to the person or firm making the payment against which the assignment is effective, and a copy will be kept in the borrower's case file. In each case, the borrower's file will show the purposes of and justification for the suspension, reduction, or release.

(3) The State Director may in justifiable cases approve requests for suspension, release, or reduction of assignments other than those specified in paragraph (b) (1) of this section, provided such action will not be dertimental to FmHA's interest.

§ 1962.23 Releases of liens on wool and mohair marketed by consignment.

(a) *Conditions.* Liens on wool and mohair may be released when the security is marketed by consignment, provided all the following conditions are met:

(1) The producer assigns to FmHA the proceeds of any advances made, or to be made, on the wool or mohair by the broker, less shipping, handling, processing, and marketing costs.

(2) The producer assigns to FmHA the proceeds of the sale of the wool or mohair, less any remaining costs in shipping, handling, processing, and marketing, and less the amount of any advance (including any interest which may have accrued on the advance) made by the broker against the wool or mohair.

(3) The producer and broker agree that the net proceeds of any advances on, or sale of, the wool or mohair will be paid by checks made payable jointly to the producer and FmHA.

(b) *Authority.* The County Supervisor may execute releases of the Government's lien on wool and mohair on Form FmHA 462-4, "Assignment, Acceptance, and Release." Since Form FmHA 462-4 is not a binding agreement until executed by all parties in interest, including the producer, the broker and the Government, the County Supervisor may execute it before other parties sign it.

§ 1962.24 Notice of termination of security interest to purchasers of farm products under consents or assignments upon payment in full.

County Supervisors will notify purchasers of farm products as soon as the FmHA has received payment in full of indebtedness for collection of which it has accepted assignments or consents to payment of proceeds from the sale of the farm products. When Form FmHA 441-18 is in effect under the UCC, the notice to the purchaser will be made on Form FmHA 460-8, "Notice of Termination of Security Interest in Farm Products." When assignments have been used, the notice to the purchaser will be by letter or by forms prescribed by State supplements.

§ 1962.25 Release of FmHA's interest in insurance policies.

When an FmHA lien on property covered by insurance has been released, the County Supervisor is authorized to notify the insurance company of the release.

§ 1962.26 Correcting errors in security instruments.

The County Supervisor may use Part 7 of Form FmHA 462-12, to correct minor errors in a financing statement when the errors are not serious (i.e., a slightly misspelled name). OGC will be asked to determine whether or not such errors are in fact minor. The County Supervisor may also use Part 7 of Form FmHA 462-12 to add chattel property to the financing statement (i.e., a new type or item of chattel or crops on land not previously described).

§ 1962.27 Termination or satisfaction of chattel security instruments.

(a) *Conditions.* The County Supervisor may terminate financing statements and satisfy chattel mortgages, chattel deeds of trust, assignments, severence agreements, and other security instruments when:

(1) Payment in full of all debts secured by collateral covered by the security instruments has been received; or

(2) All security has been liquidated or released and the proceeds properly accounted for, including collection or settlement of all claims against third party converters of security, even though the secured debts are not paid in full. This includes collection-only and debt settlement cases; or

(3) The U.S. Attorney has accepted a compromise offer in full settlement of the indebtedness and has asked that action be taken to satisfy or terminate such instruments, or

(4) FmHA has a financing statement or other lien instrument which describes the real estate upon which crops are located but neither the borrower nor FmHA has an interest in the crops because the borrower no longer occupies or farms the premises described in the lien instrument. Such action will only relate to the crops.

(b) *Form of payment.* (1) Security instruments may be satisfied or the financing statements may be terminated on receipt of final payment in currency, coin, U.S. Treasury check, cashier's or certified check, bank draft, postal or bank money order, or a check issued by a party known to be financially responsible.

(2) When the final payment is tendered in a form other than those mentioned above, the security instruments will not be satisfied until 15 days after the date of the final payment. However, in UCC States the termination statement will be signed and sent to the borrower within 10 days after receipt of the borrower's written request but not until the 10th day unless it previously has been ascertained that the payment check or other instrument has been paid by the bank on which it was drawn. (See paragraph (c) of this section for the reason for the 10-day requirement.)

(c) *Filing or recording termination statements.* Financing statements will be terminated by use of Form FmHA 462-12 if provided by a State Supplement.

(1) Under UCC provisions if FmHA fails to give a termination statement to the borrower within 10 days after written demand, it will be liable to the borrower for $100 and, in addition, for any loss caused to the borrower by such failure unless otherwise provided by a State supplement. In the absence of demand for a termination statement by the borrower, a termination statement will be delivered to the borrower when the notes have been paid in full.

(2) However, if FmHA has been meeting the borrower's annual operating credit needs in the past and expects to do so the next year, the financing statements need not be terminated in the absence of such demand unless a loan for the succeeding year will not be made or earlier termination is required by a State supplement.

(d) *Filing or recording satisfactions.* Satisfactions of chattel mortgages and similar instruments will be made on Form FmHA 460-4, "Satisfaction," or other form approved by the State Director. The original of the satisfaction form will be delivered to the borrower for recording or filing and the copy will be retained in the borrower's case file. However, if the State supplement based on State law requires recording or filing by the mortgagee, a second copy will be prepared for the borrower and the original will be recorded or filed by the County Supervisor. When State statutes provide that satisfactions may be accomplished by marginal entry on the records of the recording office, or when Form FmHA 460-4 is not legally sufficient because special circumstances require some other form of satisfaction, County Supervisors are authorized to make such satisfactions according to State supplements. In such cases, Form FmHA 460-4 will not be prepared but a notation of the satisfaction will be made on the copy of Form FmHA 451-1, "Acknowledgment of Cash Payment," or Form FmHA 456-3, "Journal Voucher

for Write-Off or Judgment," which will be retained in the borrower's case folder.

(e) *Satisfaction or termination of lien when old loans cannot be identified.* When a request is received for the satisfaction of a crop or chattel lien or for the termination of a financing statement and the status of the account secured by the lien cannot be ascertained from County Office records, the County Supervisor will prepare a letter to the Finance Office reflecting all the pertinent information available in the County Office regarding the account. The letter will request the Finance Office to tell the County Supervisor whether the borrower is still indebted to FmHA and, if so, the status of the account. If the Finance Office reports to the County Supervisor that the account has been paid in full or otherwise satisfied or that there is no record of an indebtedness in the name of the borrower, the County Supervisor is authorized to issue a satisfaction of the security instruments on Form FmHA 460-4 or other approved form or to effect the satisfaction by marginal release, or a termination on Form FmHA 462-12 as appropriate.

§ 1962.28 Assignment of notes and security instruments.

(a) The State Director may accept from third parties payment in full of a borrower's notes held by FmHA and assign the notes to third parties without recourse against FmHA and assign related security instruments including financing statements without warranty by FmHA in the following situations:

(1) The borrower requests or gives written consent to such an assignment.

(2) The borrower has not requested or given written consent to such an assignment but has demonstrated an unwillingness to cooperate voluntarily with FmHA in the servicing and orderly retirement of his/her accounts which otherwise would be liquidated.

(3) An insurer has made full payment of the borrower's indebtedness as stated in Form FmHA 426-2, "Property Insurance Mortgage Clause (Without Contribution)," or other such clause outlined in § 1806.2(g) of Subpart A of Part 1806 of this chapter (FmHA Instruction 426.1, paragraph II G).

(b) The State Director will request OGC's review of the legal matters in each proposed assignment and will request approval of the form of assignment. (See § 1872.22 of Subpart A of Part 1972 of this chapter, FmHA Instruction 465.1, paragraph XXII, for additional provisions of assigning real estate security instruments.) If the insured note is not held in the appropriate insurance fund or county office, the State Director will request the Director, Finance Office, to have the note assigned to the insurance fund and then forwarded to the State Director. Financing statements may be assigned to third parties on Form FmHA 462-12 if authorized by a State supplement.

§ 1962.29 Payment of fees and insurance premiums.

(a) *Fees*—(1) *Security instruments.* Borrowers must pay statutory fees for filing or recording financing statements or other security instruments (including Form FmHA 462-12, or other renewal statements) and any notary fees for executing these instruments. They also must pay costs of obtaining lien search reports needed in properly servicing security as outlined in this subpart. Whenever possible, borrowers should pay these fees directly to the officials giving the service. When cash is accepted by FmHA employees to pay these fees, Form FmHA 440-12, "Acknowledgment of Payment for Recording, Lien Search and Releasing Fees," will be executed. If the borrower cannot pay the fees, or if there are fees referred to in paragraphs (a) (2) and (3) of this section that must be paid by FmHA, the County Supervisor may pay them as a petty purchase or as the bill of a creditor of FmHA in accordance with FmHA Instructions 2024-E and 2075-A, copies of which are available in any FmHA office.

(2) *Satisfactions.* The borrower must pay fees for filing or recording satisfactions or termination statements unless a State supplement based on State law requires FmHA to pay them.

(3) *Notary fees.* FmHA will pay fees for notary service for executing releases, subordinations, and related documents for and on behalf of FmHA if the service cannot be obtained without cost.

(b) *Insurance premiums.* County Supervisors are authorized to approve bills or invoices for payment of insurance premiums on chattel security for FmHA loans when:

(1) A borrower cannot pay the premiums from the borrower's own resources at the time due;

(2) It is not practical to process a loan for that purpose;

(3) It is necessary to protect FmHA's interests; and

(4) The amount advanced can be charged to the borrower under the provisions of the security instrument.

§ 1962.30 Subordination and waiver of FmHA liens on chattel security.

(a) *Purposes.* FmHA chattel liens securing OL, economic emergency (EE) and emergency (EM) loans may be subordinated to a lien of another creditor to permit that creditor to lend for any authorized OL, EE, or EM loan (Subtitle B) purpose, including capital purchases, provided:

(1) The borrower needs the loan to continue farming operations; and

(2) The loan will help the borrower to accomplish the objectives of the FmHA loans; and

(3) FmHA's financial interest will not be adversely affected.

(b) *Limitations.* (1) When a non-FmHA loans is made to pay expenses directly related to particular crops or livestock enterprises, FmHA lien priority should be subordinated to the non-FmHA creditor's lien only so far as crops, livestock increases, feeder livestock or other normal farm income security is concerned. If the non-FmHA lender will not make a loan unless FmHA agrees to subordinate more of its priority, FmHA may subordinate any lien it holds on basic chattel security. FmHA should not give up any more of its priority to basic chattel security than is absolutely necessary to provide the non-FmHA lender with the security it requires.

(2) When an obligation secured by a lien prior to that of FmHA is about to mature or has matured and the prior lienholder desires to extend or renew the obligation, or the obligation can be refinanced, the FmHA lien may be subordinated. However, the relative lien position of FmHA must be maintained.

(3) The subordination will be limited to a specific amount.

(4) A subordination in favor of only one creditor will be outstanding at any one time in connection with the same security. A subordination also may be executed to enable a borrower to obtain necessary crop insurance if the creditor to whom a subordination has been given on that crop consents in writing to payment of the insurance premiums from the crop or insurance proceeds.

(5) When a subordination is executed to enable the borrower to obtain insurance on crops under lien to FmHA, the borrower will assign the insurance proceeds to FmHA or name FmHA in the loss-payable clause of the policy.

(6) Waivers of FmHA lien priority, instead of subordinations, may be executed in favor of a creditor who has made or will make advances to produce, harvest, process, or market crops under written contract to that creditor. Such waivers are limited to the purposes for which a subordination may be made under this Subpart.

(c) *Approval.* Loan approval officials may approve subordinations and waivers of FmHA OL lien priority if the amount of the proposed subordination or waiver, plus the principal balance of existing subordinations or waivers, is not more than their OL approval authority stated in tables which are available from any FmHA office. Loan

approval officials may approve subordinations and waivers of FmHA EM and EE loans lien priority if the amount of the subordination or waiver plus the unpaid principal balance of existing EM and EE loans and subordinations does not exceed their EM or EE loan approval authority stated in tables which are available from any FmHA Office. When the lien priority for more than one type of loan is subordinated or waived, the total amount of the approval official's authority will be limited to the loan with the lowest approval authority for that official. However, the State Director may approve subordinations or waivers regardless of the amount. State Directors may redelegate their authority for approving subordinations to qualified State Office employees.

(d) *Forms.* (1) Subordinations or lien waivers authorized in this Subpart will be made on Form FmHA 460-2, "Subordination by the Government," or on other forms approved by the State Director with OGC's advice. If Form FmHA 460-2 does not conform to a State's recording requirements, a State supplement may be used, if approved by OGC, to modify the form.

(2) Form FmHA 431-2 will show the subordination or lien waiver and repayment.

(e) *Loans under CCC program.* See Exhibit B of this subpart.

(1) When the ASCS County Office makes CCC loans to the borrower, FmHA will not execute a form of subordination or lien waiver.

(2) When the full value of a CCC loan on cotton is to be advanced to the borrower by a bank, ginner, or warehouseman whom the County Supervisor considers financially responsible, and when a check or draft issued by the bank, ginner, or warehouseman is made payable to FmHA, or jointly to FmHA and the borrower, and is delivered to the County Supervisor, the County Supervisor may then execute the lienholder's waiver on Form CCC Cotton A even though item 2 of that form shows that the CCC loan will be distributed to such a bank, ginner, or warehouseman. Loan approval officials may approve waivers of crop liens in accordance with paragraph (c) of this section.

(3) If the commodity covered by the CCC loan is released by CCC or redeemed by the borrower, the FmHA lien will be restored to the priority it held before the CCC loan was made.

§§ 1962.31–1962.33 [Reserved]

§ 1962.34 Transfer of chattel security and EO property and assumption of debts.

Chattel and EO property may be transferred to eligible or ineligible transferees who agree to assume the outstanding loan, subject to the provisions set out in this Section. A transfer and assumption may also be made when one or more of the borrowers or the former spouse and co-obligor of a divorced borrower withdraws from the operation or dies. The transfer of accounts secured by real estate will be processed in accordance with Subpart A of Part 1872 of this chapter (FmHA Instruction 465.1).

(a) *Transfer to eligibles.* Transfers of chattel security and EO property to a transferee who is eligible for the kind of loan being assumed or who will become eligible after the transfer may be approved, provided:

(1) The transferee assumes the total outstanding balance of the FmHA debts or that portion of the outstanding balance equal to the present market value of the chattel security or EO property, less any prior liens, if the property is worth less than the entire debt.

(2) Generally the debts assumed will be paid in accordance with the rates and terms of the existing notes or assumption agreements. Any delinquency will be scheduled for payment on or before the date the transfer is closed. Form FmHA 460-9, "Assumption Agreement (Same Terms-Eligible Transferee)," will be used. If the existing loan repayment period is extended, the debt being assumed may be rescheduled using Form FmHA 460-5, "Assumption Agreement (New Terms)." The new repayment period may not exceed that for a new loan of the same type. If Form FmHA 460-5 is used, the current interest rate for such loans will be charged to all applicants except those eligible for limited resource loans, who will be charged interest at the rate of 5 percent per year.

(3) The transfer of EM actual loss loans, or EM loans made before September 12, 1975, will be made as provided under paragraph (b) of this section. However, when one or more of the borrowers or jointly obligated partners withdraw from the operation and those remaining desire to assume the total indebtedness and continue the operation, a transfer to the remaining borrowers or partners may be made as an eligible transferee.

(b) *Transfer to ineligibles.* Transfer of the chattel security and EO property to a transferee who is not eligible for the kind of loan being assumed may be approved, provided:

(1) It is in FmHA's financial interest to approve the transfer of security or EO property and assumption of the debts rather than to liquidate the security or EO property immediately.

(2) The transferee assumes the total outstanding balance of the FmHA debt, or an amount substantially more than the present market value of the security or EO property as determined by the County Supervisor, less any prior liens, if the value is less than the entire debts.

(3) FmHA debts assumed will be repaid in amortized installments not to exceed 5 years using Form FmHA 460-5. The transferred property, including EO property, will be subject to any existing FmHA lien. In the absence of an existing FmHA lien, new lien instruments will be executed. Interest rates to the transferee will be as follows:

(i) For OL and EM loans, the current interest rate in effect at the time of approval of the transfer.

(ii) For EO loans, 6 percent.

(4) The transferee can repay the FmHA debt in accordance with the assumption agreement and can legally enter into the contract.

(c) *Effect of signature.* In all cases the purpose and effect of signing an assumption agreement or other evidence of indebtedness is to engage separate and individual personal liability, regardless of any State law to the contrary.

(d) *Release of transferor from liability.* The borrower and any cosigner may be released from personal liability to FmHA when all the chattel security is transferred to an eligible or ineligible applicant and the total outstanding debt or that portion of the debt equal to the present market value of the security is assumed.

(e) *County Committee actions*—(1) *Transfer to eligible applicant.* The County Committee will certify the transferee's eligibility for the types of loans to be assumed on Form FmHA 440-2, "County Committee Certification or Recommendations."

(2) *Transfer to ineligible applicant.* The County Committee will execute a memorandum statement on Form FmHA 440-2 as follows: "In our opinion, the transferee, (name of transferee), will honestly endeavor to make payments in accordance with the assumption agreement, maintain the security, and carry out the other obligations in connection with the loan."

(3) *Release from liability.* If the total outstanding debt is not assumed, the County Committee will execute a memorandum statement on Form FmHA 440-2 when they recommend the transferor be released from personal liability, which will read as follows: "(*Name of transferor and any cosigner*) in our opinion do not have reasonable ability to pay all or a substantial part of the balance of the debt not assumed after considering their assets and income at the time of transfer. Transferors have cooperated in good faith, used due diligence to maintain the security against loss, and otherwise fulfilled the covenants incident to the loan to the best of their ability. Therefore, we recommend that the

transferor and any cosigner be released from personal liabililty on the transferees' assumption of a portion of the indebtedness at least equal to the present market value of the security." If the total outstanding debt is assumed, the statement is not required.

(f) *Transfer and assumption docket.* The County Supervisor will assemble the following statements and forms for transfer and assumption:

(1) A statement of the current amount of the indebtedness.

(2) A description of the security or EO property to be transferred and a statement about its value.

(3) Form FmHA 410-1, "Application for FmHA Services."

(4) Form FmHA 440-2 for an eligible transferee, with the memorandum statement of the County Committee if the transferor is to be released from liability.

(5) County Committee memorandum statement for ineligible transferee with the additional memorandum statement if the transferor is to be released from liability.

(6) Statement of justification for the transfer, including a plan of repayment, if not otherwise shown in the docket.

(7) Transferee's plan of operation shown on Form FmHA 431-2, or Form FmHA 431-3, or Form FmHA 431-4.

(8) Form FmHA 460-5 or Form FmHA 460-9, as appropriate.

(9) Form FmHA 465-8, "Release from personal Liability," when appropriate.

(10) Form FmHA 440-41A, "Disclosure Statement for Loans Not Secured by Real Estate."

(11) Form FmHA 440-41, "Disclosure Statement for Loans Secured by Real Estate."

(12) Form FmHA 440-1, "Request for Obligation of Funds."

(13) Form FmHA 465-5, "Transfer of Real Estate Security," will be used to transfer real estate security.

(g) *Processing assumption agreements.* Additional security instruments will be obtained in accordance with advice from OGC.

(1) On receipt of Form FmHA 460-5 or Form FmHA 460-9, the Finance Office will establish an account in the name of the assuming transferee and will notify the County Supervisor.

(2) Form FmHA 405-1, "Management System Card—Individual," will be prepared for the transferee, and the loan record cards of the transferor will be attached.

(3) If a collection is received from the transferee after the assumption agreement is approved but before Finance Office notification to the County Office, Form FmHA 451-2, "Schedule of Remittances," will be prepared as follows:

(i) During the period that a transfer is pending in the County Office, payments received by the Finance Office will continue to be applied to the transferor's account, and Form FmHA 451-26, "Transaction Record," or Form FmHA 451-31, "Borrower Transaction Record," will be forwarded to the County Office. This includes any downpayments made in connection with the transfer for reducing the amount of the debt to be assumed. On receiving a payment on the account not included in the latest transaction record or monthly payment account status report, the County Supervisor should deduct such amounts from the total amount of principal and interest calculated from the latest information available before completing the assumption agreement and having it signed.

(ii) When the borrower has made a direct payment to the Finance Office and there is no record of it in the County Office, the account will be assumed based on the latest record in the County Office. The application of the direct payment will be reversed from the account, and the assumption agreement will be processed in the Finance Office. The Director, Finance Office, will contact the County Supervisor to determine how to dispose of the proceeds from the direct payment.

(iii) For payments received on the date of transfer, Form FmHA 451-2 will be prepared to show "Transfer in process for account owed by (borrower's name and case number) to be transferred to (name of transferee and case number, if known)." If the borrower number portion of the case number has not yet been assigned for a transferee, only the State and County portion of the case number will be shown. A statement for the information of the Finance Office will be attached to the assumption agreement showing the date of Form FmHA 451-2 and the amount paid.

(iv) When a payment is due on the assumption agreement shortly after the transfer is completed, it should be collected if possible, at the time of transfer and remitted in the transferee's name.

(h) *Approval.* Loan approval officials are authorized to approve transfer and assumption of FmHA accounts to eligible or ineligible transferees and releases from liability when the debts are within their respective loan approval authorities stated in tables which are available from any FmHA Office (FmHA Instruction 1901-A).

(1) Loan approval officials may also approve transfers and assumptions of EO loans and releases from liability. State Directors may also approve transfers to and assumptions by ineligible transferees and releases from liability regardless of the amount of the outstanding EM loan debt.

(2) The Administrator will review for approval proprosed transfers to and assumptions by eligible transferees that exceed the approval authorities of State Directors for EM loans.

§§ 1962.35–1962.39 [Reserved]

§ 1962.40 Liquidation.

FmHA will continue with borrowers if they make payments in accordance with their ability, account properly for security or EO property, and otherwise meet their loan obligations. When liquidation is begun, it is FmHA policy to liquidate all security and EO property except EO property that the County Supervisor determines is essential for minimum family living needs. The present market value of security that may be retained by the borrower for minimum family living needs will not exceed $600. However, only so much of the security and EO property will be liquidated as is necessary to pay the indebtedness. Ordinarily, before beginning liquidation, the facts will be presented to the District Director and the County Committee for recommendations. Liquidation will be undertaken when no further assistance will be given to a borrower and the borrower is in default.

(a) *Approval of liquidation.* The County Supervisor may approve liquidation of chattle security and nonsecurity property. Cases involving legal problems not covered by this Subpart or related State supplements and cases in which real estate serves as security for any FmHA loan will be referred to the State Director for advice before approval. When liquidation is approved without referral to the State Director, a statement of facts with reasons for the action will be recorded in the running case file. Liquidation will be considered approved on the date the County Supervisor:

(1) Executes Form FmHA 455-4, "Agreement for Voluntary Liquidation of Chattel Security", or

(2) Executes Form FmHA 455-3, "Agreement for Public Sale by Borrower", or

(3) Executes Form FmHA 462-2, "Written Consent To Sell and Statement of Conditions on Which Lien will be Released", or

(4) Executes Form FmHA 455-6, "Agreement for Temporary Custody of Property", or

(5) Executes Form FmHA 455-21, "Notice of Acceleration and Demand for Payment", when security is to be liquidated under the "Power of Sale" except when a State supplement requires the use of another form, or

(6) Takes possession of property under a security instrument or EO

Loan Agreement to exercise the power of sale contained in it, or

(7) Requests the borrower or another party in writing to sell EO property under the loan agreement, or

(8) Is notified by the State Director that liquidation is approved in cases submitted to the State Office.

(b) *Lien searches.* Before liquidation is approved, the County Supervisor will obtain a current lien search report to determine the effect that liens of other parties will have on liquidation, the record lienholders to whom notices of sale will be given, and the distribution that will be made of the sale's proceeds. Normally, lien searches should be obtained from the same source as is used when making a loan. If obtaining the searches from third party sources would cause undue delay which would interfere with orderly liquidation, searches may be made by the County Supervisor. If the lien search is made by third parties, the borrower will pay the cost from personal funds or if the borrower refuses, FmHA will pay the cost and charge it to the borrower's account in accordance with the security instrument or EO Loan Agreement. The records to be searched and the period covered by the search will be in accordance with a State supplement.

(c) *Acceleration of unmatured installments.* (1) When liquidation has been approved, the County Supervisor will accelerate all unmatured installments by using Form FmHA 455-21, except as follows:

(1) In cases referred to OGC for civil action, a notice of acceleration is not necessary if the notice has previously been given. However, when security is to be liquidated under the "Power of Sale" in the lien instrument without referral to OGC, the County Supervisor will use Form FmHA 455-21.

(ii) When Form FmHA 455-13, "Report of Sale of Chattel Security," is used, the statement in it declaring unmatured installments immediately due and payable will suffice for loan servicing purposes. However, the County Supervisor may use Form FmHA 455-21 when its use will assist in collecting any remaining indebtedness.

(2) Form FmHA 455-21 will be sent to the last known address of each obligor, with a copy to the Finance Office in those cases referred to OGC for civil action. County Office and Finance Office loan records will be adjusted to mature the entire indebtedness only in such cases.

(d) *Assignment of insured loans.* When liquidation of an insured loan is approved, the State Director will immediately obtain an assignment of the loan to FmHA. If the County Supervisor approves the liquidation, the County Supervisor will immediately refer the case to the State Office with a request to obtain assignment of the loan. Pending the assignment, preliminary steps to effect liquidation should be taken, but civil or other court action will not be started and claims will not be filed in bankruptcy or similar proceedings or in probate or administration proceedings with respect to the insured loan claim, unless essential to protect FmHA's interests and OGC recommends such action. However, other steps need not be held up pending assignment.

(e) *Protective advances.* (1) When liquidation has been approved and security is in danger of loss or deterioration, the State Director will protect FmHA's interest and approve advances in payment of:

(i) Delinquent taxes or assessments that constitute prior liens which would be paid ahead of FmHA under § 1962.44 (a) of this Subpart,

(ii) Premiums on insurance essential to protect FmHA's interest, and

(iii) Other costs including transportation necessary to protect or preserve the security.

(2) However, such advances may not be made unless the amount advanced becomes a part of the debt secured by FmHA's lien, or is for expenses of administration of estates or for litigation. If a case is in the hands of the U.S. Attorney, such advances may not be made without the U.S. Attorney's concurrence. Moreover, such advances may not be made in any case to pay expenses incurred by a U.S. Marshal or other similar official such as a local sheriff. However, if the official seizes the property and delivers it to FmHA for sale by FmHA, costs incurred by FmHA after delivery to FmHA will be paid. Costs provided for in Form FmHA 441-19, "Loan Agreement," also may be paid to protect FmHA's interests in EO property.

(3) The County Supervisor will submit a report on the need for such advances to the State Director, including:

(i) Borrower's County Office case file;

(ii) Current lien search report;

(iii) Statement of the type and value of the property and of the circumstances which may result in the loss or deterioration of such property; and

(iv) A recommendation as to whether or not the advance should be approved.

(4) Costs incurred by FmHA in protecting its interest in security or EO property may be paid by means of Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal," and may be charged to the borrower's loan account, or paid from proceeds of the sale of security or EO property.

§ 1962.41 Sale of chattel security or EO property by borrowers.

(a) *Public sale.* Because it is in the best interest of the borrower and FmHA, when liquidation has been approved, FmHA usually will encourage the borrower to sell security or EO property at public auction in the borrower's own name. Form FmHA 455-3 will be executed by the borrower, all lienholders, and the clerk of the sale or other person who will receive the sale proceeds before execution by the County Supervisor. When EO property is involved, delete from the Form the reference to the FmHA lien in the first "Whereas" clause, the second sentence in item 5, and all of item 8. No FmHA official is authorized to bid at such sales. The County Supervisor will arrange to promptly receive the proceeds of the sale due FmHA for application on the borrower's indebtedness.

(b) *Private sale.* The borrower may sell chattel security or EO property at a private sale if:

(i) The borrower has ready purchasers and can sell *all* of the property for its present market value; or

(ii) The property is perishable; or

(iii) The property is of a type customarily sold on a recognized market; or

(iv) The property consists of items of small value or a limited number of items which do not justify public sale.

(2) Form FmHA 462-2 may be used to approve liquidation of such security. The County Supervisor will document in the running case record the reasons that a public sale was not justified. If the security is not sold within 30 days after executing Form FmHA 462-2, it will be liquidated in accordance with paragraph (a) of this section or § 1962.42.

§ 1962.42 Repossession, care, and sale of chattel security or EO property by the County Supervisor.

(a) *Repossession.* The County Supervisor will take possession of security or EO property for FmHA when the value of the property, based on appraisal, is substantially more than the estimated sale expenses and the amount of any prior lien, if the prior lienholder does not intend to enforce the lien. The property will not be repossessed if FmHA's estimated recovery will be small in relation to the amount of its claim, or in relation to the amount it must pay on prior liens and sale expenses if it bids on the property in accordance with § 1955.20 of Subpart A of Part 1955 of this chapter.

(1) *Conditions.* The County Supervisor will take possession under any of the following conditions:

(i) When Form FmHA 455-4 has been executed. For EO property this

form will be revised by placing a period after "interest" in the first "Whereas" paragraph and deleting the remainder of that clause; deleting the words "collateral covered by the aforesaid security instruments" in the second "Whereas" paragraph and inserting in lieu thereof "property covered by the debtor's loan agreement which is hereinafter referred to as the collateral."

(ii) When the borrower has abandoned the property.

(iii) When peaceable possession can be obtained, but the borrower has not executed Form FmHA 455-4.

(iv) When the property is delivered to FmHA as a result of court action.

(v) When Form FmHA 455-5, "Agreement of Secured Parties to Sale of Security Property," is executed by all prior lienholders. If prior lienholders will not agree to liquidate the property, their liens may be paid if their notes and liens are assigned to FmHA on forms prepared or approved by OGC. When prior liens are paid, the payment will be made on Standard Form 1034 and charged to the borrower's account.

(vi) When arrangements cannot be made with the borrower or a member of the borrower's family to sell EO property in accordance with the loan agreement.

(2) *Recording.* A list, dated and signed by the County Supervisor, of all security or EO property repossessed except for those items on Form FmHA 455-4, Form FmHA 455-6, or Form FmHA 455-7, "Agreement for Cultivating, Harvesting, and Delivering Crops," will be maintained in the borrower's case file. Whenever the County Supervisor is transferred to another position or leaves FmHA or there is a change in jurisdiction, the District Director will give the succeeding County Supervisor in writing, the names of such borrowers and a list of the property repossessed in the custody of the County Supervisor and caretakers, its location, and the names and addresses of the caretakers.

(b) *Care.* The County Supervisor will arrange for the custody and care of repossessed property as follows:

(1) *Livestock.* Livestock will be delivered to a person who can care for and feed it for compensation agreed on in advance. Whenever practicable, animal products will be computed as a part of all of the caretaker's compensation. Delivery, however, will be made only after Form FmHA 455-6 is executed. Space also may be leased using Form FmHA 455-6. When more time is needed than is indicated in paragraph (c) (4) (i) of this section, the State Director may authorize Form FmHA 455-6 to be amended as appropriate and initialed by the parties or a new agreement may be executed covering the extension. If a more favorable arrangement cannot be obtained, custody agreements may provide that FmHA will supply feed necessary to maintain livestock.

(2) *Machinery, equipment, tools, harvested crops, and other chattels.* Property will be stored and cared for pending sale. Space may be leased for this purpose, if necessary, or property may be stored and cared for by agreement on Form FmHA 455-6. This type of property will not be used by the caretaker but will be held in storage only.

(3) *Crops.* Form FmHA 455-7 will be used for the custody, care, and disposition of growing crops and for unharvested matured crops unless the crops are to be sold in place. The form will be executed by the caretaker and the landlord unless the landlord gives consent otherwise in writing. If the written consent of the landlord cannot be obtained or if the procedures in this Subpart do not cover a situation, the circumstances should be reported to the State Director for advice.

(c) *Sale.* Repossessed property may be sold by FmHA at public or private sale for cash under Form FmHA 455-4, Form FmHA 441-19, the power of sale in security agreements under the UCC or in crop and chattel mortgages and similar instruments if authorized by a State supplement. Also, repossessed property may be sold at private sale when the borrower executes Form FmHA 455-11, "Bill of Sale 'B' (Sale by Private Party)."

(1) *Tests and inspections of livestock.* If required by State law as a condition of sale, livestock will be tested or inspected before sale. A State supplement will be issued for those States.

(2) *Public sales.* Such sales will be made to the highest bidder. They may be held on the borrower's farm or other premises, at public sale barns, pavilions, or at other advantageous sales locations. No FmHA employee will bid on or acquire property at public sales except on behalf of FmHA in accordance with § 1955.20 of Subpart A of Part 1955 of this chapter. The County Supervisor will attend all public sales of repossessed property.

(3) *Private sales.* FmHA will sell perishable property such as fresh fruits and vegetables for the best price obtainable. FmHA will sell staple crops such as wheat, rye, oats, corn, cotton, and tobacco for a price in line with current market quotations for products of similar grade, type, or other recognized classification. Chattel property sold under Fotm FmHA 455-4, other than perishable property and staple crops, will not be sold for less than the minimum price in the agreement. FmHA will sell other property, including that sold when the borrower executes Form FmHA 455-11, for its present market value.

(4) *Selling period.* Repossessed property will be sold as soon as possible. However, when notice is required by paragraph (c)(5) of this section, the sale will not be held until the notice period has expired.

(i) The sale will be made within 60 days unless a shorter period is indicated by a State supplement because of State law. Crops will be sold when the maximum return can be realized but not later than 60 days after harvesting, or the normal marketing time for such crops. The State Director may extend the sale time within State law limits.

(ii) These requirements do not apply to irrigation or other equipment and fixtures which, together with real estate, serve as security for FmHA real estate loans and will be sold or transferred with the real estate. However, a State Supplement will be issued for any State having a time limit within which such items must be sold along with or as a part of the real estate.

(5) *Notice.* (i) Notice of public or private sale of repossessed property when required will be given to the borrower and to any party who has filed a financing statement or who is known by the County Supervisor to have a security interest in the property, except as set forth below. The notice will be delivered or mailed so that it will reach the borrower and any lienholder at least 5 days (or longer time if specified by a State supplement) before the time of any public sale or the time after which any private sale will be held. Form FmHA 455-8, "Notice of Sale," may be used for public or private sales.

(A) Notice to the borrower of lienholder is not required when the property is sold under Form FmHA 455-4 because the parties are placed on notice when they execute the form. When the sale involves only collateral which is perishable, will decline quickly in value, or is a type customarily sold on a recognized market, notice is not required but may be given if time permits to maintain good public relations.

(B) Notice only to lienholder is required when repossessed property is sold at private sale and the borrower executes Form FmHA 455-11.

(C) If the property is to be sold under a chattel mortgage, the manner of notice will be set forth in a State supplement or on an individual case basis.

(ii) Notice to Internal Revenue Service (IRS). If a Federal tax lien notice has been filed in the local records more than 30 days before the sale of the repossessed security, notice to the District Director of IRS must be given at least 25 days before the sale. It

should be given by sending a copy of Form FmHA 455-8 and a copy of the filed Notice of Federal Tax Lien (Form IRS 668). If the security is perishable, the full 25 days' notice to the District Director is not required, but notice must be given to the District Director by registered or certified mail or by personal service before the sale. Also, the sale proceeds must be held for 30 days after the sale so that they may be claimed by IRS on the basis of its tax lien priority. In such perishable property cases, the proceeds or an amount large enough to pay the IRS tax lien will be forwarded to the Finance Office with a notation "Hold in suspense 30 days because of Federal Tax Lien." OGC will advise the Finance Office about disposing of the funds.

(6) *Advertising.* (i) Private sales and sales at established public auctions will be advertised by FmHA only if required by a State supplement based on State law.

(ii) Other public sales, whether under power of sale in the lien instrument or under Form FmHA 455-4, will be widely publicized to assure large attendance and a fair sale by one or more of the following methods customarily used in the area.

(A) The sale may be advertised by posting or distributing handbills, posting Form FmHA 455-8, or a revision of it approved by OGC to meet State law requirements, or by a combination of these methods. The length of time and place of giving notice will be covered by a State supplement.

(B) Advertising in newspapers or spot advertising on local radio or TV stations may be used depending on the amount of property to be sold and the cost in relation to the value of the property, the customs in the area, and State law requirements. When newspaper advertising is required, a State supplement will indicate the types of newspapers to be used, the number and times of insertions of the advertisement, and the form of notice of sale.

(7) *Payment of costs and prior lienholders.* If expenses must be paid before the sale or if cash proceeds are not available from the sale of the property to pay costs referred to in § 1962.44 (b) of this Subpart or to pay prior lienholders, such costs or prior liens will be paid by voucher on Standard Form 1034 or by Standard form 1143, "Advertising Order," and Standard Form 1143a, "Memorandum Copy" for newspaper or publisher's invoice for newspaper advertising under FmHA Instruction 2024-F a copy of which is available in any FmHA Office.

(i) The amount of the voucher will be charged to the borrower's account, except as limited by State law in a State supplement. No costs in the repossession and sale of security should be incurred unless they can be charged to the borrower's account, and in no event will the Government pay them. However, if costs are not legally chargeable to the borrower, they may be paid as provided in this Subpart, and charged to an account set up for the officials or other persons found responsible for them.

(ii) Each invoice or voucher will be approved by the County Supervisor, signed by the payee or supported by signed invoices, and submitted to the Finance Office for payment. An original and one copy of Form FmHA 455-6 or Form FmHA 455-7 will be attached to invoices or vouchers in payment of such costs as custody, care, storage, harvesting, and marketing.

(8) *Bill of sale or transfer of title.* If a purchaser requests a written conveyance of repossessed property sold by FmHA at public or private sale, the County Supervisor will execute and deliver to the purchaser Form FmHA 455-12, "Bill of Sale 'C' (Sale Through Government as Liquidating Agent)," or other necessary instruments to convey all the rights, title, and interests of the borrower and FmHA. A State supplement will be issued as necessary for conveying title to motor vehicles and boats.

§ 1962.43 Liquidation of chattel security or EO property by other parties.

(a) *Sale by prior lienholders and other parties.* See § 1955.20 of Subpart A of Part 1955 of this chapter for the County Supervisor's authority to bid at such sales.

(b) *Sale by junior lienholders.* On learning through formal notice or otherwise that a junior lienholder has begun foreclosure, the County Supervisor will consider whether FmHA should start liquidation. If the County Supervisor decides on liquidation, the County Supervisor will inform the junior lienholder and arrange for voluntary liquidation. If the junior lienholder has already begun foreclosure action and if voluntary liquidation cannot be effected, FmHA will foreclose its lien so that a single foreclosure sale may be held under both liens. If insufficient time or other reasons prevent holding a joint foreclosure sale, the County Supervisor will inform the foreclosing junior lienholder in writing as to the property on which FmHA holds a prior lien; and that

(1) If the junior lienholder's foreclosure sale is held, the County Supervisor will announce at the sale that FmHA holds a prior lien on each item of such property as security for an indebtedness of $—— (total principal and interest), and that any such property sold will continue to be subject to FmHA's prior lien; and that

(2) The County Supervisor will immediately start foreclosure or other legal action to obtain the full value of each item of this property to apply on its prior lien until its lien is satisfied.

(c) *Retention by other lienholders without sale.* If another lienholder notifies FmHA that it has taken possession of the security after default and proposes to keep it in satisfaction of its secured claim, the County Supervisor should promptly reply in writing that FmHA objects and insists that the property be sold in accordance with law. The County Supervisor will only write the lienholder when FmHA's estimated recovery will be substantially greater than the amount of the claim, prior liens and sale expenses. After such notice, the case will be referred to the State Director for advice.

§ 1962.44 Distribution of liquidation sale proceeds.

This section applies to proceeds of nonjudicial liquidation sales conducted under the power of sale in lien instruments or under Form FmHA 455-4, Form FmHA 455-3, or Form FmHA 462-2.

(a) *Lien priorities.*—(1) *Federal liens.* For Federal income, social security, other Federal tax liens, or liens of other Federal agencies, OGC's advice will be obtained as to lien priorities.

(2) *State and local tax liens.* A State supplement, if considered necessary by the State Director and OGC, will list priorities of these liens or may provide for referral of these cases to the State Office.

(3) *Chattel mortgages and other liens of private parties.* A State supplement, if considered necessary by the State Director and OGC, will list priorities of chattel mortgages, landlord's liens, mechanics and materialmen liens, and other liens of private parties.

(4) *Security interests under UCC.* Liens on the same collateral that are perfected by filing a financing statement under the UCC and that are still effective as constructive notice, unless otherwise provided by a State supplement, will be paid in the order of their perfection. Exceptions to this rule are listed below. A State supplement will be issued whenever necessary to explain any State deviations from these listed exceptions.

(i) A purchase money security interest in personal property will take priority over an earlier perfected security interest if a security agreement is taken and a financing statement is filed before the purchaser receives possession of the collateral or within 10 days thereafter. However:

(A) *Motor vehicles.* For motor vehicles required to be licensed, any action

necessary to obtain perfection in the particular State, such as having the security interest noted on the certificate of title, must be taken before the purchaser receives possession of the collateral or within 10 days thereafter. In some States, filing a financing statement to perfect a security interest is not required. A State supplement will be issued as necessary.

(B) *Farm equipment.* A purchase money security interest in farm equipment, other than fixtures or motor vehicles required to be licensed, costing $2,500 or less, will take priority over an earlier perfected security interest if a security agreement is obtained, even though a financing statement is not taken or filed.

(C) *Inventory.* A purchase money security interest in inventory will take priority over an earlier perfected security interest provided a security agreement is taken and a financing statement is filed not later than the time the purchaser receives possession of the property. Also, before the purchaser receives possession, the purchase money creditor will notify the earlier perfected secured party, in writing, that he or she has, or expects to acquire, a purchase money security interest in inventory described by item or type.

(ii) A security interest taken in goods before they become fixtures has priority over real estate interest holders. A security interest taken in goods after they become fixtures is valid against all persons subsequently acquiring an interest in the real estate. It is not valid, however, against persons who had an interest in the real estate when the goods became fixtures, unless they execute a consent disclaimer or subordination agreement.

(iii) A security interest taken in and to finance crops not more than 3 months before they are planted or otherwise become growing crops, has priority over an earlier perfected security interest for obligations that were due more than 6 months before the crops became growing crops.

(b) *Order of payment.*—Sales proceeds will be distributed in the following order of priority.

(1) To pay expenses of sale including advertising, lien searches, tests and inspection of livestock, and transportation, custody, care, storage, harvesting, marketing, and other expenses chargeable to the borrower, including reimbursement of amounts already paid by FmHA and charged to the borrower's account. Bills can be paid, after liquidation has been approved, for essential repairs and parts for machinery and equipment to place it in reasonable condition for sale, provided written agreements from any holders of liens which are prior to those of FmHA state that such bills may be paid from the sales proceeds ahead of their liens.

(i) However, any such expenses incurred by the U.S. Marshal or other similar official such as a local sheriff may not be paid from sale proceeds turned over to FmHA.

(ii) On the other hand, if the U.S. Marshal or other similar official such as a local sheriff has taken possession of the property and delivered it to FmHA for sale, such costs incurred by FmHA after delivery of the property to it may be paid from the proceeds of the sale.

(2) To pay liens which are prior to FmHA liens provided that:

(i) State and local tax liens on security or EO property which are prior to the liens of FmHA will be paid only when demand is made by tax collecting officials before distributing the sale proceeds. The sale proceeds will not be used to pay real estate, income, or other taxes which are not a lien against the security, or to pay substantial amounts of personal property taxes on nonsecurity personal property.

(ii) If action is threatened or taken by the sheriff or other official to collect taxes not authorized in paragraph (b) (2) (i) of this section to be paid out of the security or the sale proceeds, the sale will be postponed unless an arrangement can be made to deposit in escrow with a responsible disinterested party an amount equal to the tax claim, pending determination of priority rights. When the sale is postponed, or an escrow arrangement is made, the matter will be reported promptly to the State Director for referral to OGC.

(iii) If FmHA subordinations have been approved, their intent will be recognized in the use of sale proceeds even though the creditor in whose favor the FmHA lien was subordinated did not obtain a lien. If there are other third party liens on the property, however, the lienholders must agree to the use of the sale proceeds to pay such creditor first.

(3) To pay rent for the current crop year from the sale proceeds of other than basic security or EO property. However, there must be no liens junior to FmHA's other than the landlord's lien, if any, and the borrower must consent in writing to the payment.

(4) To pay debts owed FmHA which are secured by liens on the property sold.

(5) To pay liens junior to those of FmHA in accordance with their priorities on the property sold, including any landlord's liens for rent unless, such liens already have been paid. Junior liens will not be paid unless, on request, the lienholder gives proof of the existence and the amount of his or her lien.

(6) To pay on any EO unsecured debt.

(7) To pay rent for the current crop year if the borrower consents in writing to payment and if such rent has not already been paid as provided in paragraphs (b), (2), (3), or (5) of this section.

(8) To pay on any other FmHA debts, either unsecured or secured by liens on property which is not being sold. However, in justifiable circumstances, the State Director may approve the use of a part or all of the remainder of such sale proceeds by the borrower for other purposes: *Provided,* The other FmHA debts are adequately secured, or the borrower arranges to pay the other debts from income or other sources and these payments can be depended upon.

(9) To pay the remainder to the borrower.

(c) *Receipts.*—Receipts are required for all amounts paid from the sale proceeds and are kept in the borrower's case file. Form FmHA 451-2 will be prepared only for the total amount remitted to FmHA for credit to the borrower's indebtedness.

§ 1962.45 Reporting sales.

(a) Form FmHA 455-13 will be prepared when:

(1) Property is repossessed by FmHA; or

(2) The borrower sells the property under Form FmHA 455-3 or Form FmHA 462-2 and the FmHA debt is not paid in full; or

(3) The property is sold by prior or junior lienholders or other parties. It will not be prepared when the borrower holds the sale using Form FmHA 455-3 or Form FmHA 462-2 and the borrower's FmHA indebtedness is paid in full.

(b) Form FmHA 455-13 will be completed as soon as all the property is sold. In completing Part I of this form, the names of the purchasers need not be shown if there are numerous purchasers and the clerk's report of sale is filed in the borrower's case file, or liquidation is effected by using Form FmHA 462-2.

§ 1962.46 Deceased borrowers.

Immediately on learning of the death of any person liable to FmHA, the County Supervisor will prepare Form FmHA 455-17, "Report on Deceased Borrower," to determine whether any special servicing action is necessary unless the County Supervisor recommends settlement of the indebtedness under Part 1864 of this chapter (FmHA Instruction 456.1). If a survivor will not continue with the loan, it may be necessary to make immediate arrangements with a survivor,

executor, administrator, or other interested parties to complete the year's operations or to otherwise protect or preserve the security.

(a) *Reporting.* The borrower's case files including Form FmHA 455-17 will be forwarded promptly to the State Director for use in deciding the action to take if any of the following conditions exist (When it is necessary to send an incomplete Form FmHA 455-17, any additional information which may affect the State Director's decision will be sent as soon as available on a supplemental Form FmHA 455-17 or in a memorandum.):

(1) Probate or other administration proceedings have been started or are contemplated.

(2) The debts owed to FmHA are inadequately secured and the estate has other assets from which collection could be made.

(3) FmHA's security has a value in excess of the indebtedness it secures and the deceased obligor owes other debts to FmHA which are unsecured or inadequately secured.

(4) The County Supervisor recommends continuation with a survivor who is not liable for the indebtedness or recommends transfer to, and assumption by another party.

(5) The County Supervisor recommends, but does not have authority to approve, liquidation.

(6) The County Supervisor wants advice on servicing the case.

(b) *Probate or administration proceedings.* Generally, probate or administration proceedings are started by relatives or heirs of the deceased or by other creditors. Ordinarily, FmHA will not start these proceedings because of the problems of designating an administrator or other similar official, posting bond, and paying costs. If probate or administration proceedings are started by other parties or at FmHA's request, and any security is to be liquidated by FmHA instead of by the administrator or executor or other similar official, it will be liquidated in accordance with the advice of OGC. The State Director may request OGC to recommend that the U.S. Attorney bring probate or administration proceedings when it appears that:

(1) Such proceedings will not be started by other parties;

(2) FmHA's interests could best be protected by filing a proof of claim in such proceedings, and

(3) Public administrators or other similar officials or private parties, including banks and trust companies, are eligible to, and will serve as administrator or other similar official and will provide the required bond.

(c) *Filing proof of claim.* When a proof of claim is to be filed, it will be prepared on a form approved by OGC, executed by the State Director, and transmitted to OGC. It will be filed by OGC or by an FmHA official as directed by OGC or it will be referred by OGC to the U.S. Attorney for filing if representation of FmHA by counsel may be required. If a judgment claim is involved, the notification to the U.S. Attorney will be the same as for judgment claims in bankruptcy. If an insured loan is involved, the proof of claim will not be prepared until the note has been assigned to the Government. A proof of claim will be filed when probate or administration proceedings are started, unless:

(1) After considering liens and priority rights of FmHA and other parties, costs of administration, and charges against the estate, FmHA cannot reach the assets in the estate except for FmHA's own security and FmHA will liquidate the security by foreclosure or otherwise if necessary to collect its claim, or

(2) Continuation with an individual or transfer to and assumption by another party is approved, and either the debt owed to FmHA is fully secured, or the amount of the debt in excess of the value of the security which could be collected by filing a claim is obtained in cash or additional security, or

(3) The debt owed to FmHA by the estate is settled under Part 1864 of this Chapter (FmHA Instruction 456.1) well ahead of the deadline for filing proof of claim.

(d) *Priority of claims.* (1) Each secured claim will take its relative lien priority to the extent of the value of the property serving as security for it. These claims include those secured by mortgages, deeds of trust, landlord's contractual liens, and other contractual liens or security instruments executed by the borrower on real or personal property. However, tax, judgment, attachment, garnishment, laborer's, mechanic's, materialmen's, landlord's statutory liens, and other noncontractual lien claims may or may not be secured claims. Therefore, if any noncontractual claims are allowed as secured claims and the FmHA claim is not paid in full, the advice of OGC will be obtained as to whether they constitute secured claims and as to their relative priorities.

(2) Unsecured claims will be handled as follows:

(i) The remaining assets of the estate, including any value of security for more than the amount of the secured claims against it, are to be applied first to payment of administration costs and charges against the estate and second to unsecured debts of the deceased.

(ii) If the total of the remaining assets in the estate being administered is not enough to pay all administration costs, charges against the estate, and unsecured debts of the deceased, the Government's unsecured claims against the remaining assets will have priority over all other unsecured claims, except the costs of administration and charges against the estate. Under such circumstances unsecured claims are payable in the following order of priority:

(A) Costs of administration and charges against the estate unless under State law they are payable after the Government's unsecured claims. Such costs and charges include costs of administration of the estate, allowable funeral expenses, allowances of minor children and surviving spouse, and dower and courtesy rights.

(B) The Government's unsecured claims.

(3) A State supplement will be issued as needed taking into consideration the Federal priority statute, lien waivers and subordinations, and notice and other statutory provisions which affect lien priorities.

(e) *Withdrawal of claim.* It may not be necessary to withdraw a claim when it is paid in full by someone other than the estate or when compromised. However, when it is necessary to permit closing of an estate, compromise of a claim, or for other justifiable reasons, the State Director will recommend to OGC that the claim be withdrawn on receipt of cash or security, or both, of a value at least equal to the amount that could be recovered under the claim against the estate. When FmHA keeps existing security, arrangements must be made to assure that withdrawal of the claim will not affect FmHA's rights under the existing notes or security instruments with respect to the retained security. In some cases, with OGC's advice, the claim may be properly handled without filing a formal petition for withdrawal of the claim. However, if the claim has been referred to the U.S. Attorney, or if a formal withdrawal of the claim is necessary, the matter will be referred by OGC to the U.S. Attorney.

(f) *Liquidation of security.* When probate or administration proceedings have not been started and continuation with a survivor or transfer and assumption by another party will not be approved, chattel security and real estate security will be liquidated promptly in accordance with this subpart and Subpart A of Part 1872 of this chapter (FmHA Instruction 465.1), respectively. If the proceeds from the sale of security are insufficient to pay in full the indebtedness owed to FmHA, and other assets are available in the estate or in the hands of heirs from which to collect, the State Director will request OGC to effect collection.

(g) *Continuation of secured debt and transfer of security.* When a surviving member of a deceased borrower's family or other person is interested in continuing the loan and taking over the security for the benefit of all or a part of the deceased borrower's family who were directly dependent on the borrower for their support at the time of the borrower's death, continuation may be approved subject to the following:

(1) Any individual who is liable for the indebtedness of the deceased borrower may continue with the loan provided that individual can comply with the obligations of the notes or other evidence of debt and chattel or real estate security instruments and so long as liquidation is not necessary to protect the interest of FmHA. When an individual who is liable for the indebtedness is to continue with the account, Form FmHA 450-10, "Advice of Borrower's Change of Address or Name," will be sent to the Finance Office to change the account to that individual's name. A new case number will be assigned or, if the continuing individual already has a case number, that number will be used regardless of whether that individual assumed all or a portion of the amount of the debt owed by the estate of the deceased.

(2) When a surviving member of a deceased borrower's family, a relative or other individual who is not liable for the indebtedness desires to continue with the farming or other operations and the loan, the State Director may approve the transfer of chattel or real estate security or both to the individual and the assumption of the debt secured by such property without regard to whether the transferee is eligible for the type of loan being assumed, subject to the following conditions:

(i) The transferee will continue the farming or other operations for the benefit of all or a part of the deceased borrower's family who were directly dependent on the borrower for their support at the time of death.

(ii) The amount to be assumed and the repayment rates and terms will be the same as provided in § 1962.34(a).

(iii) The State Director determines that the continuation will not adversely affect repayment of the loan.

(3) In determining whether to continue with individuals, whether they are already liable or assume the indebtedness, all pertinent factors will be considered including whether:

(i) Probate or administration proceedings have been or will be started and, with OGC's advice, whether the filing of a claim on the debt owed to FmHA in such proceedings is necessary to protect FmHA's interests.

(ii) Arrangements can be made with the heirs, creditors, executors, administrators, and other interested parties to transfer title to the security to the continuing individual and to avoid liquidating the assets so that the individual can continue with the loan on a feasible basis.

(4) If continuation is approved, all reasonable and practical steps, short of foreclosure or other litigation, will be taken to vest title to the security in the joint debtor or transferee.

(5) The deceased borrower's estate may be released from liability for the FmHA indebtedness if title to the security is vested in the joint debtor or transferee, and:

(i) The full amount of the debt is assumed, or

(ii) If only a portion of the debt is assumed, the amount assumed equals the amount as determined by OGC which could be collected from the assets of the estate of the deceased borrower, including the value of any security or EO property, and the County Committee recommends release of liability.

(h) *Special servicing of deceased EO borrower cases.* If the EO loan is secured, all paragraphs in this section will be followed. If the EO loan is unsecured, paragraphs (a), (b), (c), (d), and (e) of this section will be followed along with the following requirements:

(1) An individual who is liable for the indebtedness of the deceased borrower and wishes to continue with the EO debt and the EO property, may do so in accordance with paragraph (g)(1) of this section.

(2) A surviving member of the deceased borrower's family, a joint operator with the deceased borrower, a relative, or other individual who is not liable for the EO debt who desires to continue with the farming or other operation may do so in accordance with paragraph (g)(2) of this section. This individual must execute a loan agreement in addition to the assumption agreement and secure the EO debt with a lien on the remaining EO property when title to the property is vested in the individual and the County Supervisor determines that scurity is necessary to protect the interests of the deceased borrower's family or FmHA.

(3) If no individual listed in paragraphs (h) (1) and (2) of this section wishes to continue, but a member of the borrower's family turns over to FmHA the EO property in which the estate has an interest and which is not essential for minimum family living needs, the County Supervisor will take possession of EO property and sell it in accordance with § 1962.42. If this cannot be done, or if real property is involved, the case will be referred to OGC. If the property is sold, notice will be delivered to any of the borrower's heirs who are in possession of the property and to any administrator or executor of the borrower's estate.

§ 1962.47 Bankruptcy and insolvency.

If a borrower becomes a debtor in proceedings under any State or Federal Bankruptcy or State insolvency law, the County Supervisor will promptly report the facts and forward the borrower's case file and other pertinent information and documents to the State Director for appropriate handling. The County Supervisor will keep the State Director informed of further developments, but will take no other action unless directed by the State Director or OGC. Under the Federal Bankruptcy law, after payment of fees and costs, unsecured FmHA claims and the amount of any claim in excess of any security with interest to the date of filing the petition in bankruptcy, are entitled to priority of payment over unsecured claims of other creditors. On receipt of the file and related material, the State Director will determine whether the case is a "no asset" or "asset" case or, if uncertain, obtain OGC's advice. A "no asset" case is one in which FmHA has no security for the debt and the debtor has no other assets from which FmHA could make a substantial collection, considering its priority rights. An "asset case" is one in which FmHA has security or the debtor has other assets, or both, from which FmHA could make a substantial collection, considering its priority rights.

(a) *No asset cases.* The file and related material will be returned to the County Office with a memorandum indicating the State Director's determination and advising that a proof of claim will not be filed unless the County Supervisor learns that the debtor has assets not previously known to exist. If assets are found before the time for filing claims has expired (within 6 months from the first date set for the first meeting of creditors), the County Supervisor will resubmit the case to the State Director.

(b) *Asset cases.*—

(1) *Liquidation without filing proof of claim.* (i) If the value of FmHA's security is not more than the amount of its secured debt and the borrower has no other assets from which FmHA can substantially collect considering its priority rights, the security may be liquidated by foreclosure sale in the usual manner without preparing proof of claim if the referee in bankruptcy has no objection to foreclosure by FmHA.

(ii) If FmHA has no security or has security from which full collection cannot be expected, but the borrower has other assets from which FmHA can make a substantial collection considering its priority rights, any secu-

rity may be liquidated by foreclosure sale under the same conditions as set forth in paragraph (b) (1) (i) of this section if the sale is held in time to file a proof of claim for the deficiency.

(2) *Filing proof of claim.* A proof of claim on an insured loan will not be executed or filed and foreclosure proceedings will not be started unless the note is held by FmHA or has been assigned to it.

(i) The State Director will execute Form FmHA 455-18, "Proof of Claim of the United States of America Entitled to Priority of Payment," or other form approved by OGC covering all indebtedness to FmHA, except any judgments obtained by a U.S. Attorney, and send it to OGC with attachments that are required by a State Supplement. OGC will refer the claim and any necessary petition for abandonment of security to the U.S. Attorney or to the Department of Justice, as appropriate, for handling.

(ii) If the County Supervisor or the State Director knows that a judgment has been obtained by a U.S. Attorney, the State Director will notify OGC even though that judgment has been charged off. OGC will inform the U.S. Attorney so that a proof of claim may be prepared and filed or some other action taken on the judgment.

(iii) The State Director, on OGC's advice, will instruct the County Supervisor about actions to take with respect to meetings of creditors.

(3) *Security released to FmHA.* Ordinarily, when the value of security is not more than the amount of FmHA liens and any prior liens against it plus any homestead or other exemptions that apply to it as specified in a State supplement or as determined by OGC, an effort will be made to get the security released to FmHA. A petition for abandonment may be referred by OGC to the U.S. Attorney or to the Department of Justice, as appropriate, for filing in any such case, with or without filing a proof of claim, as determined by OGC. When the referee orders security released to FmHA, it will be liquidated unless the State Director approves continuation with the borrower.

(i) *Liquidation.* When security is dated, the proceeds, after payment of costs, will be applied first to the interest accrued to the date of filing the petition in bankruptcy and then to the principal of the debt. Additional proceeds will be applied to the interest accrued from the date the petition in bankruptcy was filed to the date of payment. When the payments are sent to the Finance Office, the County Supervisor will give the date the petition in bankruptcy was filed.

(ii) *Continuation with borrower.* If the State Director approves continuing the loan and the borrower is keeping the security, the borrower must execute:

(A) Form FmHA 460-10, "New Promise to Pay," promising to pay all indebtedness to FmHA which is secured by the property released to FmHA in accordance with the existing instrument(s) evidencing such indebtedness; and

(B) Any security or other instruments required by OGC. The new promise and other required instruments will be executed promptly after release of the security to FmHA and the borrower's adjudication in bankruptcy unless, under State law, the new promise to be effective must be made after discharge in bankruptcy.

(c) *Other parties liable.* When a joint obligor has been discharged in bankruptcy and continuation has been disapproved, but other parties remain liable for the debt, the County Supervisor will use Form FmHA 450-10 to notify the Finance Office of the names of the parties remaining liable and the address to which to mail the statement of account.

§1962.48 Setoffs.

Generally, FmHA will request set offs only when all security has been liquidated, when ordinary collection efforts, including assignments, have not been effective and, if the borrower has cooperated with FmHA in the servicing of the loan, the setoff would not cause undue hardship on the borrower and the borrower's family. The filing of a setoff request will not decrease other collection efforts. Debts of nominal amounts and debts discharged in bankruptcy, will not be collected by setoff under this Subpart. Cases will not be referred for civil action until after any possible setoff actions are taken. However, there may be situations in which funds become available against which setoffs might be possible after referring the case for court action. Setoffs will not be requested in cases referred to the U.S. Attorney for collection or in cases where a judgment has been obtained, without prior approval of the U.S Attorney.

(a) *ASCS setoff.* The Secretary's Order on setoffs authorizes the collection of debts owed to FmHA by setoff against amounts approved for payment to the debtor by ASCS committees.

(1) *County Office actions.* (i) FmHA's County Office staff may ask the ASCS County Office staff whether the debtor has shown an intention, with respect to a particular crop year, to participate in one or more of the programs administered by ASCS under which funds might be available for setoff.

(ii) The County Supervisor will forward recommendations for such set offs to the State Director, including information about efforts to collect by other means and any other pertinent information.

(iii) If, after a recommendation for a setoff has been made the borrower pays the indebtedness to FmHA, moves to a new location or the borrower's circumstances change so as to affect the setoff, such information will be sent to the State Director.

(2) *State Office actions.* The State Director will consider a recommendation for a setoff to determine if the setoff is justified and if it complies with this subpart.

(i) The State Director will prepare requests for setoffs in memorandum form. The original and signed copy of the request will be submitted to the ASCS State Office and a copy forwarded to the County Supervisor for the borrower's case file. The request will contain the following information.

(A) Full name, address, and FmHA case number of the debtor.

(B) County and State under which the amount of the indebtedness should be set up on the debt register.

(C) Principal amount of the indebtedness, the accrued interest, the date through which interest was computed, and the daily interest factor to be applied afterwards.

(D) Address of the FmHA County Office for delivery of check.

(E) Identification of any court judgment.

(F) The following certification:

The undersigned hereby certifies that the above-described indebtedness of ———— to the United States (Farmers Home Administration) is subject to setoff under the Secretary's Order.

(Date) ————————————

(Signature of Authorized Representative) ————————————

(Title) ————————————

(ii) The State Director may withdraw a request for setoff by notifying the ASCS State Office at any time before processing a setoff voucher and sending a copy of the request for withdrawal to the County Supervisor. However, setoffs may be withdrawn only if the borrower pays the indebtedness fully or substantially, the debt is settled, or future collections can be made by other methods.

(iii) If the account of the borrower for whom a request for setoff has been submitted is transferred to another FmHA County Office jurisdiction, either within or outside the State, the State Director will notify the ASCS State Office of the address of that FmHA County Office so that any payments may be sent there.

(3) *Check delivery.* Setoffs will be made by checks or sight drafts payable to FmHA and delivered to the County Supervisor. If the claim has been forwarded to OGC, the remittance will be

sent to OGC. OGC instructions as to application will be followed.

(4) *Deletion from debt registers.* (i) The names of FmHA borrowers for whom requests for setoffs have been submitted and who have quit farming, or cannot be located in the counties for which the debts were reported, will be deleted by the ASCS County Office from their debt registers without a request from FmHA. Notices of such deletions will be furnished to the FmHA State Office originating the setoff request.

(ii) On receipt of notice, the State Director will inform the appropriate FmHA County Office of the deletions.

(iii) If the borrowers whose names have been deleted resume farming operations or can be located, the County Supervisor may submit to the State Director a recommendation for a new request for setoff.

(b) *Federal employee setoff.* Salary and lump sum payments due borrowers on separation or retirement from Federal Government employment may be set off against debts owed to FmHA. Any sum a borrower has in the Civil Service Commission retirement fund also may be set off.

(1) *County Office actions.* If efforts to collect the debt from current income from Federal employment fail, the County Supervisor will submit the case to the State Director with information necessary to report the case to the National Office.

(2) *State Office actions.* If the facts justify a setoff against the borrower's salary and lump sum payments or Civil Service retirement the State Director will submit the case to the National Office, including:

(i) Full name, address, and FmHA case number of the borrower and, if the borrower is a member of the military establishment or Coast Guard, title and serial number.

(ii) Date of birth of borrower.

(iii) Name and address of the employing agency, military establishment, or Coast Guard.

(iv) Approximate income of borrower and spouse.

(v) Financial circumstances of the borrower documented on Form FmHA 456-1, "Application for Settlement of Indebtedness."

(vi) Number of dependents.

(vii) Information about FmHA efforts to collect.

(viii) Statement of account.

(ix) Identification of any court judgment.

(x) A recommendation if the borrower is retired, based on financial circumstances, as to whether all or part of the monthly annuity check should be set off.

§ 1962.49 Civil and criminal cases.

All cases in which court actions to effect collection or to enforce FmHA rights are recommended, as well as actions relating to apparent violations of Federal criminal statutes, will be handled in accordance with this section.

(a) *Civil action.* Court action or other judicial process will be recommended to OGC when all other reasonable and proper efforts and methods to obtain payment, to remove other defaults, and to protect FmHA's interests have been exhausted. However, if an emergency situation exists or criminal action is to be recommended, the case will be submitted to OGC without taking the actions necessary to report the information required by Part II of Form FmHA 455-22, "Information for Litigation." This is because delay in submitting cases in emergency situations may affect the financial interests of FmHA and making collection efforts may affect the recommended criminal action.

(1) Civil action will be recommended when one or more of the following conditions exists:

(i) There is a need to repossess security or EO property or to foreclose a lien and such action cannot be accomplished by other means authorized in this Subpart.

(ii) There is a need for filing claims against third parties because of a conversion of security or other action.

(iii) Payments due on debts are not made in accordance with the borrower's ability to pay, and the borrower has assets or income from which collection can be made.

(iv) The borrower has progressed to the point that credit can be obtained from other sources, has agreed in the note or other instrument to do so, but refuses to comply with that agreement.

(v) FmHA or its security becomes involved in court action through foreclosure by a third-party lienholder or through some other action.

(vi) Other conditions exist which indicate that court action may be necessary to protect FmHA's interests.

(2) Claims of less than $600 principal will not be referred to OGC for court action unless:

(i) A statement of facts is submitted as to the exact manner in which the interest of FmHA, or other than recovery of the amount involved, would be adversely affected if suit were not filed; and

(ii) Collection of a substantial part of the claim can be made from assets and income that are not exempt under State or Federal law. A State supplement will be issued to set forth such exemptions or a summary of those exemptions with respect to property to which FmHA normally would look for payment such as real estate, livestock, equipment, and income.

(3) If criminal action will not be recommended before civil action is recommended, the following actions will be taken or determinations made:

(i) It must be determined on the basis of reasonably current credit data that there is a reasonable prospect of collection now or in the near future of all the debt or a substantial amount of the debt from assets and income that are not exempt under State or Federal law.

(ii) The debtor must be contacted personally and requested to pay the debt in full, unless one or more such contacts have been made recently without success, or such contact is not feasible considering the distance of the debtor from the County Office or other relevant factors.

(iii) Form FmHA 455-21 will be used to accelerate the borrower's indebtedness, and will state the consequences of failure to make payment as demanded. The borrower will be given at least 15 days, but not more than 30 days, to make payment. However, this form will not be sent to the borrower unless the County Supervisor believes that it would be appropriate to refer the case to the U.S. Attorney if the borrower does not comply with the demand.

(iv) It must be determined that collection cannot be made by ASCS setoff in accordance with the provisions of § 1962.48 (a) of this Subpart, or by setoff or other agreement if the debtor is employed by another Federal agency or has a judgment against the United States.

(v) The current address of the debtor will be determined or efforts will be made to locate the debtor in accordance with § 1864.5 (b) of Part 1864 of this chapter. (FmHA Instruction 456.1 paragraph V B).

(vi) If the debtor advises that the claim cannot be paid in full, and if the County Supervisor believes that this may be the situation and that there has been no fraud or misrepresentation in the case, the County Supervisor will suggest that the debtor submit promptly an application for compromise or adjustment on Form FmHA 456-1, so that it may be considered and the debt disposed of by such debt settlement, if possible.

(4) When a borrower has not properly accounted for the proceeds of the sale of security, it is the general policy to look first to the borrower for restitution rather than to third-part purchasers. In line with this policy the remaining chattel security on which FmHA holds a first lien usually will be liquidated before demand is made or civil action taken to recover from third-party purchasers.

(i) When the County Supervisor determines that full collection cannot be made from the borrower and that it will be necessary to collect the full value of the security purchased by a converter, a demand (see Guide Letter 1962-A-1, a copy of which is available in all FmHA County Offices) will be sent to the converter at the same time that Form FmHA 455-21 is sent to the borrower.

(ii) When the County Supervisor determines that it is likely that action will have to be taken to collect from third-party purchasers, the County Supervisor will notify such purchasers by letter (see Guide Letter 1962-A-2, a copy of which is available in all FmHA County Offices) that FmHA security has been purchased by them and that they may be called upon to return the property or pay the value thereof in the event restitution is not made by the borrower. If it later becomes necessary to make demand on such third-party purchasers, FmHA will do so unless the case already has been referred to OGC or the U.S. Attorney, in which event the demand will be made by one of those offices.

(iii) When restitution is made by the borrower, or a determination is made, with the advice of OGC, that the facts in the case do not support the claim against the third-party purchaser, the third-party purchaser will be informed by the County Supervisor that FmHA will take no adverse action (see Guide Letter 1962-A-3, a copy of which is available in all FmHA County Offices). Ordinarily, it will not be necessary to inform the third-party purchaser of OGC's decision when OGC determines that the facts support the claim against the third-party purchaser but no substantial part of the claim can be collected. If OGC makes such a determination and the third-party purchaser asks what determination has been made, the County Supervisor will say that no further action is to be taken on the claim "at this time."

(iv) If court action is recommended against a converter, the applicable provisions of subparagraphs (a) (2) and (3) of this section will be followed with respect to such converter the same as with respect to the borrower. In addition, unless personal contacts with the converter or other efforts to collect demonstrate that further demand would be futile, and a satisfactory compromise offer has not been received, a followup letter (see Guide Letter 1962-A-4, a copy of which is available in all FmHA County Offices) will be sent by the State Director as soon as possible after the 15-day period set forth in the demand letter has expired. Unless response to the State Director's followup letter or personal contacts or other efforts indicate that further demand would be futile, an additional followup letter will be sent to the converter by OGC after the case has been referred to that office.

(v) The loan programs administered by FmHA are authorized by law of Congress to carry out national purposes and policies throughout the entire United States and its territories and possessions. Therefore, the liability of an auctioneer for conversion of personal property mortgaged to FmHA shall be determined and enforced in accordance with the applicable Federal law. "Auctioneer" for the purposes of this Subpart includes a commission merchant, market agency, factor, or agent. When there has been a disposition without authorization by FmHA of personal property mortgaged to that agency, any auctioneer involved in that disposition shall be liable to the Government for conversion—notwithstanding any State statute or decisional rule to the contrary.

(b) *Criminal action.* When factual information has been obtained indicating that criminal violations may have been committed and the violations are of such a nature that criminal action will be recommended, the facts will be immediately reported to OGC without taking collection actions necessary to report the information required by Part II of form FmHA 455-22. In all other cases in which it appears that criminal violations may have been committed, but in which criminal action will not be recommended, the factual situation will be reported to OGC as soon as collection action has been completed in accordance with paragraphs (a) (3) and (4) of this section. Minor deviations referred to in § 1962.4 (f) (7) need not be reported.

(c) *Handling civil and criminal cases.* All cases in which court actions to effect collection or to enforce the rights of FmHA are recommended, and actions relating to apparent violations of Federal criminal statutes, will be forwarded to OGC for submission to the appropriate U.S. Attorney.

(1) *County Office actions.* Forms FmHA 455-1, "Request for Legal Action," and FmHA 455-22 will be prepared. Form FmHA 455-2, "Evidence of Conversion," will be prepared for each conversion. The original and two copies of Forms FmHA 455-1, FmHA 455-22, and, when applicable, Form FmHA 455-2, together with the borrower's case file, will be submitted to the State Office. Signed statements should be obtained, if possible, from the borrower, any third party purchasers, or others to support the information contained on Forms FmHA 455-1 and FmHA 455-21. Appropriate recommendations will be made on Forms FmHA 455-1 and FmHA 455-22 against the borrower or others. When a case is referred to the State Office, the County Supervisor will keep that office informed of any future developments in the case.

(2) *State Office actions.* (i) Upon receipt of Form FmHA 455-1 and, when applicable, Form FmHA 455-2, the State Director will analyze each form to determine if all of the necessary information is documented and, if not, whether an appropriate effort was made to obtain the information. If the State Director is not sure whether additional information is needed, the State Director will ask OGC's advice. If all the necessary information is not available, the State Director will return the case and request the County Supervisor to obtain the information to complete Forms FmHA 455-1 and 455-2. The State Director may assign any qualified FmHA employee to help a County Supervisor obtain the information necessary to complete the reports. After diligent efforts, if FmHA employees are unable to obtain the additional information, the State Director will decide if the case will be referred to the Office of Investigation (OI). A case will be referred to the OI for investigation when:

(A) The State Director determines the additional information is needed before the case is referred to the OGC with a recommendation for civil or criminal actions, and

(B) The debtor owes more than $600 principal, and

(C) The Federal Statute of Limitations has not run and is not about to complete running (Cases should be submitted to the OGC for legal action at least 90 days before the statute completes running.), and

(D) The value of the FmHA security is substantially greater than the estimated cost of investigation and litigation, or

(E) The OGC recommends an OI investigation to pursue criminal action.

(ii) After all of the pertinent information available has been obtained, the State Director will refer the case to OGC if referral is required under the policy expressed in this section. If such referral is not required, the State Director will set forth in Item 19 of Form FmHA 455-1 the basis for the determination not to refer the case and instructions for followup servicing action. Cases which have been investigated by the OI will be referred to OGC. Demands on third-party purchasers will be made in accordance with paragraph (a)(4) of this section. In cases referred to OGC, the State Director will make comments and recommendations regarding the civil and criminal aspects of the case on Form FmHA 455-1. With respect to the criminal aspects of the case, the State Director, in making a recommendation, will consider the nature and gravity of the offense, the restitution

made or undertaken, and all other extenuating circumstances.

(A) When cases are referred to OGC, the County Office case file, Form FmHA 455-1, and, when appropriate, Form FmHA 455-2 will be transmitted. In addition, when the institution of court proceedings by FmHA is recommended, the notes, financing statements, security agreements, other security instruments, loan agreements, and other legal instruments and copies thereof as required by OGC, and Form FmHA 451-11, "Statement of Account," or Form FmHA 451-25, "Status of Account," and Form FmHA 455-22 will be submitted to OGC. The State Director, with the advice of OGC, will determine the number of copies of such instruments needed and the information required on the certified statement of account. Each request for a certified statement of account will specify the type of information needed.

(B) Notes, statements of account, files, or other documents and copies thereof needed in referring cases to OGC for court or other action will be obtained from the Finance Office or County Office by the State Director. When the time required for obtaining the above material or documents may jeopardize FmHA's interest by permitting the diversion or dissipation of assets which otherwise could be expected as a source of payment, the Finance Office, upon the request of the State Director, will forward such material or documents directly to OGC or (at the State Director's direction) to the U.S. Attorney.

(d) *Actions on cases referred to OGC.* When a case is referred to OGC, the State Director will notify the County Supervisor and the Finance Office of the referral and will return the County Office case file when it is no longer needed. After notice of the referral is received by the County Supervisor no collection or servicing action will be taken except upon specific instructions from the State Director or OGC. However, when a borrower voluntarily proposes to make a payment on an account, the County Supervisor will accept the collection unless notice has been received that the case has been referred to the U.S. Attorney. The County Supervisor will immediately notify OGC directly by memorandum, with a copy sent to the State Director, of any such collections received. The County Supervisor also will notify the State Director and OGC of any developments which may affect any case which has been referred to OGC.

(e) *Actions on cases referred to the U.S. Attorney and on judgment cases (including third-party judgments).* OGC will notify the State Director, the Finance Office, and the County Supervisor when a case is referred to the U.S. Attorney or is otherwise disposed of. When a case is referred to the U.S. Attorney, the Finance Office will discontinue mailing Forms FmHA 450-1, "Statement of Account," to such borrowers. OGC will also notify the State Director when a judgment (including third-party) is obtained.

(1) When the County Supervisor receives notice from OGC that a judgment (including third-party) has been obtained, the County Supervisor will notify the Finance Office to establish a judgment account by submitting Form FmHA 455-20, "Notice of Judgment."

(2) After notice has been received that a case has been referred to the U.S. Attorney or a judgment has been obtained and has not been returned to FmHA by the U.S. Attorney, no action will be taken by the County Supervisor except upon specific instructions from the State Director, OGC, or the U.S. Attorney. However, the County Supervisor will keep the State Director informed of any developments which may affect the FmHA security interest or and pending court action to enforce collection. If information is obtained indicating that such debtors have assets or income not previously reported by the County Supervisor to the State Director from which collection of such judgment accounts can be obtained, the facts will be reported to the State Director. The State Director immediately will notify OGC of any developments which might have a bearing on cases referred to the U.S. Attorney, including such judgment cases.

(i) If the debtor proposes to make a payment, FmHA employees will not accept such payment but will offer to assist in preparing a letter for the debtor's signature to be used in transmitting the payment to the U.S. Attorney. In such case, the debtor will be advised to make payment by check or money order payable to the Treasurer of the United States.

(ii) Collection items received through the mail from the debtor or from other sources by the County Office to be applied to such accounts will be forwarded by the County Supervisor through OGC to the appropriate U.S. Attorney. Likewise, collections received by the District Director or the State Office will be forwarded through OGC to the appropriate U.S. Attorney. Such items will be forwarded in the form received except that cash will be converted into money orders made payable to the Treasurer of the United States. The money order receipts will remain attached to the money orders. Form FmHA 451-1 will not be issued in any such case. The debtor will be informed in writing by the County Supervisor of the disposition of the amount received.

(3) When the U.S. Attorney has returned a judgment case to FmHA, the County Supervisor is responsible for servicing it as follows:

(i) When the judgment debtor has the ability to make periodic payments, action will be taken by the County Supervisor to make arrangements for the judgment debtor to do so.

(ii) Any payments received from such debtor by FmHA will be handled by issuing Form FmHA 451-1 and converting and transmitting such payments as provided in Part 1862 of this Chapter (FmHA Instruction 451.2). The U.S. Attorney will be informed through OGC of payments received only when the debtor pays a judgment in full.

(iii) At the time of the annual review of collection-only or delinquent and problem cases, the County Supervisor will determine whether such judgment debtors, whose judgments have not been charged off and who are not making regular and satisfactory payments, have assets or income from which the judgment can be collected. If such debtors have either assets or income from which collection can be made and they decline to make satisfactory arrangements for payment, the facts will be reported by the County Supervisor to the State Director. The State Director will notify OGC of developments when it appears that collections can be enforced out of income or assets.

(iv) Such judgments will not be renewed or revived unless there is a reason to believe that substantial assets have or may become subject thereto.

(v) Such judgments may be released only by the U.S. Attorney when they are paid in full or compromised.

(4) In all judgment cases, any proposed compromise or adjustment will be handled in accordance with § 1864.12 of Part 1864 of this chapter (FmHA Instruction 456.1, paragraph XII).

(5) If the debtor requests information as to the amount of outstanding indebtedness, such information, including court costs, should be obtained from the Finance Office if the County Supervisor does not have that information. If questions arise as to the payment of court costs, information as to such costs will be obtained through the State Office from OGC.

§ 1962.50 [Reserved]

ATTACHMENTS: EXHIBITS A AND B

EXHIBIT A

MEMORANDUM OF UNDERSTANDING BETWEEN COMMODITY CREDIT CORPORATION AND FARMERS HOME ADMINISTRATION

IT IS HEREBY AGREED by and between the Farmers Home Administration (hereinafter referred to as "FHA") and the Commodity Credit Corporation (hereinafter referred to as "CCC") that the following procedure will be observed in those cases where producers sell to CCC or pledge to CCC as loan collateral under the Price Support Program, agricultural commodities such as, but not limited to, cotton, tobacco, peanuts, rice, soybeans, grains, on which FHA holds a prior lien and the proceeds from such sales or loans are not remitted to FHA for application against the loan(s) secured by such lien:

1. When an FHA County Supervisor learns that an FHA borrower has obtained a loan from CCC on a commodity or sold a commodity to CCC under such circumstances, he shall immediately notify his State Director. The State Director, immediately upon receipt of the notice, shall furnish CCC (see Appendix 1) with the name and address of such borrower, the county of his location at the time the commodity was placed under loan or sold, and the amount of the FHA loan secured by the lien.

2. When CCC receives such a notice from FHA, CCC shall take steps to prevent the making of any further loans on or purchases of the commodity of the borrower. If the CCC loan is still outstanding and CCC calls the loan, CCC shall notify the FHA State director of the demand.

3. If the CCC loan is repaid, whether prior to or after the receipt by CCC of the notice from FHA, the FHA State Director shall be notified immediately, at which time CCC will have discharged its responsibility under this agreement.

4. FHA shall, in each case in which the CCC loan is not repaid or the commodity has been sold to CCC, endeavor to collect from the borrower the amount due on the FHA loan. Such collection efforts shall include the making of demand on the borrower and the following of FHA's normal administrative policies with respect to the collection of debts, but shall not include the making of demand for payment upon the area peanut producer cooperative marketing associations through which CCC makes price support available to producers. If collection efforts are not successful, the FHA County Supervisor shall make a complete report on the matter to his State Director. If the State Director determines that the amount due on the FHA lien is not collectable by administrative action, he shall refer the matter to the appropriate local office of the General Counsel, with a full statement of the facts, for a determination of the validity of the FHA lien. If it is determined by the General Counsel's Office that FHA holds a valid prior lien on the commodity, the State Director shall furnish CCC with a copy of such determination, together with all other pertinent information, and shall request payment to FHA of the lesser of (1) the amount due on its loan, or (2) the value of the commodity at the time the CCC loan or purchase was made (based on the market value of the commodity on the local market nearest to the place where the commodity was stored). The information to be furnished CCC shall include (a) the principal balance plus interest due FHA on the date of the request, (b) the amount due on the FHA loan at the time the CCC loan or purchase was made, and (c) the amount of the CCC loan or purchase proceeds, if any, applied by the producer against the FHA loan. FHA shall continue to make collection efforts and shall notify CCC of any amount collected from the producer or any other party.

5. Upon receipt of evidence, including a copy of the determination of the Office of the General Counsel, from the State Director of FHA that the proceeds from the CCC loan or purchase have not been received by FHA from the borrower, and that collection cannot be made by FHA, CCC will if the CCC loan has not been repaid or if CCC has purchased the commodity, pay FHA the amount specified in paragraph 4 above or deliver the commodity (or warehouse receipts representing the commodity) to FHA: *Provided*, That if CCC has any information indicating that collection may be made by FHA from the borrower or any other party, it may notify FHA and delay payment pending additional collection efforts by FHA.

6. It is the desire of both FHA and CCC that claims to be processed under this agreement receive prompt attention by both parties and be disposed of as soon as possible. Instructions for the implementation of these procedures at the field office level will be developed and issued by the Washington offices of FHA and CCC.

7. Any question with regard to the handling of any claim hereunder shall be reported by the applicable ASCS office to ASCS in Washington and by the FHA State Director to the National Office of FHA.

This Memorandum of Understanding supersedes the agreement entered into between FmHA and CCC on November 5, 1951.

Entered into as of this 29th day of May, 1973.

FARMERS HOME ADMINISTRATION,
FRANK B. ELLIOTT,
Acting Administrator.

COMMODITY CREDIT CORPORATION,
KENNETH E. FRICK,
Executive-Vice President.

APPENDIX 1

FURNISHING NOTICE OR INFORMATION TO COMMODITY CREDIT CORPORATION

Commodity:	*Direct to*
Cotton	Prairie Village, Kansas, ASCS Commodity Office
Tobacco	Applicable tobacco association
Peanuts	Applicable peanut association
All other commodities.	Applicable State ASCS office

MEMORANDUM OF UNDERSTANDING AND BLANKET—COMMODITY LIEN WAIVER

The Farmers Home Administration (FHA) sometimes makes loans to farmers on the security of agricultural commodities that are eligible for price support under loan and purchase programs conducted by the Commodity Credit Corporation (CCC). FHA and CCC desire that price support be made available to farmers without unnecessarily impairing or undermining the respective security interests of FHA and CCC in and without undue inconvenience to producers and FHA and CCC in securing lien waivers on such commodities.

Now, therefore, it is agreed as follows:

(1) Upon request of an official of an ASCS State Office, the FHA State Director in such State shall furnish designated ASCS County Offices with the names of producers in the trade area from whom FHA holds currently effective liens on commodities with respect to which CCC conducts price support programs. FHA will try to furnish a complete and current list of the names of such producers; however, FHA's liens with respect to any commodity will not be affected by an error in or omission from such lists.

(2) For a loan disbursed by an ASCS County Office, CCC will issue a draft in the amount (less fees and charges due under CCC program regulations) of the loan on, or purchase price of, the commodity payable jointly to FHA and the producer if (a) his name is on the list furnished by FHA, or (b) he names FHA as lienholder. The draft will indicate the commodity covered by the loan or purchase.

(3) On issuance of the draft, the security interest of FHA shall be subordinated to the rights of CCC in the commodity with respect to which the loan or purchase is made. The word "subordinated" means that, in the case of a loan, CCC's security interest in the commodity shall be superior and prior in right to that of FHA and that, on purchase of a commodity by CCC or its acquisition by CCC in satisfaction of a loan, the security interest of FHA in such commodity shall terminate.

(4) Nothing contained in this Memorandum of Understanding shall be construed to affect the rights and obligations of the parties except as specifically provided herein.

(5) This agreement may be terminated by either party on 30 days' written notice to the other party.

H. D. GODFREY,
Executive Vice President, CCC.
JULY 20, 1967.

HOWARD BERTSCH,
Administrator, FmHA.
JULY 14, 1967.

(7 U.S.C. 1989; 42 U.S.C. 2942; 5 U.S.C. 301; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70; delegations of authority by Dir., OEO, 29 FR 14764, 33 FR 9850).

NOTE.—This document has been reviewed in accordance with FmHA Instruction 1901-G "Environmental Impact Statements". It is the determination of FmHA that the proposed action does not constitute a major Federal action significantly affecting the quality of the human enviroment and in accordance with the National Enviromental Policy Act of 1969, Pub. L. 91-190 an Environmental Impact Statement is not required.

Dated: December 9, 1978.

GORDON CAVANAUGH,
Administrator,
Farmers Home Administration

[FR Doc. 79-2164 Filed 1-19-79; 8:45 am]

[7590-01-M]

Title 10—Energy

CHAPTER 1—NUCLEAR REGULATORY COMMISSION

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

Clarification of Computation of Time Provisions

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Nuclear Regulatory Commission is amending certain provisions of its Rules of Practice to clarify the requirements for computing the time prescribed for replying to a petition for leave to intervene.

EFFECTIVE DATE: January 22, 1979.

FOR FURTHER INFORMATION CONTACT:

Marc R. Staenberg, Regulations Division, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, TEL: (301-492-8689).

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission has become aware that some confusion has arisen in regard to the time allowed for answering a petition for leave to intervene. Prior to this amendment, § 2.714(c), provided that answers to a petition for leave to intervene must be filed within a prescribed period after *filing* of the petition. In § 2.710, Computation of Time, the prescribed period for taking some action, such as filing an answer, runs from *service* of the initiating document.

The Nuclear Regulatory Commission intended § 2.710 to generally govern computation of time, including the provision for additional time for mailing. Therefore, a minor clarifying amendment is being made to § 2.714(c) to make clear that the time for replying to a petition to intervene shall be computed from the date of service of the petition.

Standard practice calls for notices of hearing and notices of proposed action to include the names and addresses of the Commission staff and applicant so that they may be served with copies of intervention petitions. This practice will be continued. If for some reason an intervention petition is not served by the petitioner, then the time for answer may be calculated from the date of service by the Secretary of the Commission.

Because these amendments relate solely to corrections and minor procedural matters, the Commission has found that good cause exists for omitting notice of proposed rulemaking, and public procedure thereon, as unnecessary, and for making the amendments effective on January 22, 1979, without the customary 30 days notice.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendment to Title 10, Chapter 1, Code of Federal Regulations, Part 2 is published as a document subject to codification.

Section 2.714(c) is revised to read as follows:

§ 2.714 Intervention.

* * * * *

(c) Any party to a proceeding may file an answer to a petition for leave to intervene within ten (10) days after service of the petition, with particular reference to the factors set forth in paragraph (d) of this section. However, the staff may file such an answer within fifteen (15) days after service of the petition.

* * * * *

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

Dated at Bethesda, Maryland, this 12th day of January, 1979.

For the Nuclear Regulatory Commission.

LEE V. GOSSICK,
Executive Director for Operations.

[FR Doc. 79-2241 Filed 1-19-79; 8:45 am]

[4910-13-M]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 79-CE-1-AD; Amdt. 39-3395]

PART 39—AIRWORTHINESS DIRECTIVES

Cessna Models 152 and A152 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This amendment adds a new Airworthiness Directive (AD) applicable to Cessna Models 152 and A152 airplanes. It supersedes existing AD 78-21-01, amendment 39-3318 (43 FR 49298, 49299) and makes the inspections and actions specified therein applicable to all KMR Industries Part Number 1-1000 exhaust systems having heat exchangers with internal baffles. This AD, which is of an emergency nature, is necessary because failures of the components have occurred which allow carbon monoxide to enter the cabin heater air. This condition may cause pilot incapacitation and result in an accident.

EFFECTIVE DATE: January 25, 1979, to all persons except those to whom it has already been made effective by airmail letter from the FAA dated December 1, 1978.

Compliance: As required in the body of the AD.

ADDRESSES: Cessna Single Engine Service Letter SE78-71, dated December 1, 1978, or later revisions, applicable to this AD, may be obtained from Cessna Aircraft Company, Marketing Division, Attention: Customer Service Department, Wichita, Kansas 67201; Telephone (316) 685-9111. A copy of the service letter cited above is contained in the Rules Docket, Office of the Regional Counsel, room 1558, 601 East 12th Street, Kansas City, Missouri 64106 and at Room 916, 800 Independence Avenue, S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

Donald L. Page, Aerospace Engineer, Engineering and Manufacturing Branch, Federal Aviation administration, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, telephone (816) 374-3146.

SUPPLEMENTARY INFORMATION: The FAA has determined that the problem described in the summary is an unsafe condition which is likely to exist or develop in other airplanes of the same type design. The agency also determined that an emergency situation existed, that immediate corrective action was required, and that notice and public procedure thereon was impractical and contrary to the public interest. Accordingly, the FAA notified all known registered owners of the airplanes affected by the AD by Airmail letters dated December 1, 1978. The AD became effective as to these individuals upon receipt of the letter. Since the unsafe condition described herein still exists on other Cessna Model 152 and A152 airplanes, the AD is being published in the FEDERAL REGISTER as an amendment to Part 39 of the Federal Aviation Regulations (14 CFR Part 39) to make it effective to all persons who did not receive the letter notification. Since the subject matter of this AD is similar to that of AD 78-21-01 (Amendment 39-3318, 43 FR 49298, 49299) and includes all airplanes to which that AD applies, AD 78-21-01 is being superseded by this amendment.

ADOPTION OF THE AMENDMENT

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

CESSNA: Applies to Cessna Model 152 (Serial Numbers 15279406 through 15282919) and Model A152 (Serial Numbers A1520735 through A1520845) airplanes having Cessna original equipment type exhaust systems installed.

Compliance: Required as indicated unless already accomplished.

To preclude contamination of cabin heater air with carbon monoxide, accomplish the following:

(A) Before next flight, except that the airplane may be flown with the cabin heat in the "OFF" position to a location where this inspection may be accomplished:

1. Unless previously accomplished per AD 78-21-01, visually inspect the clearance between the exhaust pipe and cowl opening. Minimum clearance must be .375 inch in the fore and aft direction and .625 inch in the lateral direction with a smooth transition between. Enlarge cowl opening as required to obtain this clearance.

2. Visually inspect the interior of the heater muffler, through the tailpipe, for the presence of a perforated baffle system using a flashlight or other aid to illuminate the interior of the heater muffler. If no baffle system is present, the heater muffler is acceptable and the further inspections and actions required by paragraph (A)3 of this AD are not required. If an internal baffle system is present, remove the cowling to gain access to the exhaust system. Determine whether the exhaust system is a KMR Industries Part Number 1-1000, or an Alternate Elano Part Number EL099001-060 by examination of the nameplate which is located between the hose connections on the aft side of the heater shroud on the KMR system or comparison of the exhaust system configuration with those depicted in Figures 64 and 65 of the Model 152 and A152 Illustrated Parts Catalog. If the system is the Alternate Elano system, the present heater muffler is acceptable and the further inspections and actions specified in paragraph (A)3 of this AD are not required.

3. If the exhaust system is a KMR Industries assembly:

(a) Prior to further flight, safety wire the cabin heat valve control arm in the closed position by securing it to the engine mount using .032 diameter safety wire.

(b) Within the next 10 hours time-in-service and within each 50 hours time-in-service thereafter:

1. Remove the engine cowling and the KMR Industries heat exchanger shroud.

2. Using a 5-power, or greater, magnifying glass, visually inspect the heater muffler can for any cracks around the tailpipe and along the three lines of spot welds on the surface of the heat exchanger can itself.

3. If the heater muffler can is found cracked, prior to next flight:

(i) Replace it with a heater muffler having a serial number 4000 or above; or

(ii) Repair and reinstall heater mufflers having cracked or completely pulled-through spot welds and/or closed cracks that do not extend under the end plates and do not exceed 3 inches continuous length, by heli-arc welding in accordance with the following:

1. Use rod material compatible with titanium stabilized 321 stainless steel.

2. It is not necessary to reattach the can to the baffle at pulled-through spot welds if the can and baffle are separated. In this case, it is only necessary to close the hole or crack in the can at the spot weld location.

3. Disconnect the hose between the heat exchanger shroud and the firewall cabin heat valve at the cabin heat valve and safety wire it to the engine mount tube so that 1.5 inches of the hose extends below the fuselage through the cowl air exit hole and to the right of the nose gear. Install the hose clamp on the valve end of the hose so that it grips the wire supported section of the hose. Route the safety wire between the clamp and the hose to secure the clamp and hose to the engine mount.

4. After installation of a new KMR Industries heater muffler having a serial number 4000 or above, obliterate the existing exhaust system serial number located on the nameplate attached to the shroud.

(B) Upon installation of a KMR Industries heater muffler can having a serial number 4000 or above and incorporation of a dam in the heat exchanger shroud in accordance with Cessna Service Kit 152-3, the cabin heat system may be reactivated and the inspection required by Paragraph (A)3(b) discontinued.

NOTE—(The serial number will be stamped on a flange of the replacement heat exchanger can.)

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

Cessna Service Letter SE78-71 dated December 1, 1978, or later revisions, pertains to this subject.

This AD supersedes AD 78-21-01 which became effective October 6, 1978 [43 FR 49298, 49299] to all persons except those to whom it had already been made effective by airmail letter from the FAA dated September 18, 1978.

This amendment becomes effective on January 25, 1979 to all persons except those to whom it has already been made effective by an airmail letter from the FAA dated December 1, 1978.

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

NOTE—The FAA has determined that this document involves a proposed regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transportation guidelines (43 FR 9582; March 8, 1978).

Issued in Kansas City, Missouri, on January 9, 1979.

C. R. MELUGIN, Jr.,
Director, Central Region.

[FR Doc. 79-2169 Filed 1-19-79; 8:45 am]

[4910-13-M]

[Docket No. 79SO-3, Amendment 39-3398]

PART 39—AIRWORTHINESS DIRECTIVES

Piper Models PA-44-180 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD) which requires the inspection of certain Piper PA-44-180 airplane fuel supply lines for evidence of chafing damage and requires line replacement, if necessary. This amendment also requires that the lines be repositioned for clearance, if necessary, and the installation of a chafe guard grommet where the line passes through the wing rib. This amendment is necessary to insure that the fuel lines are not damaged by chafing which could result in a fuel leak.

DATES: Effective January 24, 1979. Compliance required within the next 10 hours time in service after the effective date of this AD unless already accomplished.

ADDRESSES: Copies of Piper Service Bulletin 627 may be obtained from Piper Aircraft Corporation, 820 East Bald Eagle Street, Lock Haven, Pennsylvania 17745. Copies of Piper Service Bulletin 627 are maintained in the AD Docket File and may be examined in Room 275, Federal Aviation Administration, Southern Region, 3400 Whipple Street, East Point, Georgia.

FOR FURTHER INFORMATION CONTACT:

Gil Carter, ASO-214, Propulsion Section, Engineering and Manufacturing Branch, Southern Region, P.O. Box 20636, Atlanta, Georgia 30320, telephone: (404) 763-7435.

SUPPLEMENTARY INFORMATION: There have been reports of fuel supply lines chafing on the edge of a wing rib lightening hole. Since this condition is likely to exist or develop in other airplanes of the same type design, this amendment is issued to insure chafe protection for the fuel line. Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulation (14 CFR 39.13) is amended

by adding the following new Airworthiness Directive:

PIPER AIRCRAFT CORPORATION. Applies to Model PA-44-180, serial numbers 44-7995001 through 44-7995003, 44-7995005 through 44-7995023, 44-7995025 through 44-7995053, 44-7995055 through 44-7995064, 44-7995066, 67, 69, 71, 73, and 74 airplanes certificated in all categories.

Compliance is required within the next 10 hours' time in service after the effective date of this AD unless already accomplished.

To prevent fuel leakage due to a damaged fuel line, accomplish the following:

(a) Remove the inspection plate (or plates) on the underside of the left and right wings, in the area of the electrical fuel boost pump, inboard of the engine nacelle.

(b) Inspect the fuel supply lines part number 86238-03 (Left and Right), where the line passes through the rib lightening hole, for damage due to interference with the hole flange. If a fuel supply line is damaged, replace it with a serviceable line.

(c) Install a caterpillar grommet, part number 63976-34 (MS21266-1N) on the lower half of the rib lightening hole flange in both wings using a suitable cement to retain the grommet in position.

(d) Position the fuel supply line to obtain a minimum clearance of .125 inch from the caterpillar grommet.

(e) Reinstall the inspection plates on the left and right wings.

(f) Make an appropriate maintenance record entry.

(g) An alternate method of compliance may be approved by the Chief, Engineering and Manufacturing Branch, Federal Aviation Administration, Southern Region.

NOTE.—Piper Service Bulletin 627, dated October 24, 1978, pertains to this subject.

This amendment becomes effective January 24, 1979.

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

Issued in East Point, Georgia, on January 10, 1979.

GEORGE R. LACAILLE,
Acting Director.

[FR Doc. 79-2165 Filed 1-19-79; 8:45 am]

[4910-13-M]

[Docket No. 78-SO-14, Amdt. No. 39-3397]

PART 39—AIRWORTHINESS DIRECTIVES

Teledyne Continental Motors Models TSIO-520J and TSIO-520-N Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Amendment amends an existing Airworthiness Directive (A.D.) applicable to Teledyne Continental Motors Series TSIO-520-J and TSIO-520-N engines installed in certain Cessna Model aircraft by requiring the installation of an improved number two (#2) intake manifold tube. The amendment is needed to improve the induction system flexible elbow retention on the intake manifold and thereby eliminating the repetitive inspection imposed by Amendment 39-3153.

DATES: Effective January 24, 1979.

ADDRESSES: The applicable Customer Service Bulletin may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, Alabama 36601. A copy of the service Bulletin is contained in Room 275, Engineering and Manufacturing Branch, ASO-210, Southern Region, Federal Aviation Administration, 3400 Whipple Street, East Point, Georgia.

FOR FURTHER INFORMATION CONTACT:

H. D. Roe, Aerospace Engineer, Engineering and Manufacturing Branch, ASO-210, Southern Region, Federal Aviation Administration, 3400 Whipple Street, East Point, Georgia 30344, telephone No. (404) 763-7435.

SUPPLEMENTARY INFORMATION: This A. D. Proposes to further amend Amendment 39-3153, FR 10340, A. D. 78-06-01, as amended by Amendment 39-3193, which currently requires repetitive inspections on Teledyne Continental TSIO-520-J and TSIO-520-N engines installed in certain Cessna and Riley converted Cessna aircraft.

After issuing Amendment 39-3193, the FAA has determined that the longer nipple on improved elbow tube, TCM P/N 642590, provides for improved joint integrity on the critical L.H. flexible elbow and repetitive inspections are no longer required. In addition, it has been determined that the R. H. flexible elbow inspections are no longer necessary. Based on this, a notice was issued in the FEDERAL REGISTER on November 20, 1978, (43 FR 54101) which proposed to amend the existing A. D. by deleting the inspection provisions and requiring the installation of a new #2 intake manifold tube.

Interested persons have been afforded an opportunity to participate in the making of the amendment. No objections were received. Accordingly, the proposal is adopted without change.

ADOPTION OF THE AMENDMENT

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended by amending Amendment No. 39-3193, A. D. 78-06-01, as follows:

Teledyne Continental Motors. Amendment 39-3153 as amended by Amendment 39-3193 is further amended by amending AD 78-06-01. Applies to model TSIO-520-J and TSIO-520-N engines not previously fitted with improved elbow tube TCM P/N 642590, installed in, but not limited to, Cessna models 340A and 414. Also applies to Cessna model 340 as modified by STC's SA1881SW or SA186NW.

Compliance is required as indicated except that the initial 25-hour inspection specified in paragraph A-2 is not required for Cessna aircraft manufactured after April 1, 1978.

To prevent a separation of flexible elbow TCM P/N 635930 from the left hand (L. H.) No. 2 cylinder intake tube and possible engine malfunctions or stoppage, accomplish the following:

A. 1. Within the next 12 months after the effective date of this amendment, replace induction system intake tube TCM P/N 629138 with new intake tube TCM P/N 642590. After the intake tube has been replaced with the new tube TCM P/N 642590, inspections required by paragraph A.2 do not apply.

2. Within the next 25 hours time in service after the effective date of this A. D., unless already accomplished, and thereafter at each 100 hours time in service, accomplish the following:

(i) Inspect the L. H. elbow installation for full engagement over intake manifold tube and intercooler nipple beads with the hose clamps properly located behind nipple beads.

(ii) Check torque of 30 to 35 inch pounds on left flexible intake manifold clamps (Cessna P/N U-84-270-SH) and intercooler clamps (Cessna P/N U-94-260-SH or B35A-21P). On aircraft which use TCM clamps P/N 631972) at these joints, check for torque of 25 to 30 inch pounds. On Riley conversions which use Riley P/N 631972 clamps on these joints, check for 30 to 35 inch pounds.

(iii) Upon request of the operator, an FAA maintenance inspector may adjust the repetitive inspection interval up to a maximum time between inspections of 125 hours to permit compliance at an established inspection period of the operator if the request contains substantiating data to justify the increase for that operator.

3. The inspections required by paragraph A-2 may be discontinued once the intake tube has been replaced with new tube TCM P/N 642590.

B. Alternate methods of compliance may be acceptable if approved by the Chief, Engineering and Manufacturing Branch, Federal Aviation Administration, Southern Region, Atlanta, Georgia.

C. Appropriate maintenance record must be made in accordance with FAR 43.9.

This amendment becomes effective January 24, 1979.

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

Issued in East Point, Georgia, on January 10, 1979.

GEORGE R. LACAILLE,
Acting Director,
Southern Region.

[FR Doc. 79-2167 Filed 1-19-79; 8:45 am]

[4910-13-M]

[Airspace Docket No. 78-SO-68]

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

Designation of Transition Area, Cairo, Ga.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule.

SUMMARY: This rule will designate the Cairo, Georgia, Transition Area and will lower the base of controlled airspace in the vicinity of the Cairo-Grady County Airport from 1200 to 700 feet AGL to accommodate Instrument Flight Rule (IFR) operations. A public use instrument approach procedure has been developed for the Cairo-Grady County Airport, and the additional controlled airspace is required to protect aircraft conducting Instrument Flight Rule (IFR) operations.

EFFECTIVE DATE: February 1, 1979.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: A Notice of Proposed Rulemaking was published in the FEDERAL REGISTER on Monday, December 4, 1978 (43 FR 56680), which proposed the designation of the Cairo, Georgia, transition area. No objections were received from this notice.

ADOPTION OF THE AMENDMENT

Accordingly, Subpart G, § 71.181 (44 FR 442) of Part 71 of the Federal Aviation Regulations (14 CFR 71) is amended, effective 0901 GMT, February 1, 1979, by adding the following:

Cairo, Georgia

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of Cairo-Grady County Airport (latitude 30°53'19"N., longitude 84°09'22"W.); within 3 miles each side of the 137° bearing from the Caidy RBN (latitude 30°53'17"N., longitude 84°09'34"W.), extending from the 6.5 mile radius area to 8.5 miles northwest of the Rbn.

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

Note.—The Federal Aviation Administration has determined that this document involves a regulation which is not considered to be significant under the procedures and criteria prescribed by Executive Order 12044 and as implemented by interim Department of Transporation guidelines (43 FR 9582; March 8, 1978).

Issued in East Point, Georgia, on January 12, 1979.

GEORGE R. LACAILLE,
Acting Director, Southern Region.

[FR Doc. 79-2168 Filed 1-19-79; 8:45 am]

[1505-01-M]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Airworthiness Docket No. 78-NA 17]

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

Part 73—SPECIAL USE AIRSPACE

Designation of Temporary Restricted Area

Correction

In FR DOC. 78-33766, appearing on page 56648, in the issue of Monday, December 4, 1978, second column, in the boundary description of "R-2212 Clear Creek, Alaska", sixth line, "64°15'00"N.," should be corrected to read, "64°15'30"N.,".

[3510-13-M]

Title 15—Commerce and Foreign Trade

CHAPTER V—UNITED STATES METRIC BOARD

PART 500—PROCEDURES FOR PUBLIC MEETINGS UNDER THE GOVERNMENT IN THE SUNSHINE ACT

AGENCY: United States Metric Board.

ACTION: Final rule.

SUMMARY: The United States Metric Board adopts procedures for its public meetings in order to implement the Government in the Sunshine Act. Such procedures shall facilitate and encourage public observations of the deliberations and decisions of The United States Metric Board to the maximum extent possible.

EFFECTIVE DATE: December 15, 1978.

FOR FURTHER INFORMATION CONTACT:

John Miló Bryant, Office of General Counsel, United States Metric Board, Suite 301, 1815 N. Lynn Street, Arlington, VA 22209, (703) 235-1933.

SUPPLEMENTARY INFORMATION: On Friday, September 15, 1978 there was published in the FEDERAL REGISTER (43 FR 41230) a notice of proposed rule making by The United States Metric Board which would amend Title 15 of the Code of Federal Regulations by establishing Chapter V entitled "United States Metric Board" consisting of Part 500.

The public was afforded a 60-day period in which to submit written comments, data, and views on the proposal. Five written comments were received all of which were directed at Section 500.5(a), "Procedures for announcing meetings." Respondents indicated that seven days advance notice was insufficient time for interested persons to plan for or attend the meetings, and suggested that the time should be extended to 14 or 21 days. The commenters expressed concern about delays in publishing notices of meeting in the FEDERAL REGISTER, and the fact that public and private newsletters interested in Board activities cannot print Board Meeting hours on such short notice.

The Board appreciates the comments submitted by these five commenters in response to the notice of proposed rule making. After giving such comments careful consideration the Board has determined that proposed rule of *at least* seven days notice remain as the legal requirement. However, the Board has directed the Staff to strive for a longer period of notice whenever practicable and adopted a

staff goal of 21 days. Moreover, the Board directs the staff to implement mailing lists so that interested individuals may receive personal notice rather than having to rely exclusively on the FEDERAL REGISTER for information.

FINAL RULE

Accordingly, under the authority of 5 U.S.C. 552(g) the United States Metric Board hereby adopts the procedures for Public Meetings under the Government in the Sunshine Act (15 CFR Part 500) as appearing in the FEDERAL REGISTER on September 15, 1978 (43 FR 41230), by amending Title 15 of the Code of Federal Regulations by establishing Chapter V entitled "United States Metric Board" to consist of Part 500 and to read as follows:

PART 500—PUBLIC MEETING PROCEDURES OF THE UNITED STATES METRIC BOARD

Sec.:
500.1 Purpose and scope.
500.2 Definitions.
500.3 Open meetings.
500.4 Grounds on which meetings may be closed, or information may be withheld.
500.5 Procedure for announcing meetings.
500.6 Procedure for closing meetings.
500.7 Transcripts, recordings, and minutes of meetings.
500.8 Enforcement and review.

AUTHORITY: 5 U.S.C. 552b(g); Pub. L. 94-168, 89 Stat. 1007 (15 U.S.C. 205a-205k).

§ 500.1 Purpose and scope.

It is the policy of the United States Metric Board to provide the public with the fullest practicable information regarding its decision-making processes. It is the purpose of these regulations to provide the public with such information while protecting the rights of individuals and the Board's ability to carry out its responsibilities. Accordingly, these procedures apply to all meetings of the Unites States Metric Board, including committees of the Board. Every portion of every Board meeting will be open to public observation, except as otherwise provided in these regulations.

§ 500.2 Definitions.

As used in this part:

"Board" or "United States Metric Board" means the collegial body that conducts the business of the United States Metric Board, as specified in section 5 of Pub. L. 94-168 (15 U.S.C. 205d), consisting of:

(a) The Chairman, a qualified individual who shall be or has been appointed by the President, by and with the advice and consent of the Senate;

(b) Sixteen members who shall be or have been appointed by the President, by and with the advice and consent of the Senate, on the following basis—

(1) One selected from lists of qualified individuals recommended by engineers and organizations representative of engineering interests;

(2) One selected from lists of qualified individuals recommended by scientists, the scientific and technical community, and organizations representative of scientists and technicians;

(3) One selected from a list of qualified individuals recommended by the National Association of Manufacturers or its successor;

(4) One selected from lists of qualified individuals recommended by the United States Chamber of Commerce, or its successor, retailers, and other commercial organizations;

(5) Two selected from lists of qualified individuals recommended by the American Federation of Labor and Congress of Industrial Organizations or its successor who are representative of workers directly affected by metric conversion, and by other organizations representing labor;

(6) One selected from a list of qualified individuals recommended by the National Governors Conference, the National Council of State Legislatures, and organizations representative of State and local government;

(7) Two selected from lists of qualified individuals recommended by organizations representative of small business;

(8) One selected from lists of qualified individuals representative of the construction industry;

(9) One selected from a list of qualified individuals recommended by the National Conference on Weights and Measures and standards making organizations;

(10) One selected from lists of qualified individuals recommended by educators, the educational community, and organizations representative of educational interests; and

(11) Four at-large members to represent consumers and other interests deemed suitable by the President and who shall be qualified individuals.

"Chairman" means the presiding officer of the Board, appointed in accordance with section 5(b)(1), Pub. L. 94-168 (15 U.S.C. 205d(b)(1)).

"Committee" means any formally designated subdivision of the Board, consisting of at least two Board members, authorized to act on behalf of the Board, including the Board's standing committees and any ad hoc committees appointed by the Board for special purposes.

"Executive Director" means the individual appointed by the Board to serve as the chief executive officer of the Board, in accordance with section 10(a), Pub. L. 94-168 (15 U.S.C. 205i(a)).

"Meeting" means the deliberations of at least the number of individual voting members of the Board required to take action on behalf of the Board, where such deliberations determine or result in the joint conduct or disposition of official business of the Board, but does not include:

(a) Deliberations to open or close a meeting, to establish the time, place, and subject matter of a meeting, or to release or withhold information required or permitted by § 500.5 or § 500.6.

(b) Notation voting or similar consideration of matters whether by circulation of material to members individually in writing, or polling of members individually by telephone, telegraph, or similar mechanism, and

(c) Instances where individual members, authorized to conduct business on behalf of the Board, or to take action on behalf of the Board, meet with members of the public or staff. Conference telephone calls that involve the requisite number of members, and otherwise come within the definition, are included.

"Member" means a member of the Board.

"Staff" includes the employees of the United States Metric Board, other than the members of the Board.

§ 500.3 Open meetings.

(a) Members shall not jointly conduct or dispose of business of the Board other than in accordance with these procedures. Every portion of every meeting of the Board shall be open to public observation subject to the exceptions provided in § 500.4.

(b) Open meetings may be attended by members of the Board, staff, and any other individual(s) or group(s) desiring to observe the meeting: *Provided*, That sufficient room is available to safely accommodate them. The Board shall exert its best efforts to assure that such room is available and therefore requests but does not require that those wishing to attend notify the Board in advance by phoning or writing the contact person identified in the Board's notice of the upcoming meeting.

(c) The public will be invited to observe and listen to the meeting, but not to participate unless specifically invited to do so by the Board and then only in accordance with such reasonable limitations and procedures as the Board shall specify.

§ 500.4 Grounds on which meetings may be closed, or information may be withheld.

Except in a case where the Board or one of its committees finds that the public interest requires otherwise, the open meeting requirement as set forth in the second sentence of § 500.3(a)

shall not apply to any portion of a Board or committee meeting, and the informational disclosure requirements of §§ 500.5 and 500.6 shall not apply to any information pertaining to such meeting otherwise required by this part to be disclosed to the public, where the Board or committee, as applicable, properly determines that such portion or portions of its meetings or the disclosure of such information is likely to:

(a) Disclosure matters that are (1) specifically authorized under criteria established by an Executive Order to be kept secret in the interests of national defense or foreign policy and (2) in fact properly classified pursuant to such Executive Order;

(b) Relate solely to the internal personnel rules and practices of the Board and its staff;

(c) Disclose matters specifically exempted from disclosure by statute (other than section 552, Title 5, United States Code): *Provided,* That such statute (1) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (2) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Involve accusing any person of a crime or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records, compiled for law enforcement purposes, or information which if written would be contained in such records, but only to the extent that the production of such records or information would (1) interfere with enforcement proceedings, (2) deprive a person of a right to a fair trial or an impartial adjudication, (3) constitute an unwarranted invasion of personal privacy, (4) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (5) disclose investigative techniques and procedures, or (6) endanger the life or physical safety of law enforcement personnel;

(h) Disclose information the premature disclosure of which would in the case of any agency, be likely to significantly frustrate implementation of a proposed agency action, except in any instance where the agency has already disclosed to the public the content or nature of its proposed action, or where the agency is required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal; or

(i) Specifically concern the issuance of a subpoena, or the Board's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Board of a particular case of formal Board adjudication pursuant to the procedures in section 554 of Title 5, United States Code, or otherwise involving a determination on the record after opportunity for a hearing.

§ 500.5 Procedure for announcing meetings.

(a) Except to the extent that such information is exempt from disclosure under the provisions of § 500.4, in the case of each Board or committee meeting, the Executive Director, acting at the Direction of the Board, shall submit for publication in the FEDERAL REGISTER, at least seven days before the meeting, the following information:

(1) Time of the meeting,

(2) Place of the meeting,

(3) Subject matter of the meeting,

(4) Whether the meeting or parts of it are to be open or closed to the public, and

(5) The name and phone number of the person designated by the Board or committee to respond to requests for information about the meeting.

(b) The seven-day period for the public announcement required by paragraph (a) of this section may be reduced if a majority of the members of the Board or committee, as applicable, determine by a recorded vote that Board or committee business requires that such expedited meeting be called at an earlier date. In this case the Board or committee shall make public announcement of the time, place, and subject matter of such meeting, and whether open or closed to the public, at the earliest practicable time.

(c) The time or place of a meeting may be changed following the public announcement required by paragraph (a) of this section only if the Executive Director, acting at the direction of the Board or one of its committees, publicly announces such change at the earliest practicable time. Such change need not be voted on by the members.

(d) The subject matter of a meeting, or the determination of the Board or committee, as applicable, to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by paragraph (a) of this section, only if (1) a majority of the entire voting membership of the Board or committee determines by a recorded vote that Board or committee business so requires and that no earlier announcement of the change was possible, and (2) the Board or committee publicly announces such change and the vote of each member upon such change at the earliest practicable time.

(e) Immediately following each public announcement required by this section, notice of the time, place and subject matter of a meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and phone number of the person designated by the Board or committee to respond to requests for information about the meeting, shall be submitted for publication in the FEDERAL REGISTER.

§ 500.6 Procedure for closing meetings.

(a) Action to close a meeting or a portion thereof, pursuant to the exemptions set forth in § 500.4, shall be taken only when a majority of the entire voting membership of the Board or committee, as applicable, votes to take such action.

(b) A separate vote of the Board or committee members shall be taken with respect to each Board or committee meeting, a portion or portions of which are proposed to be closed to the public pursuant to § 500.4, or with respect to any information which is proposed to be withheld under § 500.4.

(c) A single vote of the Board or committee may be taken with respect to a series of meetings, a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than 30 days after the initial meeting in such series.

(d) Whenever any person whose interests may be directly affected by a portion of a meeting requests that the Board or a committee close such portion to the public under any of the exemptions relating to criminal accusation or censure, personal privacy, or law enforcement information, as referred to respectively in paragraphs (e), (f), or (g) of § 500.4, the Board or committee, as applicable, upon request of any one of its members, shall vote by recorded vote, at the earliest practicable time, whether to close such meeting, to delete the relevant subject matter from the meeting agenda, or to delay discussion of the relevant subject matter to a subsequent meeting. Any resulting changes shall be announced in accordance with § 5 of these regulations.

(e) The vote of each member, taken pursuant to paragraph (a), (b), (c) or (d) of this section, shall be recorded,

and may be by notation voting, telephone polling, or similar mechanism. Within one day of any such vote, the Board or committee shall make publicly available a written copy of the vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the Board or committee shall, within one day of the vote taken, pursuant to paragraph (a), (b), (c), or (d) of this section, make publicly available a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation. The information required by this paragraph shall be disclosed except to the extent it is exempt from disclosure under the provisions of § 500.4.

(f) For every meeting closed pursuant to § 500.4, the Gereral Counsel of the United States Metric Board shall certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemptive provision. A copy of such certification, together with a statement from the presiding officer of the meeting setting forth the time and place of the meeting, and the persons present, shall be retained by the Board as part of the transcript, recording or minutes required by § 500.7.

§ 500.7 Transcripts, recordings, and minutes of meetings.

(a) The Board shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to the public, except that in the case of a meeting closed to the public pursuant to paragraph (i) of § 500.4, the Board shall maintain either such a transcript or recording, or a set of minutes.

(b) Where minutes are maintained they shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons for such actions, including a description of each of the views expressed on any item and the record of any rollcall vote (reflecting the vote of each member on the question). All documents considered in connection with any action shall be identified in such minutes.

(c) The Board shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any Board proceeding with respect to which the meeting or portion was held, whichever occurs later.

(d) Public availability of such records shall be as follows:

(1) At the earliest practicable time the Board shall make available to the public, in its offices located at 1815 N. Lynn Street, Arlington, Va. 22209, the transcript electronic recording, or minutes of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting except for such item or items of such discussion or testimony as the Board or its General Counsel determines to contain information which may be withheld under § 500.4.

(2) Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be available at the actual cost of duplication or transcription.

(3) The determination of the Board or General Counsel to withhold information pursuant to subparagraph (1) of this paragraph may be appealed to the Board. The Board shall make a final determination to withhold or release the requested information no later than at its next regularly scheduled meeting following the date of receipt of a written request for review. Such a request shall be deemed received by the Board when it has arrived at the offices of the Board in a form that describes in reasonable detail the material sought.

§ 500.8 Enforcement and Review.

In addition to the right of appeal specified in § 500.7(d)(3) of these regulations, any person may bring an action to enforce these regulations and the relevant related provisions of the Government in the Sunshine Act, Pub. L. 94-409, 90 Stat. 1241, 5 U.S.C. 552b, in accordance with the provisions of that Act. Review of Board action related to these regulations may also be had in the same manner.

Dated at Arlington, Va. this 10th day of January 1979.

For United States Metric Board.

MALCOLM E. O'HAGAN,
Executive Director.

[FR Doc. 79-2249 Filed 1-19-79; 8:45 am]

[1505-01-M]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket No. C-2941]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

Nelson Bros. Furniture Corp.

Correction

In FR Doc. 79-1485 appearing at page 3259 in the issue for Tuesday, January 16, 1979, in the third column in the ninth line, the final word should be corrected to read "depictions."

[6351-01-M]

Title 17—Commodity and Securities Exchanges

CHAPTER I—COMMODITY FUTURES TRADING COMMISSION

PART 166—CUSTOMER PROTECTION RULES

Authorization to Effect Commodity Interest Trades

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rule on discretionary trading to make clear that brokers may execute "good-'til-cancelled" orders for their customers (*i.e.*, orders that do not specify a precise date upon which the order is to be executed but rather remain open until cancelled by the customer) without first obtaining written discretionary trading authorization from the customer.

EFFECTIVE DATE: January 22, 1979.

FOR FURTHER INFORMATION CONTACT:

Frederick L. White, Special Counsel, Office of the Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581. Telephone (202) 632-5110.

SUPPLEMENTARY INFORMATION: Commission rule 166.2 (17 CFR 166.2) generally provides that no futures commission merchant ("FCM") or associated person ("AP") thereof may effect a commodity interest transaction for a customer unless, before the transaction, the customer (or person designated by the customer to control his account) either "specifically authorized" the FCM or AP to effect the transaction or authorized the FCM or AP in writing to effect transactions for the customer without his specific authorization.[1]

[1] The text of the rule (which was adopted July 24, 1978, 43 *Fed. Reg.* 31886, and became effective October 1, 1978) is as follows:

No futures commission merchant or associated person may directly or indirectly effect a transaction in a commodity interest for the account of any customer unless before the transaction the customer, or person designated by the customer to control the account—

(a) Specifically authorized the futures commission merchant or associated person to effect the transaction (a transaction is "specifically authorized" if the customer

Footnotes continued on next page

Paragraph (a) of the rule states that a transaction is "specifically authorized" if the customer specifies "(1) the precise commodity interest to be purchased or sold, (2) the exact amount of the commodity interest to be purchased or sold and (3) the date the transaction is to be effected * * *." As explained below, the Commission is amending the rule by revising paragraph (a) as follows (deletions are inside brackets, additions are in italic):

(a) * * * (a transaction is "specifically authorized" if the customer *or person designated by the customer to control the account* specifies (1) the precise commodity interest to be purchased or sold [,] *and* (2) the exact amount of the commodity interest to be purchased or sold [,]). [and (3) the date the transaction is to be effected).]

The central purpose of the rule was to make it expressly unlawful for an FCM or AP to engage in unauthorized trading—*i.e.*, to execute trades for a customer without the customer's authorization. Unauthorized trading has been held to be implicitly prohibited by section 4b of the Commodity Exchange Act (7 U.S.C. 6b),[2] and the Commission considered it advisable to set forth an express prohibition in its rules.

After the rule was adopted, however, a number of FCMs advised the Commission that the rule might be interpreted to prohibit "good-'til-cancelled" orders unless written discretionary trading authorization is obtained from the customer. (A "good-'til-cancelled" order, instead of specifying a date for execution, specifies the price at which the trade is to be effected and remains in effect until the order is executed or until the customer cancels the order.) Since the rule was not intended to have the effect, clause (3) of rule 166.2(a) is being deleted.

Also, the Commission is adding the phrase "or person designated by the customer to control his account," to paragraph (a) of the rule to conform that paragraph to the first paragraph of the rule, where the same phrase is used. This amendment is solely technical.

* * * * *

In revising the rule, the Commission has considered 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 Commodity Exchange Act. *See* section 15 of the Act (7 U.S.C. 19).

Rule 166.2 is being changed without notice and opportunity for comment because the Commission finds that those measures would be unnecessary and contrary to the public interest in this matter. The amendment eliminates an unnecessary and possibly costly burden on customers, FCMs and APs that could adversely affect the execution of commodity interest orders. For this reason and because the rule change relieves a restriction, the change is being made effective immediately upon publication.

* * * * * *

In consideration of the foregoing, § 166.2 of the Commission's regulations (17 CFR 166.2) is amended to read as follows:

§ 166.2 Authorization to trade.

* * * * *

(a) Specifically authorized the futures commission merchant or associated person to effect the transaction (a transaction is "specifically authorized" if the customer or person designated by the customer to control the account specifies (1) the precise commodity interest to be purchased or sold *and* (2) the exact amount of the commodity interest to be purchased or sold.)

* * * * *

(Sec. 4, Pub. L. 74-675, 49 Stat. 1493 (7 U.S.C. 6b and 6c), as amended, Pub. L. 90-258, 82 Stat. 27, Pub. L. 93-463, 88 Stat. 1392, 1412, 1413, Pub. L. 95-405, 92 Stat. 867; sec. 10, Pub. L. 74-675, 49 Stat. 1500 (7 U.S.C. 12a), as amended, Pub. L. 90-258, 82 Stat. 33, Pub. L. 93-463, 88 Stat. 1392, 1404; sec. 23, Pub. L. 95-405, 92 Stat. 876.)

Issued in Washington, D.C. on January 17, 1979.

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

[FR Doc. 79-2115 Filed 1-19-79; 8:45 am]

Footnotes continued from last page

specifies (1) the precise commodity interest to be purchased or sold, (2) the exact amount of the commodity interest to be purchased or sold, and (3) the date the transaction is to be effected); or

(b) Authorized in writing the futures commission merchant or associated person to effect transactions in commodity interests for the account without the customer's specific authorization.

The term "commodity interest" is defined in CFTC rule 166.1(b) (17 CFR 166.1(b)) as:

(1) Any contract for the purchase or sale of any commodity for future delivery, traded on or subject to the rules of a contract market;

(2) Any agreement or transaction subject to Commission regulation under section 4c(b) of the [Commodity Exchange] Act; or

(3) Any contract or transaction subject to Commission regulation under section 217 of the Commodity Futures Trading Commission Act of 1974 (7 U.S.C. 15a).

As a result of the 1978 amendments to the Commodity Exchange Act (Pub. L. 95-405, 92 Stat. 865, 867, 876) the reference in clause (2) of § 166.1(b) to section 4c(b) will be changed to section 4c and the reference in clause (3) to section 217 of the 1974 Act will be changed to section 19 of the Commodity Exchange Act.

[2] *E.g., Jeffrey L. Silverman*, C.F.T.C., No. 75-6 (May 5, 1976), *affirmed, Silverman* v. *C.F.T.C.*, 549 F. 2d 28,33 (7th Cir. 1977).

[8010-01-M]

CHAPTER II—SECURITIES AND EXCHANGE COMMISSION

[Release Nos. 33-6014, 34-15489, IC-10551]

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

Revision of Forms, Reports and Regulations

AGENCY: Securities and Exchange Commission.

ACTION: Final forms.

SUMMARY: The Commission has decided not to revise any of the items in new registration statement Forms N-1 and N-2 on which submission of additional comments by the public was invited in Securities Act Release No. 5964, the release adopting an integrated registration and reporting system for management investment companies. In the period since adoption of the new registration statement forms, no information has come to the attention of the Commission which would lead to a conclusion that any of these items should be revised.

EFFECTIVE DATE: January 11, 1979.

FOR FURTHER INFORMATION CONTACT:

Glen Payne, Esq., Special Counsel (202-755-1739) or Dianne E. O'Donnell, Esq. (202-755-1796), Division of Investment Management, Securities and Exchange Commission, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: On August 28, 1978, the Commission issued a release adopting an integrated registration and reporting system for management investment companies. This system is composed of the following forms and rule: revised Form N-8A [17 CFR 274.10], the notification of registration under the Investment Company Act of 1940 ("1940 Act") [15 U.S.C. 80a et seq. as amended by Pub. L. 91-547 (December 14, 1970)]; two

new integrated registration statement forms to be used by management investment companies to register their securities under the Securities Act of 1933 ("1933 Act") [15 U.S.C. 77a et seq. as amended by Pub. L. 94-29 (June 4, 1975)], to meet the requirements of filing a registration statement under the 1940 Act, or accomplish both of these objectives—Form N-1 [17 CFR 239.15] for open-end companies and Form N-2 [17 CFR 239.14] for closed-end companies; revised Form N-1R [17 CFR 249.330, 274.101], the annual report form for management investment companies under the 1940 Act and the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq. as amended by Pub. L. 94-29 (June 4, 1975)]; and new Rule 8b-16 [17 CFR 270.8b-16] under the 1940 Act, requiring all investment companies which file Form N-1R to file an annual update of their 1940 Act registration statement within 120 days of the close of the fiscal year.[1] In that release, the Commission invited additional submission of comments by interested persons on ten items of new registration statement Forms N-1 and N-2.[2] The period for filing such additional comments expired on October 16,1978.

No letters of comment were received concerning any of the items in Forms N-1 or N-2 upon which additional public comment was invited. In the period since adoption of the new registration statement forms, no information has come to the attention of the Commission which would lead to a conclusion that any of these items should be revised. Therefore, the Commission has decided not to revise those items in Forms N-1 and N-2 upon which it invited additional public comment.

One letter of comment was received concerning Item 1 of Part I of Form N-1 ("Cover Page"). While this item was not included in those items of Forms N-1 and N-2 upon which additional comment by the public was invited, the Commission believes it appropriate to examine the issue raised by this commentator. The commentator noted that Item 1 in Part I of Form N-1 does not specifically permit a mutual fund to state on the cover page of its prospectus that its shares are sold at no load, and requests that the instructions to the above item be amended to permit mutual funds whose shares are sold without a sales charge to state that fact on the cover page of the prospectus. The Commission is of the view that such an amendment of the instructions to this item is unnecessary for two reasons. First, subpart (e) of the Cover Page item specifically allows "at the discretion of the registrant . . . such legend, logotype, pictures, or other attention-getting devices that are not misleading" to appear on the cover page of a mutual fund's prospectus. The Division of Investment Management interprets the term "attention-getting device" as allowing a registrant to highlight on the cover page of its prospectus any non-misleading description of the entity that it desires, including the fact that its shares are sold without a sales charge. Thus, there is no need to permit specifically such a statement to appear on the cover page.

In addition, as noted in Securities Act Release No. 5964, a new item has been included in Form N-1 to ensure that a synopsis of information concerning the key investment policies, operations and activities of a mutual fund will appear in the forepart of the prospectus. This item (Item 2 of Part I) specifies in subpart (c) thereof that information concerning the maximum sales load, both as a percentage of the net amount invested and as a percentage of the offering price, must appear in the synopsis. Given the fact that the new synopsis section of mutual fund prospectuses will include information concerning the maximum sales charge at which a particular fund's shares are sold, the Commission is of the view that there is no need to require such information to appear on the cover page as well.

Other Matters

Revised Form N-1R is being put into EDP format by the Office of Data Processing so that the information reported thereon can be readily processed by that Office. Thus, the official text of the form that will be printed and distributed to the public will not appear exactly in the form of the revised Form N-1R that was printed in the *SEC Docket* shortly after its adoption, but any differences that result will relate only to style. The substance of revised Form N-1R will remain the same. For the convenience of registrants, copies of revised Form N-1R will be available after March 1, 1979, at the Commission's Publications Section in Washington, D.C.

By the Commission.

George A. Fitzsimmons,
Secretary.

January 11, 1979.

[FR Doc. 79-2098 Filed 1-19-79; 8:45 am]

[1] *See* Securities Act Release No. 5964 [43 FR 39548 (September 5, 1978)].

[2] Submission of additional comments from the public was invited on the following items: Items 8, 12 and 13(c) of Part I and Items 1(b)(14) and 8 of Part II of Form N-1 and Items 10, 14 and 15(c) of Part I and Items 4(b)(15) and 9 of Part II of Form N-2.

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[FAP 8H5186/T42; FRL 1042-3]

SUBCHAPTER E—ANIMAL FEEDS, DRUGS, AND RELATED PRODUCTS

PART 561—TOLERANCES FOR PESTICIDES IN ANIMAL FEEDS ADMINISTERED BY THE ENVIRONMENTAL PROTECTION AGENCY

Thiabendazole

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This rule establishes a feed additive regulation related to the experimental use of the fungicide thiabendazole in rice hulls. The regulation was requested by Merck & Co. This rule will permit the marketing of rice hulls while further data is collected on the subject pesticide.

EFFECTIVE DATE: Effective on January 22, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Henry Jacoby, Product Manager (PM) 21, Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, SW, Washington DC 20460 (202/426-2454).

SUPPLEMENTARY INFORMATION: On July 21, 1978, the EPA announced that Merck & Co., Inc., PO Box 2000, Rahway, NJ 07065, had filed a food additive petition (FAP 8H5186). This petition proposed that 21 CFR 561.380 be amended by the establishment of a regulation permitting residues of the fungicide thiabendazole (2-(4-thiazolyl)benzimidazole) in rice hulls resulting from application of the fungicide to growing rice in a proposed experimental program with a tolerance limitation of 12 parts per million (ppm) in accordance with an experimental use permit that is being issued concurrently under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136). No comments were received by the Agency in response to this notice of filing. (A related document establishing the temporary tolerances for residues of thiabendazole on rice grain and straw appears elsewhere in today's Federal Register.)

The scientific data reported and other relevant material have been evaluated, and it has been determined

that the pesticide may be safely used in accordance with the provisions of the experimental use permit (618-EUP-9) which is being issued concurrently under FIFRA. It has further been determined that since residues of the pesticide may result in rice hulls from agricultural use provided for on the experimental use permit, the feed additive regulation should be established and should include a tolerance limitation.

The data submitted in the petition and other relevant material have been evaluated. The toxicological data considered in support of the tolerance included two-year rat and dog feeding studies, rat and mouse reproduction studies, and subchronic studies on rats, sheep, and other farm animals. Based on a rat study, the no-observable-effect level (NOEL) is 10 milligrams (mg)/kilogram (kg) of body weight (bw)/day. Using a safety factor of 100, the acceptable daily intake (ADI) is 0.1 mg/kg bw/day and the maximum permissible intake (MPI) is 6 mg/day for a 60-kg human. The previously established tolerances for residues of thiabendazole add up to a theoretical maximal residue contribution (TMRC) in an average daily diet that is far less than the MPI. Tolerances have previously been established for residues of thiabendazole on a variety of raw agricultural commodities at levels ranging from 10 ppm to 0.02 ppm. Feed additive tolerances have been previously established for residues of thiabendazole in a variety of processed feed items at levels ranging from 35 ppm to 3.5 ppm. The previously established tolerances and the proposed tolerance result in a maximum theoretical exposure to humans of 1 mg/day.

The metabolism of thiabendazole is adequately understood, and an adequate analytical method (spectrophotofluorometry) is available for enforcement purposes. Tolerances are currently pending on wheat and straw. Existing tolerances will be adequate to cover residues that could result in milk and the meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep from use of animal feed items bearing tolerance levels. No desirable data are lacking from the petition, nor are there any regulatory actions pending against the continued registration of thiabendazole, nor are any other considerations involved in establishing the proposed tolerance.

The pesticide is considered useful for the purpose for which a tolerance is sought. Therefore the regulation establishing a tolerance of 12 ppm in rice hulls by amending 21 CFR 561.380 is being promulgated as proposed. Accordingly a feed additive regulation is established as set forth below.

Any person adversely affected by this regulation may, on or before February 21, 1979, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M-3708, 401 M St., SW, Washington 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Effective on January 22, 1979, 21 CFR 561 is amended as set forth below.

Dated: January 15, 1979.

(Section 409(c)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 348(c)(1)).)

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

Part 561, § 561.380, is revised in its entirety to read as follows:

§ 561.380 Thiabendazole.

(a) Tolerances are established for residues of thiabendazole (2-(4-thiazolyl)benzimidazole) in the following processed feeds when present as a result of the application of this pesticide to growing crops or post-harvest crops:

Feed:	*Parts per million*
Apple pomace, dried (POST-H)	33
Beets, sugar, pulp (dried and/or dehydrated)	3.5
Citrus molasses	20
Citrus pulp, dried (POST-H)	35
Potato processing waste (PRE- & POST-H)	30

(b)(1) a tolerance of 12 parts per million is established for residues of the fungicide thiabendazole (2-(4-thiazolyl)benzimidazole) in rice hulls resulting from application of the fungicide to growing rice. Such residues may be present therein only as result of application of the fungicide in accordance with the provisions of an experimental use permit that expires April 1, 1980.

(2) Residues in rice hulls not in excess of 12 parts per million resulting from the use as described in paragraph (b)(1) of this section remaining after expiration of the experimental use program will not be considered to be actionable if the fungicide is legally applied during the term of and in accordance with the provisions of the experimental use permit and feed additive tolerance.

(3) Merck & Co. shall immediately notify the Environmental Protection Agency of any findings from the experimental use that have a bearing on safety. The firm shall also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the Environmental Protection Agency or the Food and Drug Administration.

[FR Doc. 79-2235 Filed 1-19-79; 8:45 am]

[4210-01-M]

Title 24—Housing and Urban Development

CHAPTER X—FEDERAL INSURANCE ADMINISTRATION, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI-4992]

PART 1914—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

AGENCY: Federal Insurance Administration, HUD.

ACTION: Final Rule.

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

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

ADDRESSES: The addresses where flood insurance policies can be obtained are published at 24 CFR 1912.7

FOR FURTHER INFORMATION CONTACT:

Mr. Richard Krimm, Assistant Administrator, Office of Flood Insurance, (202) 755-5581 or Toll Free Line 800-424-8872, Room 5270, 451 Seventh Street, SW., Washington, DC 20410.

SUPPLEMENTARY INFORMATION: The Flood Disaster Protection Act of 1973 (Pub. L. 93-234), amended, requires the purchase of flood insurance as a condition of Federal financial assistance of insurable property if such assistance is:

(1) for acquisition and construction purposes as defined in Part 1909 of Title 24 of the Code of Federal Regulations and

(2) for property located in a special flood hazard area identified by the

Secretary of Housing and Urban Development.

The requirement applies to all identified special flood hazard areas within the United States, and no such financial assistance can legally be provided for acquisition or construction except as authorized by section 202(a) of the Act unless the community has entered the program. Accordingly, for communities listed under this Part no such restriction exists, although insurance, if required, must be purchased.

Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurers Association (NFIA) servicing company for the State.

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

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

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

§ 1914.6 List of eligible communities.

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	Community number
•	•	•	•	•	•
Arizona	Gila	Unincorporated Areas	January 2, 1979, Emergency	Nov. 1, 1974 and Apr. 8, 1977	040028-A
Georgia	Bartow	Adairsville, City of	January 5, 1979, Emergency	June 14, 1974 and Jan. 23, 1976.	130235-A
Iowa	Linn	Unincorporated Areas	do	June 3, 1977	190329-A
Texas	Smith	do	do	Jan. 3, 1978	481185
Illinois	Jasper	St. Marie, Village of	January 8, 1979 Emergency	Mar. 21, 1975	170320
Kansas	Marion	Florence, City of	do	Aug. 6, 1976 and Oct. 17, 1978.	200494-A
Do	Geary	Unincorporated Areas	do	Oct. 18, 1977	200579
Michigan	St. Clair	Kimball, Township of	do	Sept. 19, 1975	260594
Tennessee	Jefferson	Dandridge, Town of	do	June 11, 1976	470299
Vermont	Washington	Warren, Town of	September 1, 1972, Emergency, September 1, 1977, Regular, September 15, 1977, Suspended, January 8, 1979, Reinstated.	June 28, 1974 and Oct. 29, 1976.	500121-B
New Hampshire	Belknap	Barnstead, Town of	January 10, 1979, Emergency.	Jan. 3, 1975	330177
Minnesota	Washington	Hugo, City of	June 20, 1974, Emergency, September 29, 1978, Regular, September 29, 1978, Suspended, January 9, 1979, Reinstated.	May 17, 1974 and Dec. 20, 1974.	270504-B

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, (34 FR 2680, Feb. 27, 1969) as amended 39 FR 2787, Jan. 24, 1974.)

In accordance with Section 7(o)(4) of the Department of HUD Act, Section 324 of the Housing and Community Amendments of 1978, Pub. L. 95-557, 92 Stat. 2080, this rule has been granted waiver of Congressional review requirements in order to permit it to take effect on the date indicated.

Issued: January 5, 1979.

GLORIA M. JIMENEZ,
Federal Insurance Administrator.

[FR Doc. 79-2001 Filed 1-19-79; 8:45 am]

[3810-70-M]

Title 32—National Defense

CHAPTER I—OFFICE OF THE SECRETARY OF DEFENSE

SUBCHAPTER R—CHARTERS

[DoD Directive 5148.2]

PART 364—ASSISTANT TO THE SECRETARY OF DEFENSE (ATOMIC ENERGY)

AGENCY: Office of the Secretary of Defense.

ACTION: Final rule—DoD Charter Directive 5148.2. [1]

SUMMARY: The Secretary of Defense has assigned functions and responsibilities to the Assistant to the Secretary of Defense (Atomic Energy), and has delegated specific authorities. This Directive serves as the instrument that authorizes the Assistant to the Secretary of Defense (Atomic Energy), to carry out the charter.

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120. Attention: Code 301.

EFFECTIVE DATE: August 10, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Arthur H. Ehlers, Director for Organizational & Management Planning, Office of the Deputy Assistant Secretary of Defense, (Administration), Telephone 202-695-4278.

SUPPLEMENTARY INFORMATION: This information is submitted in compliance with the requirements of section 552(a)(1) of Title 5, United States Code, and Recommendation 76-2 of the Administrative Conference of the United States.

Accordingly, 32 CFR, Chapter I, is amended by adding a new Part 364, reading as follows:

Sec.
364.1 Purpose.
364.2 Responsibilities and functions.
364.3 Relationships.
364.4 Authorities.

AUTHORITY: 10 U.S.C. Chapter 4.

§ 364.1 Purpose.

Pursuant to the authority vested in the Secretary of Defense under the provisions of title 10, United States Code, the position of Assistant to the Secretary of Defense (Atomic Energy) (hereinafter "the ATSD(AE)"), is hereby established with responsibilities, functions and authorities as prescribed herein. The Chairman of the Military Liaison Committee to the Department of Energy will serve as the ATSD(AE) without additional compensation.

§ 364.2 Responsibilities and functions.

The ATSD(AE), as the principal staff assistant for Department of Defense atomic energy matters, shall:

(a) Develop policies, provide advice, make recommendations, and issue guidance on Defense atomic energy plans and programs.

(b) Develop systems and standards for the administration and management of approved atomic energy plans and programs.

(c) Review and evaluate programs for carrying out approved policies and standards.

(d) Promote coordination, cooperation, and mutual understanding on atomic energy policies, plans, and programs within the Department of Defense, and between the DoD and other Federal agencies.

(e) Participate in those DoD planning, programming and budgeting activities which relate to atomic energy matters.

(f) Develop policies and procedures for the transmission of information to the Senate and House Armed Services Committees, as required by the Atomic Energy Act of 1954, as amended, and coordinate such information with other officials and agencies as appropriate.

(g) Serve on boards, committees, and other groups concerned with atomic energy. Also, represent the Secretary of Defense on atomic energy matters outside the Department of Defense.

(h) Perform such other functions as the Secretary of Defense may assign.

§ 364.3 Relationships.

(a) The ATSD(AE) shall serve under the direction, control, and authority of the Under Secretary of Defense for Research and Engineering.

(b) In the performance of assigned functions, the ATSD(AE) shall:

(1) Coordinate and exchange information with other DoD organizations having collateral or related functions.

(2) Use existing facilities and services, whenever practicable, to achieve maximum efficiency and economy.

(3) Communicate with other Government agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

(c) The Military Liaison Committee shall advise the ATSD(AE) on such atomic energy matters as the latter deems appropriate and necessary.

(d) All DoD organizations shall coordinate all matters concerning the functions cited in section B. with the ATSD(AE).

§ 364.4 Authorities.

The ATSD(AE) is hereby delegated authority to:

(a) Issue DoD Instructions and one-time directive-type memoranda, which carry out policies approved by the Secretary of Defense, in his assigned fields of responsibility. Instructions to the Military Departments will be issued through the Secretaries of those Departments, or their designees. Instructions to Unified and Specified Commands will be issued through the Joint Chiefs of Staff.

(b) Obtain such reports, information, advice, and assistance consistent with the policies and criteria of DoD Directive 5000.19, "Policies for the Management and Control of Information Requirements," March 12, 1976, as he deems necessary.

(c) Communicate directly with heads of DoD organizations, including the Secretaries of the Military Departments, the Joint Chiefs of Staff, the Commanders of the Unified and Specified Commands, and the Directors of Defense Agencies. Communications of the ATSD(AE) to the Commanders of Unified and Specified Commands shall be coordinated with the Joint Chiefs of Staff.

MAURICE W ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

JANUARY 16, 1979.

[FR Doc. 79-2232 Filed 1-19-79; 8:45 am]

[3810-70-M]

[DoD Directive 5141.1]

PART 366—ASSISTANT SECRETARY OF DEFENSE (PROGRAM ANALYSIS AND EVALUATION)

AGENCY: Office of the Secretary of Defense.

ACTION: Final Rule—DoD Charter Directive 5141.1.[1]

SUMMARY: The Secretary of Defense has assigned functions and responsibilities to the Assistant Secretary of Defense (Program Analysis and Evaluation), and has delegated specific authorities. This Directive serves as the instrument that authorizes the Assistant Secretary of Defense (Program Analysis and Evaluation), to carry out the charter.

EFFECTIVE DATE: November 29, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Arthur H. Ehlers, Director for Organizational & Management Planning, Office of the Deputy Assistant Secretary of Defense (Administration), Telephone 202-695-4278.

SUPPLEMENTARY INFORMATION: This information is submitted in compliance with the requirements of section 552(a)(1) of Title 5, United States Code, and Recommendation 76-2 of the Administrative Conference of the United States.

Accordingly, 32 CFR, Chapter I, is amended by adding a new Part 366, reading as follows:

Sec.
366.1 Purpose.
366.2 Responsibilities.
366.3 Functions.
366.4 Relationships.
366.5 Authorities.

AUTHORITY: 10 U.S.C. Chapter 4.

§ 366.1 Purpose.

Pursuant to the authority vested in the Secretary of Defense, under the provisions of title 10, United States Code, one of the positions of Assistant Secretary is designated the Assistant Secretary of Defense (Program Analysis and Evaluation) (hereafter "the ASD (PA&E)"), with responsibilities, functions and authorities as prescribed herein.

§ 366.2 Responsibilities.

The ASD (PA&E) is the principal staff adviser and assistant to the Secretary of Defense for Department of Defense program analysis and evalua-

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120. Attention: Code 301.

tion. For each assigned area the ASD (PA&E) shall:

(a) Develop policies, provide advice, make recommendations, and issue planning, fiscal, and materiel support guidance upon which Defense planning and program projections are based.

(b) Perform analyses and evaluations of plans, programs, and budget submissions in relation to projected threats, estimated costs, resource constraints, and U.S. Defense objectives and priorities.

(c) Identify issues and evaluate alternative programs.

(d) Initiate programs, actions and taskings to insure adherence to DoD policies and national security objectives; and to insure that programs are designed to accommodate operational requirements and promote the readiness and efficiency of the forces.

(e) Provide leadership in developing and promoting improved analytical methods for analyzing national security planning and the allocation of resources.

(f) Review, analyze, and evaluate programs for carrying out approved policies and standards.

(g) Serve on boards, committees and other groups pertaining to the ASD(PA&E)'s functional areas. Also, represent the Secretary of Defense on PA&E matters outside the Department of Defense.

(h) Perform such other duties as the Secretary of Defense may from time to time prescribe.

§ 366.3 Functions.

(a) In executing assigned responsibilities, the ASD(PA&E) shall:

Carry out the responsibilities described in § 366.2(a) through (h) for the following functional areas:

(1) Force review of active and reserve components.

(2) Strategic and theater nuclear forces.

(3) Weapon systems and major items of materiel.

(4) Nuclear warhead requirements.

(5) Support systems.

(6) Deployment plans and overseas basing requirements.

(7) Mobility force programs and prepositioning plans.

(8) Materiel support programs and war reserve stocks.

(9) Force readiness and capabilities.

(10) Contingency plans.

(11) Security assistance programs.

(12) Allied and foreign military requirements and capabilities.

(13) Economic analyses and their impact on Defense programs.

(14) Such other areas as the Secretary of Defense may from time to time prescribe.

(b) Perform critical reviews of requirements, performance, and life cycle costs of current and proposed weapon systems.

(c) Provide appropriate leadership and support of the Cost Analyses Investment Group in accordance with DoD Directive 5000.4, "OSD Cost Analysis Improvement Group," June 13, 1973.

§ 366.4 Relationships.

(a) In the performance of the duties, the ASD(PA&E) shall:

(1) Coordinate and exchange information with other DoD organizations having collateral or related functions.

(2) Use existing facilities and services, whenever practicable, to achieve maximum efficiency and economy.

(b) All DoD organizations shall coordinate all matters concerning the functions cited in section C with the ASD(PA&E).

§ 366.5 Authorities.

(a) Issue instructions and one-time directive-type memoranda which carry out policies approved by the Secretary of Defense, in assigned fields of responsibility, as prescribed in DoD Directive 5025.1, "Department of Defense Directives System," November 18, 1977. Instructions to the Military Departments will be issued through the Secretaries of those Departments or their designees. Instructions to Unified and Specified Commands will be issued through the Joint Chiefs of Staff.

(b) Obtain such reports, information, advice, and assistance consistent with the policies and criteria of DoD Directive 5000.19, "Policies for the Management and Control of Information Requirements," March 12, 1976, as the ASD(PA&E) deems necessary.

(c) Communicate directly with the heads of DoD organizations, including the Secretaries of the Military Departments, the Joint Chiefs of Staff, the Directors of Defense Agencies, and, through the Joint Chiefs of Staff, the Commanders of the Unified and Specified Commands.

(d) Establish arrangements for DoD participation in those non-defense governmental programs for which the ASD(PA&E) has been assigned primary cognizance.

(e) Communicate with other Government agencies, representatives of the legislative branch, and members of the public, as appropriate, in carrying out assigned functions.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

JANUARY 17, 1979.

[FR Doc. 79-2233 Filed 1-19-79; 8:45 am]

[4110-83-M]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS, AND STUDENT LOANS

Grants for Dental Team Practice Training Programs

AGENCY: Department of Health, Education, and Welfare.

ACTION: Final regulations.

SUMMARY: These regulations set forth the requirements for the award of grants to schools of dentistry and other public or nonprofit private entities for projects to plan, develop, and operate or maintain programs to train dental students in the organization and management of a multiple auxiliary dental team practice. The program is designed to increase the number of dental graduates who are trained to practice with dental auxiliaries, thereby increasing the productivity of the dental care team and improving the efficiency of dental services provided to patients.

EFFECTIVE DATE: These regulations are effective January 22, 1979.

FOR FURTHER INFORMATION CONTACT:

Dr. Richard Weaver, Education Development Branch, Division of Dentistry, Bureau of Health Manpower, Health Resources Administration, Center Building, Room 3-30, 3700 East-West Highway, Hyattsville, Maryland 20782 (301-436-6510).

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of June 16, 1978 (43 FR 26074), the Assistant Secretary for Health, Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education, and Welfare, proposed to add a new Subpart N, entitled "Grants for Programs to Train Dental Students in the Organization and Management of Multiple Auxiliary Dental Team Practice," to 42 CFR Part 57. These regulations were proposed to implement section 783(a)(3) of the Public Health Service Act, as added by the Health Professions Educational Assistance Act of 1976 (Pub. L. 94-484).

Interested persons were invited to participate in the rulemaking process by submitting comments on the proposed regulations not later than July 17, 1978. Three responses were re-

ceived during the comment period. The comments, the Department's response to the comments, and the revisions in the regulations are indicated below. For clarity the comments and responses have been arranged according to the section of the regulation to which they pertain. References are to the section numbers and titles as they appeared in the Notice of Proposed Rulemaking.

§ *57.1301 Applicability.* One comment was received suggesting that the applicability section be expanded to include information concerning the improvement that a team mode of practice can have on the effectiveness and goal achievement of the team and team members.

With respect to this suggestion, the Secretary believes that since both the applicability section and the Program Guidelines transmitted to each potential applicant adequately describe the purposes of the team mode of practice, the suggested expansion need not be incorporated into the regulations.

§ *57.1302 Definitions.* One commenter recommended that the regulations include a definition of the term "management" to mean "soliciting, encouraging and achieving performance that results in goal oriented behavior."

This recommended definition has not been incorporated in the regulations because the Secretary believes that it appears to be more an objective of management rather than an effective definition of the term as used in the regulations.

§ *57.1305 Project requirements.* One commenter suggested that the regulations require each team practice project to provide dental student participants with the opportunity to be responsible for a team effort, including having the authority to state objectives, choose employees, assign tasks, delegate authority evaluate performance, and take, where necessary, corrective action.

While the Secretary recognizes that each dental student participating in the team project must, upon completion of the training, be able to demonstrate a wide variety of skills in the organization and management of a team practice, he nonetheless believes that a grantee must be permitted to exercise flexibility in proposing the specific curricula and methods it will use in carrying out this team project. In the Secretary's view, the project requirements as stated in the Notice of Proposed Rulemaking clearly permit the grantee to exercise this flexibility. The Secretary further believes that within the project requirements listed, it is possible that an applicant can propose methods of training similar to the one suggested by this commenter. Based upon these views, the commenter's suggested requirement has not been incorporated in the regulations.

A second commenter has questioned the relationship between the team mode of practice and the project requirement in § 57.1305(b)(3) that each dental student, upon completion of the team training, "demonstrate * * * skills in preventive dental care, including and understanding of motivation and personal health education."

This project requirement was included to give effect to the congressional intent that the clinical component of the team project "incorporate the provision of preventive care." In addition, since the Secretary believes that an important factor in providing preventive care in the team mode of practice is an understanding of patient motivation in attaining an acceptable level of oral hygiene, the regulations also contain the provision that a dental student completing the team practice training must be able to demonstrate an understanding of patient motivation and personal health education.

It is the Secretary's view that this project requirement is both necessary and appropriate and therefore should not be deleted from the regulations.

A third comment objected to the § 57.1305(c) requirement that each dental student have successfully completed didactic and clinical training in four-handed sit-down dentistry before participating in a team project as being illogical and against the congressional intent in implementing the team program.

In creating the team practice grant program, Congress clearly intended that a dental student have experience in organizing and managing a team practice, including delegating responsibilities and supervising the performance of the auxiliaries. Since the primary objective of the team grant program is to provide training in the organization and management of a team practice, the Secretary believes that rather than require each team project to provide the basic introductory instruction of working with auxiliaries as provided in the four-handed sit-down dentistry training, the regulations should instead provide that each dental student must have successfully completed this basic instruction before he or she undertakes the more complex training procedures and methods involved in learning to organize and manage a team practice. Thus, the regulations have not been changed to reflect this objection.

§ *57.1306 Evaluation of applications.* Two commenters opposed the § 57.1306(f) provision that the Secretary take into consideration as an evaluation factor the "extent to which the expanded function dental auxiliary will be performing advanced skills *such as placing and finishing restorations"* (emphasis added). In opposing the use of this evaluation factor, these commenters interpreted the factor to be a project requirement and stated that this specific listing of the types of advanced skills which the expanded function dental auxiliary will be performing is beyond congressional intent, potentially conflicts with State practice laws, and is biased in favor of a small number of States.

The Secretary intends that team programs be designed to delegate to dental auxiliaries the maximum number of functions permissible under the laws of the various States without specifying any particular functions. It was not the Secretary's intention to require that an expanded function dental auxiliary participating in a team program *must* place and finish restorations, but merely to list illustrative examples of the types of advanced skills which the Secretary *may* take into consideration in evaluating grant applications. Therefore, in light of the confusion generated by the words "such as placing and finishing restorations" in this section, these words have been deleted from the regulations.

§ *57.1307 Grant award.* One commenter suggested that it would be helpful if the regulations included an explanation of the terms "direct and indirect costs." The Secretary has not incorporated the requested explanation in the regulations because these terms are explained in 45 CFR Part 74 (Cost Principles), which are applicable to these grants.

§ *57.1313 Records, audit, and inspection.* It should be noted that this section has been changed in the regulations to provide that in addition to meeting the requirements of 45 CFR Part 74, a grantee must also meet the requirements of section 705 of the Act.

In addition, the Department has made many minor editorial and technical changes in the regulations for clarity. Accordingly, Subpart N is added to 42 CFR Part 57 and adopted as set forth below.

Dated: November 3, 1978.

CHARLES MILLER,
Acting Assistant Secretary for Health.

Approved: January 2, 1979.

JOSEPH A. CALIFANO, JR.,
Secretary.

AUTHORITY: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); sec. 783(a)(3) of the

Public Health Service Act, 90 Stat. 2314 (42 U.S.C. 295g.3(a)(3)).

Subpart N—Grants for Dental Team Practice Training Program

57.1301 To what projects do these regulations apply?
57.1302 Definitions.
57.1303 What entities are eligible to apply for a grant?
57.1304 How must an entity apply for a grant?
57.1305 What requirements must a project meet?
57.1306 What are the criteria for deciding which applications are to be funded?
57.1307 How will grant awards be made?
57.1308 How will grant payments be made?
57.1309 What are the purposes for which grant funds may be spent?
57.1310 What nondiscrimination requirements apply to grantees?
57.1311 How must grantees account for grant funds received?
57.1312 Applicability of 45 CFR Part 74.
57.1313 What recordkeeping, audit, and inspection requirements apply to grantees?
57.1314 What additional conditions apply to grantees?

Subpart N—Grants for Dental Team Practice Training Program

§ 57.1301 To what projects do these regulations apply?

The regulations in this subpart are applicable to the award of grants to public or nonprofit private schools of dentistry and other public or nonprofit private entities under section 783(a)(3) of the Public Health Service Act to meet the costs of projects to plan, develop, and operate or maintain a program to train dental students in the organization and management of a multiple auxiliary dental team (referred to as team) practice. In a team practice, dental auxiliaries are used for the purpose of improving the dentist's productivity and the efficiency of dental services provided to patients.

§ 57.1302 Definitions.

For purposes of this subpart:

"Act" means the Public Health Service Act, as amended.

"Budget period" means the interval of time into which the project period is divided for budgetary and reporting purposes, as specified in the grant award document.

"Council" means the National Advisory Council on Health Professions Education established by section 702 of the Act.

"Dental assistant" means an individual who assists the dentist with the clinical, laboratory, or business operation of a dental practice and provides services to patients as may be delegated and supervised by the dentist in accordance with the law or regulations of the State in which the individual is employed.

"Dental auxiliary" means a dental assistant, dental hygienist, or expanded function dental auxiliary.

"Dental hygienist" means an individual who is trained and licensed to function as a member of the dental care team and provide preventive and therapeutic direct care services to patients as may be delegated and supervised by the dentist in accordance with the law or regulations of the State in which the individual is employed.

"Expanded function dental auxiliary" mean a dental assistant or dental hygienist who has received additional training in a program for the training of expanded function dental auxiliaries as defined in section 701(8)(A) of the Act, 42 U.S.C. 292a(8)(A) or in a similar training program, and is qualified to perform under the supervision of a dentist a wide range of clinical functions and direct patient care procedures in accordance with the law or regulations of the State in which the individual is employed.

"Four-handed, sit-down dentistry" means a mode of dental practice which encourages the efficient use of dental assistants and dental hygienists to assist the dentist or operating dental auxiliary in a manner that maximizes patient and operator comfort, saves time, and increases the productivity of the practice while maintaining the quality of dental care. This mode of practice includes, but is not limited to, the following:

(1) Preplanning of patient treatment;

(2) Chair positioning of patient, operator, and dental auxiliary;

(3) Use of prearranged sterilized instrument trays;

(4) Effective hand instrument exchange techniques;

(5) Standardized sequential usage of instruments;

(6) Use of water, air, and oral evacuation equipment to maintain a clear field of operation; and

(7) Preparation and delivery of restorative and other treatment materials required for the procedures.

"Project period" means that total time for which support for a project has been approved, including any extensions thereof.

"School of dentistry" means a school which provides training leading to a degree of doctor of dentistry or an equivalent degree and which is accredited as provided in section 772(b) of the Act (42 U.S.C. 295f-5).

"Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

"State" means one of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

§ 57.1303 What entities are eligible to apply for a grant?

Any public or nonprofit private school of dentistry or other public or nonprofit private entity located in a State may apply for a grant under this subpart.

§ 57.1304 How must an entity apply for a grant?

(a) Each eligible applicant desiring a grant under this subpart must submit an application in the form and at the time as the Secretary may require.[2] The application must be executed by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the Act, the regulations of this subpart, and any additional terms and conditions of the award.

(b) In addition to other pertinent information as the Secretary may require, an application for a grant under this subpart must set forth a full description of the project; including the manner in which the applicant proposes to meet the requirements of this subpart, and in particular § 57.1305; the number and type of dental auxiliaries to be utilized in the project; the available resources to conduct the proposed project; and a detailed budget.

§ 57.1305 What requirements must a project meet?

A project supported under this subpart must be conducted in accordance with the following requirements:

(a) The project must be conducted in accordance with section 783(a)(3) of the Act, the regulations of this subpart, the approved application, and the terms and conditions of the award.

(b) Each project must have a didactic and clinical component which has as its objectives the training of dental students who will, upon completion of the training be able to:

(1) Demonstrate the ability to delegate duties commensurate with the skills of their auxiliaries and ensure the quality of their clinical performance and products;

(2) Demonstrate skills in personnel management, including an understanding of human behavior, interpersonal relations, group dynamics and communication;

(3) Demonstrate skills in patient management and preventive dental care including an understanding of

[2] Applications and instructions may be obtained from the Grants Management Officer, Bureau of Health Manpower, Health Resources Administration, Center Bldg., Rm. 4-27, 3700 East-West Highway, Hyattsville, Maryland 20782.

motivation and personal health education as related to team practice.

(4) Demonstrate those skills in dental office management which relate to operating a team practice, including patient scheduling and flow, and cost benefit analysis; and

(5) Demonstrate an understanding of the basic principles of facility and equipment design necessary for operating a team practice in a private practice setting.

(c) Each dental student must have successfully completed didactic and clinical training in four-handed, sit-down dentistry before participating in a project supported under this subpart.

(d) Each dental student participating in a project supported under this subpart must receive training in a team composed, at a minimum, of one dental assistant, one expanded function dental auxiliary and a shared dental hygienist.

(e) Each project must be designed to delegate to dental auxiliaries all functions permitted by the law or regulations of the State in which the project is conducted.

§ 57.1306 What are the criteria for deciding which applications are to be funded?

Within the limits of funds available under section 783(a)(3), the Secretary, after consultation with the Council, may award grants to those applicants whose projects will in his or her judgment best promote the purposes of section 783(a)(3) of the Act, taking into consideration, among other pertinent factors:

(a) The potential effectiveness of the proposed project in carrying out the training purposes of section 783(a)(3) of the Act;

(b) The degree to which the proposed project adequately provides for meeting the project requirements set forth in § 57.1305;

(c) The administrative and managerial capability of the applicant to carry out the proposed project;

(d) The qualifications of the project director, staff and faculty;

(e) The reasonableness of the proposed budget in relation to the proposed project; and

(f) The scope of the expanded functions to be performed by expanded function dental auxiliaries, and, in particular, the extent to which the expanded function dental auxiliary will be performing advanced skills.

§ 57.1307 How will grant awards be made?

(a) General (1) Within the limits of funds available for this purpose, the Secretary may award grants to those applicants whose projects will, in his or her judgment, best promote the purposes of section 783(a)(3) of the Act as determined in accordance with § 57.1306.

(2) All grant awards will be in writing and set forth the amount of funds granted and the period for which grant funds will be available for obligation by the grantee.

(3) Projects receiving grants under this subpart may be approved for an initial period of grant support for up to two years. Additional support may be obtained by submission of a competing extension application.

(4) Neither the approval of any application nor any grant award obligates the United States in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of an approved application. For continuation support grantees must make separate application at the time and in the form as the Secretary may require.

(b) The amount of any award will be determined by the Secretary on the basis of his or her estimate of the sum necessary for the cost (including both direct and indirect costs) of projects to plan, develop, and operate or maintain programs for dental team practice training grants.

(c) The Secretary may, within the limits of funds available for this purpose, make a grant award for an additional budget period for any previously approved project if, on the basis of progress and accounting records, the Secretary finds that the project's activities during the current budget period justify continued support of the project for an additional budget period.

§ 57.1308 How will grant payments be made?

The Secretary will from time to time make payments to a grantee of all or a portion of any grant award, either in advance or by way of reimbursement.

§ 57.1309 What are the purposes for which grant funds may be spent?

(a) Grant funds must be expended solely for costs of projects to plan, develop, and operate or maintain programs for dental team practice training grants in accordance with the applicable provisions of the Act, these regulations, and the terms and conditions of the award.

(b) Grant funds may not be expended for sectarian instruction or any religious purpose.

(c) Any unobligated funds remaining in the grant account at the close of a budget period may be carried forward and will be available for obligation during subsequent budget periods of the project period. The amount of any subsequent award will take into consideration the amount remaining in the grant account. At the end of the last budget period, any unobligated funds remaining in the grant account must be refunded to the Federal Government.

§ 57.1310 What nondiscrimination requirements apply to grantees?

(a) Recipients of grants under this subpart are advised that in addition to complying with the terms and conditions of these regulations, the following laws and regulations are applicable:

(1) Section 704 of the Act (42 U.S.C. 292d) and 45 CFR Part 83 (prohibiting discrimination on the basis of sex in the admission of individuals to training programs under Title VII of the Act);

(2) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) and its implementing regulation, 45 CFR Part 80 (prohibiting discrimination in Federally assisted programs on the grounds of race, color, or national origin);

(3) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*) and its implementing regulation, 45 CFR Part 86 (prohibiting discrimination on the basis of sex in Federally assisted education programs); and

(4) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and its implementing regulation, 45 CFR Part 84 (prohibiting discrimination in Federally assisted programs on the basis of handicap).

(b) The grantee shall not discriminate on the basis of religion in the admission of individuals to its training programs.

§ 57.1311 How must grantees account for grant funds received?

(a) *Accounting for grant award payments.* The grantee must record all payments made by the Secretary in accounting records separate from the records of all other funds, including funds derived from other grant awards. The grantee must account for the sum total of all amounts paid by making available evidence satisfactory to the Secretary of expenditures for costs meeting the requirements of this subpart.

(b) *Grant closeout.*

(1) *Date of final accounting.* A grantee must submit with respect to each grant under this subpart, a full account, in accordance with this subsection, as of the date of the termination of grant support. The Secretary may require other special and periodic accounting.

(2) *Final settlement.* The grantee must pay to the Federal Government as final settlement with respect to each approved project the total sum of:

(i) any amount not accounted for under paragraphs (a) and (b) of this section; and

(ii) any other amounts due in accordance with 45 CFR Part 74 and the terms and conditions of the grant award. This total sum constitutes a debt owed by the grantee to the Federal Government and is recoverable from the grantee or its successors or assignees by setoff or other lawful action.

§ 57.1312 Applicability of 45 CFR Part 74.

The provisions of 45 CFR Part 74, establishing uniform administrative requirements and cost principles, apply to all grants under this subpart.

§ 57.1313 What recordkeeping, audit, and inspection requirements apply to grantees?

Each entity that receives a grant must, in addition to the requirements of 45 CFR Part 74, meet the requirements of section 705 of the Act concerning recordkeeping, audit and inspection.

§ 57.1314 What additional conditions apply to grantees?

The Secretary may with respect to any grant award impose additional conditions prior to or at the time of any award when in his or her judgment these conditions are necessary to assure or protect advancement of the grant purposes, the interests of the public health, or the conservation of grant funds.

[FR Doc. 79-1313 Filed 1-19-79; 8:45 am]

[4110-83-M]

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

Grants for Programs for the Training of Expanded Function Dental Auxiliaries

AGENCY: Public Health Service, HEW.

ACTION: Final regulations.

SUMMARY: These regulations set forth requirements for grants to plan, develop, and operate or maintain programs for the training of expanded function dental auxiliaries. The program is designed to increase the number of dental auxiliaries (dental assistants and dental hygienists) who can perform legally delegated expanded functions, thereby increasing the productivity of the dental care team to provide quality care to more people.

EFFECTIVE DATE: These regulations are effective immediately.

FOR FURTHER INFORMATION CONTACT:

Dr. Richard Weaver, Education Development Branch, Division of Dentistry, Bureau of Health Manpower, Room 3-30, Health Resources Administration, Center Building, 3700 East-West Highway, Hyattsville, Md. 20782 (301-436-6510).

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of June 16, 1978 (43 FR 26071), the Assistant Secretary for Health, Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education, and Welfare, proposed to add a new Subpart II entitled "Grants for Programs for the Training of Expanded Function Dental Auxiliaries" to 42 CFR Part 57. These regulations were proposed to implement section 783(a)(2) of the Public Health Service Act, as added by the Health Professions Educational Assistance Act of 1976 (Pub.L. 94-484), on October 12, 1976.

Interested persons were invited to submit comments on the proposed regulations not later than July 17, 1978. Four comments on the proposed regulations were received during the comment period. The comments, the Department's response to the comments, and the revisions made in the regulations are indicated below. For clarity, the comments and responses have been arranged according to the section of the regulations to which they pertain.

Section 57.3403—Eligibility. One comment recommended that the regulations include a provision authorizing a grantee to contract with other entities, including proprietary schools, for services to carry out the program.

The Department did not include a provision regarding contracts by the grantee because this is covered under the Public Health Service grants policy. According to the Public Health Service supplement to the Department of Health, Education, and Welfare Grants Administration Manual, Chapter PHS:1-430, a grantee may contract for routine services, but principal activities of the grant-supported project may only be contracted out to another organization with specific prior approval by the Public Health Service.

Section 57.3405—Project requirements. One comment questioned the necessity of § 57.3405(e)(3), which requires the grantee to collect, evaluate, and make available to the Secretary data on student performance on an individual basis in classroom and preclinical laboratory work and clinical practice.

The Secretary agrees that the information on student performance on an individual basis is not necessary for the administration of the expanded function dental auxiliaries program; therefore, the requirement for this data has been deleted from § 57.3405(e)(3).

Section 57.3406—Evaluation and grant award. The Secretary has deleted former § 57.3406(a)(1)(iv), which stated that in evaluating applications, the Secretary would consider the extent to which the project has plans to provide high quality training at a reasonable cost per student trained. The basis for this action was that this factor could appropriately be considered as part of the criteria for determining the "reasonableness of the proposed budget," in § 57.3406(a)(1)(viii).

One comment stated that the evaluation criteria contained in § 57.3406(a)(1) were too general.

The Department has provided the basic considerations used in evaluation in § 57.3406(a)(1) and will expand them by adding examples and further detail in the guidelines for this program.[1]

Three professional associations filed comments objecting to § 57.3406(a)(2), which provides that in evaluation of grant applications the Secretary will give special consideration to projects designed to: (i) train students in the greatest number of expanded functions;

(ii) provide students with opportunities for training in locations geographically remote from the main site of the teaching facilities of the program; and (iii) provide students with opportunities for interdisciplinary or team training experiences. The objections to this provision were based on the incorrect premise that these factors are *project requirements*, instead of *special considerations* given to projects in evaluation. Thus, the comments criticized the provision as being overly restrictive and contrary to congressional intent.

The Department points out that this provision sets forth factors which are given special consideration in evaluating projects and not project requirements. Special consideration given to particular factors in evaluation is a reasonable and commonly used means of allocating limited funds for greatest effectiveness in a discretionary grant program. Projects are reviewed for factors given special consideration after they have been determined as meeting program requirements and general evaluation criteria.

With respect to § 57.3406(a)(2)(i), the Department intends to encourage training in the maximum number of

[1] Program guidelines may be obtained by request from the Grants Management Office, Bureau of Health Manpower, Health Resources Administration, Center Building, Room 4-22, 3700 East-West Highway, Hyattsville, Md. 20782.

functions permissible under the laws of the various States, without specifying any particular functions. As examples, the Department included a list of some specific advanced skills which could be delegated to dental auxiliaries in some States. The professional organizations which commented on this provision misinterpreted these examples as skills which were required to be taught. In order to clarify the Department's intent, this list of examples has been deleted from the final regulations.

With respect to §§ 57.3406(a)(2) (ii) and (iii), the Department believes that remote site and interdisciplinary training improve the educational quality of the programs by providing the trainee with opportunities to work with patients from various population groups with a broad assortment of dental problems in differing practice settings, and with other members of the health professions. The variety of training experience will assist the trainee in making career decisions. It is, therefore, the Department's view that special consideration for these factors is justified, and they have been retained in the final regulations.

In addition, the Department has made many minor editorial and technical changes in the proposed regulations for clarity.

Accordingly, a new subpart II is added to 42 CFR Part 57 and is adopted as set forth below.

Dated: November 3, 1978.

CHARLES MILLER,
Acting Assistant Secretary for Health.

Approved: January 2, 1979.

JOSEPH A. CALIFANO, JR.,
Secretary.

Subpart II—Grants for Programs for the Training of Expanded Function Dental Auxiliaries

Sec.

57.3401 To what projects do these regulations apply?
57.3402 Definitions.
57.3403 What entities are eligible to apply for a grant?
57.3404 How must an entity apply for a grant?
57.3405 What requirements must a project meet?
57.3406 How will the Secretary evaluate applications and make grant awards?
57.3407 How will grant payments be made?
57.3408 Purposes for which grant funds may be spent.
57.3409 What nondiscrimination requirements apply to grantees?
57.3410 How must grantees account for grant funds received?
57.3411 Applicability of 45 CFR Part 74.
57.3412 What recordkeeping, audit, and inspection requirements apply to grantees?
57.3413 What additional conditions apply to grantees?

AUTHORITY: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); sec. 783(a)(2) of the Public Health Service Act, 90 Stat. 2314 (42 U.S.C. 295g-3(a)(2)).

Subpart II—Grants for Programs for the Training of Expanded Function Dental Auxiliaries

§ 57.3401 To what projects do these regulations apply?

The regulations in this subpart are applicable to the award of grants to public or nonprofit private schools of dentistry and other public or nonprofit private entities under section 783(a)(2) of the Public Health Service Act (42 U.S.C. 295g-3(a)(2)) to meet the costs of projects to plan, develop, and operate or maintain programs for the training of expanded function dental auxiliaries.

§ 57.3402 Definitions.

For purposes of this subpart:

"Act" means the Public Health Service Act.

"Budget period" means the interval of time into which the project period is divided for budgetary and reporting purposes, as specified in the grant award document.

"Council" means the National Advisory Council on Health Professions Education established by section 702 of the Act.

"Expanded function dental auxiliaries" means dental assistants and dental hygienists who, by successfully completing a training program which meets the requirements of Subpart HH, are qualified to perform, under the supervision of a dentist, a new or wider range of clinical functions and direct patient care procedures.

"Nonprofit" as applied to any school or entity means one which is a corporation or association, or is owned and operated by one or more corporations or associations, no part of the net earnings of which inures or may lawfully inure to the benefit of any shareholder or individual.

"Project director" means an individual designated by the grantee in the grant application and approved by the Secretary to direct the project being supported under this subpart.

"Project period" means the total time for which support for a project has been approved, including any extensions thereof.

"School of dentistry" means a school which provides training leading to a degree of doctor of dentistry or an equivalent degree and which is accredited as provided by section 772(b) of the Act.

"Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

"State" means one of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

"Supervised clinical practice" means supervised clinical practice as defined in 42 CFR 57.3302(k).

§ 57.3403 What entities are eligible to apply for a grant?

(a) *Eligible applicants.* Any public or nonprofit private school of dentistry or other public or nonprofit private entity located in a State may apply for a grant under this subpart.

(b) *Eligible projects.* The Secretary may make grants under this subpart to eligible applicants for projects to plan, develop, and operate or maintain a program for the training of expanded function dental auxiliaries which meets the requirements of 42 CFR 57.3301-3303.

§ 57.3404 How must an entity apply for a grant?

(a) Each eligible applicant desiring a grant under this subpart must submit an application in the form and at the time as the Secretary may require.[1]

(b) The application must be signed by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the terms and conditions of any award, including the regulations in this subpart.

(c) In addition to other pertinent information as the Secretary may require, an application for a grant under this subpart must contain a detailed description of the proposed project and of the manner in which the applicant intends to conduct the project and carry out the requirements of section 783 of the Act and this subpart, in particular, the requirements of § 57.3405. The application must include a budget for the proposed project and a justification for the amount of funds requested.

§ 57.3405 What requirements must a project meet?

A project supported under this subpart must be conducted in accordance with the following requirements:

(a) The project must conduct its program for the training of expanded function dental auxiliaries in accordance with the requirements in 42 CFR 57.3301-3303.

[1] Applications and instructions may be obtained from the Grants Management Officer, Bureau of Health Manpower, Health Resources Administration, Center Building, Room 4-22, 3700 East-West Highway, Hyattsville, Md. 20782.

(b) The project must be conducted under the direction of the project director. If the project director becomes unable to function in this capacity, the Secretary must be notified as soon as possible.

(c) In the case of a project to plan, develop, and operate a program for the training of expanded function dental auxiliaries, the planning and developmental activities must be accomplished within the first six months of the project period except that in the case of programs for which model curriculums, course materials, and expertise do not exist, the Secretary may approve a period of up to one year for planning and development.

(d) The project must develop and use appropriate methods for placing graduates of the program in dental assisting or dental hygiene positions for which they have been trained.

(e) In accordance with the plan set forth in its approved application, the project must collect, evaluate, and make available to the Secretary data concerning the program being conducted. This data collection and evaluation must include, at a minimum:

(1) Systematic evaluation by faculty and students of the program curriculum in relation to the purposes, objectives, and conceptual framework of the program;

(2) Evaluation of the effectiveness of the program in relation to its purposes and objectives;

(3) Information concerning the number of student applicants and students enrolled, and student characteristics (such as age, sex, race, educational background, and previous work experience, including type of position, specialty, and work setting); and

(4) Information concerning the number of graduates per class, the attrition rate, characteristics of graduates, and use and performance of graduates (including employer assessment).

(f) At the time and in the manner the Secretary requires, the project must participate in a program conducted by the Secretary to evaluate the overall effectiveness of Federal support for the training of expanded function dental auxiliaries.

§ 57.3406 How will the Secretary evaluate applications and make grant awards?

(a) *General.* (1) Within the limits of funds available for this purpose the Secretary, after consultation with the Council, may award grants to those applicants whose projects will in his or her judgment best promote the purposes of section 783(a)(2) of the Act, taking into consideration:

(i) The degree to which the project plan adequately provides for meeting the requirements in § 57.3405.

(ii) The number of students the project proposes to train in the program.

(iii) The scope and skill level of expanded functions which the project proposes to teach in the program.

(iv) The potential effectiveness of the project in carrying out the training purposes of section 783(a)(2) of the Act.

(v) The administrative and managerial capability of the applicant to carry out the project.

(vi) The adequacy of the facilities and resources available to the applicant to carry out the project.

(vii) The qualifications of the project director and faculty.

(viii) The reasonableness of the proposed budget.

(ix) The potential of the project to continue on a self-sustaining basis after the project period.

(2) The Secretary will give special consideration to:

(i) Projects designed to train students to clinical proficiency in the greatest number of expanded functions which increase the productivity of the dental team, including advanced skills.

(ii) Projects designed to provide students with opportunities for training in locations geographically remote from the main site of the teaching facilities of the program.

(iii) Projects designed to provide students with opportunities for interdisciplinary or team training experiences.

(3) All grant awards will be made in writing and will set forth the amount of funds granted and the period for which funds will be available for obligation by the grantee.

(4) Except as provided in paragraph (a)(5) of this section, projects receiving grants under this subpart may be approved for an initial project period of up to three years. Grantees may apply for up to two years of additional support by submitting a competing extension application.

(5) Projects maintaining programs, for the training of expanded function dental auxiliaries, supported under this subpart and which previously received support under section 774(a) of the Act, as in effect on September 30, 1977, may receive grants to maintain their programs for no more than the period of time which, when added to the period of support under section 774(a), equals five years.

(6) Neither the approval of any project nor the award of any grant commits or obligates the United States in any way to make additional supplemental, continuation, or other awards with respect to any approved project or any portion of an approved project. For continuation support, grantees must make separate application at the time and in the form which the Secretary requires.

(b) The Secretary will determine the amount of an award on the basis of his or her estimate of the sum necessary for the direct and indirect costs of the project. In the case of projects whose periods of support, including any periods of support received under section 774(a) of the Act as in effect on September 30, 1977, exceed three years, however, the amount of the fourth year of support may not exceed 60 percent of the award for the third year of support and the amount of the fifth year of support may not exceed 40 percent of the award for the third year of support.

(c)The Secretary may make a grant award for an additional budget period for any previously approved project on the basis of an application and those progress and accounting records which may be required. If the Secretary finds that the project's activities during the current budget period justify continued support, and the Secretary decides to continue support, the amount of the grant award will be determined in accordance with paragraph (b) of this section.

§ 57.3407 How will grant payments be made?

The Secretary will, from time to time, make payments to a grantee of all or a portion of any grant award either in advance or by way of reimbursement.

§ 57.3408 Purposes for which grant funds may be spent.

(a) Funds granted under this subpart may be expended solely for carrying out the approved project in accordance with section 783(a)(2) of the Act, the regulations of this subpart and the terms and conditions of the award. Funds may not be expended for sectarian instruction or for any religious purposes.

(b) Funds granted under this subpart may be used in accordance with an approved application for the clinical training of dental assistant and dental hygienist faculty members to teach in the program conducted by the project.

(c) The amount of funds granted under this subpart which may be used for alteration and renovation of facilities during the project period may not exceed the lesser of $10,000 or 25 percent of the total funds recommended for direct costs for the project period.

(d) Any unobligated grant funds remaining in the grant account at the close of a budget period may be carried forward and be available for obligation during subsequent budget periods of the project period. The amount of the subsequent award will take into consideration the amount remaining in the grant account.

(e) Grant funds may not be used for sectarian instruction or for any other religious purpose.

§ 57.3409 What nondiscrimination requirements apply to grantees?

(a) Recipients of grants under this subpart are advised that in addition to complying with the terms and conditions of these regulations, the following laws and regulations are applicable:

(1) Section 704 of the Act (42 U.S.C. 292d) and its implementing regulation, 45 CFR Part 83 (prohibiting discrimination on the basis of sex in the admission of individuals to training programs);

(2) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) and its implementing regulations, 45 CFR Part 80 (prohibiting discrimination in federally assisted programs on the ground of race, color, or national origin);

(3) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*) and its implementing regulation, 45 CFR Part 86 (prohibiting discrimination on the basis of sex in federally assisted education programs); and

(4) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and its implementing regulation, 45 CFR part 84 (prohibiting discrimination in federally assisted programs on the basis of handicap.)

(b) The grantee may not discriminate on the basis of religion in the admission of individuals to its training programs.

§ 57.3410 How must grantees account for grant funds received?

(a) *Accounting for grant award payments.* The grantee must record all payments made by the Secretary in accounting records separate from the records of all other funds, including funds derived from other grant awards. The grantee must account for the sum total of all amounts paid by presenting or otherwise making available, evidence satisfactory to the Secretary of funds spent for costs meeting the requirements of this subpart.

(b) Grant closeout.

(1) Date of final accounting. The grantee must submit, with respect to each grant under this subpart, a full account, in accordance with this subpart, as of the date of the termination of grant support. The Secretary may require other special and periodic accounting.

(2) Final settlement. The grantee must pay to the Federal Government as final settlement with respect to each grant under this subpart the total sum of (i) any amount not accounted for under paragraphs (a) and (b) of this section and (ii) any other amounts due in accordance with 45 CFR Part 74 and the terms and conditions of the grant award. This total sum constitutes a debt owed by the grantee to the Federal Government and is recoverable from the grantee or its successors or assigns by setoff or other lawful action.

§ 57.3411 Applicability of 45 CFR Part 74.

The provisions of 45 CFR Part 74, establishing uniform administrative requirements and cost principles, apply to all grants under this subpart.

§ 57.3412 What recordkeeping, audit, and inspection requirements apply to grantees?

Each school which receives a grant under this subpart must, in addition to the requirements of 45 CFR Part 74, meet the requirements of section 705 of the Act, concerning recordkeeping, audit, and inspection.

§ 57.3413 What additional conditions apply to grantees?

The Secretary may with respect to any grant award impose additional conditions prior to or at the time of any award when in his or her judgment these conditions are necessary to assure or protect the advancement of the approved activity, the interest of the public health, or the conservation of grant funds.

[FR Doc. 79-1314 Filed 1-19-79; 8:45 am]

[4110-83-M]

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS, AND STUDENT LOANS

Programs for the Training of Expanded Function Dental Auxiliaries

AGENCY: Public Health Service, HEW.

ACTION: Final regulations.

SUMMARY: These regulations set forth requirements for programs for the training of expanded function dental auxiliaries under the Public Health Service Act. The program is designed to increase the number of dental auxiliaries (dental assistants and dental hygienists) who can perform legally delegated expanded functions, thereby increasing the productivity of the dental care team to provide quality care to more people.

EFFECTIVE DATE: These regulations are effective immediately.

FOR FURTHER INFORMATION CONTACT:

Dr. Richard Weaver, Education Development Branch, Division of Dentistry, Bureau of Health Manpower, Room 3-30, Health Resources Administration, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782 (301-436-6510).

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of June 16, 1978 (43 FR 26012), the Assistant Secretary for Health, Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education, and Welfare, added a new Subpart HH entitled "Programs for the training of Expanded Function Dental Auxiliaries" to 42 CFR Part 57. These regulations implemented section 701(8)(B) of the Public Health Service Act, as added by the Health Professions Educational Assistance Act of 1976 (P.L. 94-484), on October 12, 1976.

Due to the need to give entities which are eligible for grants under section 783(a)(2) of the Act adequate time to structure their programs in accordance with this subpart, these regulations were promulgated as interim-final regulations, without benefit of proposed rulemaking procedures. Notwithstanding the omission of these rulemaking procedures, interested persons were invited to submit comments not later than August 15, 1977. Following the close of the comment period, the regulations were to be revised as warranted by public comments received. Three comments on the interim-final regulations were received during the comment period. The comments, the Department's response to the comments, and the revisions made in the regulations are indicated below. For clarity, the comments and responses have been arranged according to the section of the interim-final regulations to which they pertain.

(1) Two comments from professional organizations addressed the provision of section 701(8)(B), which requires the Secretary to consult with appropriate professional organizations before prescribing regulations for programs for the training of expanded function dental auxiliaries. These comments stated that the Secretary had failed to meet this requirement for meaningful consultation and recommended that the Secretary hold a meeting with dental and dental auxiliary organizations to discuss revisions to these regulations before publishing final regulations.

For the following reasons, the Secretary believes that these comments lack support. The Department has consulted with various dental organizations from the early development of the program for the training of expanded function dental auxiliaries. When developing the program guidelines, which provided direction to the program through 1976 and formed the foundation for these regulations, the

Division of Dentistry of the Bureau of Health Manpower had several meetings with representatives and members of the American Dental Association, American Dental Hygientists' Association, American Dental Assistants' Association, American Association of Dental Schools, and the American Association of Dental Examiners to share ideas and concerns about the program.

In December 1976, after the enactment of the Health Professions Educational Assistance Act of 1976 (P.L. 94-484), the Secretary invited the above-listed organizations to submit comments on the interpretation of this amendment to the Act providing support for programs for the training of expanded function dental auxiliaries and their ideas on the objectives of the program. Their responses were supportive of the existing guidelines, so the Department used them as the basis for the regulations implementing the revised program.

In addition, the Secretary published for public comment a Notice of Intent to publish regulations for programs for the training of expanded function dental auxiliaries in the FEDERAL REGISTER on March 22, 1977 (42 FR 15433), and also requested advice on program development in the "Health Resources News" of March, 1976 (vol. 4, No. 8). In response, the Secretary received numerous comments from professional organizations, as well as institutions, agencies, and individuals, which were considered in drafting program specifications. Furthermore, a draft of the program specifications was made available at the June 7, 1977, meeting of the National Advisory Council on Health Professions Education, and members of the Department met with representatives and individuals of dental organizations to discuss the specifications.

In sum, the Secretary believes that the Department fulfilled the statutory requirement of consulting with professional organizations in the development of regulations for programs for the training of expanded function dental auxiliaries, and is therefore publishing them as final regulations.

(2) One comment objected to § 57.3303(a) of the regulations, which requires that an entity which conducts an expanded function dental auxiliaries training program be accredited by the Commission on Accreditation of Dental and Dental Auxiliary Educational Programs. The basis of this objection was that section 701(8), the authorizing statute, does not place this limitation on eligibility, and that there is no evidence that programs which do not have this accreditation do not merit grant support.

The Secretary is unable to accept this comment because it is his view that this restriction on eligibility is justified in this discretionary grant program to assure the quality of the programs supported under this authority. The Commission on Accreditation of Dental and Dental Auxiliary Education Programs is the body recognized by the Commissioner of Education, Department of Health, Education, and Welfare, for accrediting programs for training dental auxiliaries; therefore, the Secretary believes that this requirement is a reasonable means of establishing the educational standards of programs.

(3) Another comment objected to § 57.3303(n), which sets forth minimum curriculum requirements for programs for the training of expanded function dental auxiliaries, as related to functions permissible under State law or authorized by the Board of Dentistry of the State in which the program is located. The objection was based on the concern that this requirement may create the appearance of Federal endorsement of restrictive State laws.

It is the Department's position that § 57.3303(n) establishes minimum curriculum requirements for programs for the training of expanded function dental auxiliaries but neither supports nor opposes State laws regarding dental functions that may be delegated to dental auxiliaries. It is reasonable to state this provision in terms of functions permissible under State law in order to require training in useful skills because State law governs the scope of functions that may be delegated to dental auxiliaries. To clarify the intent of this provision, the Department has added the words "At a minimum" to § 57.3303(n)(1) of the final regulations.

In addition, the Department has made many minor editorial and technical changes in the regulations for clarity.

Accordingly, a new Subpart HH is added to 42 CFR Part 57 and is adopted as set forth below.

Dated: November 3, 1978.

CHARLES MILLER,
Acting Assistant Secretary for Health.

Approved: January 2, 1979.

Joseph A. Califano, Jr.,
Secretary.

Subpart HH—Programs for the Training of Expanded Function Dental Auxiliaries

Sec.
57.3301 Purpose.
57.3302 Definitions.
57.3303 Requirements.

AUTHORITY: Sec. 215 of the Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); sec. 701(8) of the Public Health Service Act, 90 Stat. 2247 (42 U.S.C. 292a(8)).

Subpart HH—Programs for the Training of Expanded Function Dental Auxiliaries

§ 57.3301 Purpose.

Section 701(8)(B) of the Public Health Service Act (42 U.S.C. 292a(8)(B)) requires the Secretary of Health, Education, and Welfare to prescribe regulations for programs for the training of expanded function dental auxiliaries. The purpose of this subpart is to comply with this requirement.

§ 57.3302 Definitions.

For purposes of this subpart:

"Academic year" means the approximately 9-12 month period of time during which the program is in session.

"Basic education program" means a dental assisting or dental hygiene education program accredited by the Commission on Accreditation of Dental and Dental Auxiliary Education Programs in which the existing course of study is modified to include additional preparation in expanded functions, preventive dentistry, and techniques to modify patient behavior.

"Dental assistant" means an individual who assists the dentist with the clinical, laboratory, or business operation of a dental practice and provides services to patients as may be delegated and supervised by the dentist in accordance with the law of the State in which the individual is employed.

"Dental auxiliary" means a dental assistant or dental hygienist.

"Dental hygienist" means an individual who is trained and licensed to provide preventive and therapeutic direct patient care services as may be delegated and supervised by the dentist in accordance with the law of the State in which the individual is employed.

"Expanded function dental auxiliaries" means dental assistants and dental hygienists who, by successfully completing a training program which meets the requirements of this subpart, are qualified to perform, under the supervision of a dentist, a new or wider range of clinical functions and direct patient care procedures.

"Four-handed, sit-down dentistry" means a mode of dental practice which encourages the efficient use of dental assistants and dental hygienists to assist the dentist or operating dental auxiliary in a manner that maximizes patient and operator comfort, saves time, and increases the potential productivity of the practice while maintaining the quality of dental care. This chairside assistance includes, but is not limited to, the following:

(1) Preparation for patient treatment;

(2) Chair positioning of patient, operator, and dental auxiliary;
(3) Use of prearranged sterilized instrument trays;
(4) Effective hand instrument exchange techniques;
(5) Standardized sequential usage of instruments;
(6) Use of water, air, and oral evacuation equipment to maintain a clear field of operations; and
(7) Preparation and delivery of restorative and other treatment materials required for the procedures.

"Full-time student" means a student who is enrolled in a program for the training of expanded function dental auxiliaries and pursuing a course of study which constitutes a full-time academic workload, as determined by the program.

"Preventive dentistry" means a method of practice and patient management that included a series of diagnostic, corrective, and disease preventive procedures, including patient education and motivation, that results in the establishment and maintenance of oral health in patients.

"Program director" means the individual responsible for providing competent direction of the program

"Supervised clinical practice" means direct participation by students in patient care by observation, examination, and performance of procedures as are appropriate for the assigned role of the student for the purposes of instruction, under the direction and responsibility of a licensed dentist who holds a faculty appointment at the institution conducting the program.

"Supplemental education program" means a program which provides training designed to extend the knowledge and skills of practicing dental auxiliaries so that they achieve clinical proficiency in expanded funtions, preventive dentistry, and techniques to modify patient behavior.

§ 57.3303 Requirements.

An education program which trains expanded function dental auxiliaries must:

(a) Be conducted by a school of dentistry or other public or nonprofit private entity accredited by the Commission on Accreditation of Dental and Dental Auxiliary Education Programs;
(b) Offer expanded function training in a basic education program or a supplemental education program, or both;
(c) Have an enrollment of not less than eight full-time students in each class;
(d) Be a minimum of one academic year in length;
(e) Consist of supervised clinical practice and at least four months (in the aggregate) of classroom instruction;
(f) Have a project director who is a full-time faculty member at the institution conducting the program;
(g) Have faculty who are qualified, through academic preparation and experience, to teach the subjects assigned and who are experienced in four-handed, sit-down dentistry;
(h) Have faculty for laboratory and clinical instruction who are competent in laboratory procedures and experienced in clinical practice;
(i) Have, in the supervised clinical practice sessions, a faculty-to-student ratio of one faculty member to no more than six students;
(j) Have adequate teaching facilities with sufficient space for instruction and practice in four-handed, sit-down dentistry techniques and expanded function procedures and be adequately equipped with functioning modern equipment;
(k) Have appropriate settings for the supervised clinical practice sessions which must be provided by the institution conducting the program or through written agreements with other institutions, agencies or organizations;
(l) Have adequate library, audiovisual, and other instructional resources;
(m) Before providing training in expanded functions, (1) require students to demonstrate clinical proficiency in the techniques of four-handed, sit-down dentistry or (2) train students to clinical proficiency in these techniques;
(n) Have a curriculum which provides for classroom instruction, preclinical laboratory instruction, and supervised clinical practice designed to train students to clinical proficiency in the performance of:
(1) At a minimum, all dental functions that may be delegated to dental auxiliaries under the law of the State in which the program is located; or
(2) In addition to the functions described in paragraph (n)(1) of this section, the expanded functions that may be taught by the program with the written concurrence of the Board of Dentistry of the State in which the program is located, for purposes such as preparing students for employment in other States or for national, regional, or other State credentialing.
(o) If is a supplemental education program, have entrance requirements for students, such as current certification or licensure, or require students to pass an entrance examination designed to determine whether they have the knowledge and skills necessary for achieving clinical proficiency in the performance of expanded functions;
(p) Have a plan and methodology for evaluating student performance, including:
(1) Standards for preclinical performance which students must meet before receiving clinical training; and
(2) Standards for evaluating the performance of expanded functions which are comparable to the standards used to evaluate the performance of the same skills by dental students; and
(q) Award a degree, diploma, or certificate of completion to individuals who have successfully completed the program.

[FR Doc. 79-1315 Filed 1-19-79; 8:45 am]

[6315-01-M]

Title 45—Public Welfare

CHAPTER X—COMMUNITY SERVICES ADMINISTRATION

PART 1061—EMERGENCY ENERGY CONSERVATION PROGRAM

Subpart—FY79 Crisis Intervention Program

AGENCY: Community Services Administration.

ACTION: Final rule.

SUMMARY: The Community Services Administration is revising the rule on its FY 79 Crisis Intervention Program. The rule is being revised to reflect comments received from the public. In general the amendments provide for modification of the conditions under which individuals can be served and expansion of the types of situations which can trigger a request for funds under this Program.

DATE: This rule is effective January 22, 1979.

FOR FURTHER INFORMATION CONTACT:

CSA grantees and program beneficiaries: Appropriate CSA Regional Office; Others: Mr. David Robbins or Mr. J. Brian Hannigan, Community Services Administration, Office of Community Action, 1200 19th Street NW., Washington, D.C. 20506. Telephone: (202) 254-6310 or (202) 632-6503; Teletypewriter: (202) 254-6218.

SUPPLEMENTARY INFORMATION: On December 28, 1978, CSA published in the FEDERAL REGISTER (43 FR 60466) a final rule on its FY 79 Crisis Intervention Program with a notation that, although it was effective immediately due to the emergency nature of the Program, CSA welcomed comments and that the rule would be changed to reflect comments if warranted.

A number of comments have been received from the public which CSA believes are important enough to warrant revision of the rule. Subpart 1061.52 is being reprinted in its entire-

ty for the convenience of the public and supersedes the December 28, 1978, regulation. It includes the substantive changes which follow:

SECTIONS 1061.52-2 POLICY AND 106152-10(b)(3) (FORMERLY 1061.52-7(b)(3)) PROGRAM ELIGIBILITY

The rule published December 28, 1978, stated that "* * * the primary intent of the program is to make available to grantees funds which will enable them to respond to winter-related energy crisis which endanger the health and survival of eligible low-income households, *and* result in substantially increased energy costs." (Emphasis added.) This has been changed to read "* * * households *and/or* result in substantially increased energy costs." (Emphasis added.)

This change has been made since we can forsee many situations where an energy crisis could result in life or health threatening situations but would not necessarily bring with substantially increased energy costs. Example: A low-income person, forced to leave home because of a winter emergency such as a non-operating furnace, would require assistance in transportation, clothing, blankets, alternative lodging, etc., but would not be faced with any increase in energy costs.

SECTION 1061.52-8(a)(2) (FORMERLY § 1061.52-5(f)) SUPPLEMENTAL CRISIS INTERVENTION PROGRAM.

This section includes a new subsection (iv), to indicate that a partial-state emergency will be deemed to exist when the Governor determines that a specified area within a state has experienced daily temperatures for fourteen (14) consecutive days which compute to an average of twenty-five (25) degrees Fahrenheit or less. This subsection has been added to make eligible colder sub-state areas, for which degree day data may not be available, in those states which as a whole do not qualify for supplemental assistance.

The following additional supplementary information is reprinted from the original announcement of the rule: Section 222(a)(5), the "Emergency Energy Conservation Services" program describes programs and activities for which the Director may provide financial assistance to "* * * lessen the impact of the high cost of energy on (low income individuals and families, including the elderly and the near poor) and to reduce individual and family consumption." Included are activities related to crisis intervention, that is, intervention to prevent or alleviate hardship or danger due to a winter energy crisis. Activities initiated under this section of the Act are also governed by the basic purpose of Title II which is to "* * * stimulate a better focusing of all available local, state, private, and federal resources upon the goal of enabling low-income families, and low-income individuals of all ages, in rural and urban areas to attain the skills, knowledge, and motivations and secure the opportunities for them to become fully self-sufficient." These legislative goals were used by CSA as the major guideline in developing the rule which will govern its FY79 program to address poor people's winter-related energy emergencies.

CSA is not, and was not created to be, a Federal agency administering income transfer programs, nor is the intent of its authorizing legislation that any of its programs be such. The program outlined in this rule is in keeping with the intent and spirit of the Economic Opportunity Act of 1964, as amended. This final rule is effective immediately as a thirty day waiting period would be impractical and contrary to the public interest since winter weather now exists and energy-related emergencies may occur at any time * * *.

WILLIAM W. ALLISON,
Acting Director.

45 CFR 1061.52 is revised to read as follows:

Sec.
1061.52-1 Applicability.
1061.52-2 Policy.
1061.52-3 What these funds can be used for.
1061.52-4 Duration of Program.
1061.52-5 Availability and distribution of funds.
1061.52-6 Organizations eligible for funding under this program.
1061.52-7 Regular Crisis Intervention Program.
1061.52-8 Supplemental Crisis Intervention Program.
1061.52-9 Winter-Related Disaster Relief Program.
1061.52-10 Who can be served by this program.
1061.52-11 Reporting requirements for all grants made under this program.
1061.52-12 Appeal for denial of assistance.
1061.52-13 Non-federal share requirement.
1061.52-14 Clearinghouse review procedures (A-95).
1061.52-15 Limitation of project expenditures.
1061.52-16 Maintenance of effort.
1061.52-17 Delegation of Authority.

AUTHORITY: Sec. 602, 78 Stat. 530 (42 U.S.C. 2942).

§ 1061.52-1 Applicability.

This subpart is applicable to grants funded under section 222(a)(5) of the Economic Opportunity Act of 1964, as amended, if the assistance is administered by the Community Services Administration.

§ 1061.52-2 Policy.

CSA's FY79 Crisis Intervention Program is not intended to be an income transfer program; nor does it entitle any person or household to a certain amount and/or form of assistance. Rather, the primary intent of the program is to make available to grantees funds which will enable them to respond to winter-related energy crises which endanger the health and survival of eligible low-income households, and/or result in substantially increased energy costs.

§ 1061.52-3 What these funds can be used for.

(a) Funds made available under this program shall be used only to assist low-income families who experience substantially increased energy costs and/or face life or health threatening situations caused by winter-related energy emergencies.

(b) Funds shall be used to cover such items as blankets and warm clothing, temporary loan of space heaters, emergency furnace repairs, emergency firewood and fuel deliveries, temporary shelter, food and other supportive services, emergency replacement of broken window panes, and temporary/emergency repairs to housing otherwise unfit for habitation.

(c) During FY 1979, payment of outstanding bills of regulated utilities is allowable only in those areas where shutoffs are not legally prohibited and where the applicant for assistance can produce a notice to disconnect. Payment of other outstanding fuel bills is allowable only where: (a) The applicant has less than one (1) week's supply of fuel; (2) the fuel cost or usage is significantly higher for the applicant; (3) the local administering agency certifies that it has been unable to arrange for further fuel delivery without payment; and (4) the applicant establishes an inability to pay for the fuel. However, in life or health threatening situations, the local administering agency may waive, in writing, criterion (2) above, concerning fuel cost or usage.

(d) Fuel and utility bills shall include, but not be limited to, those for operating cooking stoves, furnaces, space heaters, and wood-burning stoves. Telephone, Cable-TV, and other non-energy bills are not eligible for payment. Grantees and local administering agencies shall not exclude any energy-related or fuel expense from coverage under this program except as provided above.

(e) Money assistance will be limited to voucher payments and payments made directly to suppliers of fuel or other assistance.

(f) No funds made available under this program shall be used to reimburse States for assistance provided to

low-income households in response to winter-related emergencies.

(g) The restrictions of paragraph (c) of this section apply only to payment of outstanding fuel and utility bills. Where a local administering agency determines that an income-eligible household is experiencing an energy-related crisis which is endangering life or health, assistance as outlined in paragraph (b) of this section *other than* the payment of outstanding fuel and utility bills, shall be allowable in response to the household crisis.

§ 1061.52-4 Duration of program.

(a) Grants will be effective January 1, 1979.

(b) No grant funds may be committed by grantees to provide assistance to certified households after May 31, 1979. Administrative funds may be committed until June 30, 1979.

(c) All grants will have a termination date of June 30, 1979.

(d) Grant funds which remain uncommitted by the grantee after June 30, 1979 shall be deobligated and returned by check to CSA for refund to the U.S. Treasury.

§ 1061.52-5 Availability and distribution of funds.

(a) Since funds for this program are available near the beginning of the heating season, it has been possible this year for CSA to design, and the grantees to put in place, a program which can stress preventive activities in addition to those which deal with crisis and disaster situations.

(b) Under certain circumstances, there are areas of the country whose normal winter weather may be severe enough to cause severe energy-related winter emergencies which cause hardships for poor people. In addition there are conditions which seriously aggravate such hardships, such as unusually cold weather or precipitous increases in fuel or utility prices. Finally, there are unforeseen winter emergencies which result in low-income people needing immediate attention and assistance, such as a Federally-declared winter-related disaster or unusually cold weather which leaves eligible households without access to food, fuel, or utilities.

(c) To deal with all of these situations—the foreseen and the unforeseen—CSA will make funds available immediately for use at the local level and create a Director's national contingency fund to be available for demonstrated need in both those areas receiving initial funding and in other areas. Following are the procedures for applying for and distributing funds, and the criteria for funding.

§ 1061.52-6 Organizations eligible for funding under this program.

(a) CSA intends these funds to be used by Community Action Agencies to carry out activities under this program. The only anticipated exceptions will be agencies identified by CSA to serve non-CAA covered areas, Migrant and Seasonal Farmworkers or Native Americans. Grantees may enter into delegate agency agreements with other agencies to carry out part or all of the work program.

(b) There may be a number of States and Territories which will not receive funds under the distribution of crisis intervention funds under § 1061.52-7 below, which may be eligible to apply for funds under §§ 1061.52-8 and 1061.52-9. Therefore, to assist Governors with information and data which will make it possible to respond quickly to emergencies or needs which may arise, CSA is requesting that SEOOs assist Regional Directors in developing within-State allocation percentages, in identifying agencies which would serve areas not served by a CAA, and in developing baseline data that will assist in the analysis of winter-related energy needs.

§ 1061.52-7 Regular Crisis Intervention Program.

(a) *Allocation and Purpose.* (1) CSA will allocate on a one-time basis for crisis intervention activities $15 million by formula to States or areas within States having population-weighted average (normal) annual heating degree days of three thousand (3,000) or more. (For listing of population-weighted annual heating degree days, by state, see Appendix B.) These funds are in addition to any provided by other CSA programs for crisis intervention assistance.

(2) The Governor in each of these states will be requested CSA Regional Directors in developing a within-state allocation plan, and to recommend agencies which can provide assistance in those areas not covered by a Community Action Agency and where a CAA is not able to do so. Governors also will be requested to waive the thirty day review and disapproval period set out in Section 242 of the Economic Opportunity Act of 1964 as amended.

(3) The total one-time grant will also include the greater of an additional $8,000 per grantee, or an amount equal to fifteen percent (15%) of the crisis intervention funds, for administrative costs.

(b) *Application Process.* (1) Based on the results of the within-state allocation process described above, CSA Regional Directors will review and approve Form 314, Statement of CSA Grant.

(2) Special conditions will be attached to all grants, requiring submission, within 30 days of the obligation date of the grant, of a CSA Form 419, Summary of Work Programs and Budget.

§ 1061.52-8 Supplemental Crisis Intervention Program.

(a) *Purpose.* Realizing that some areas of states will have needs greater than those which can be met with the resources available through the regular crisis intervention grants, CSA will make available, *on a one-time basis* unless waived by the Director, additional crisis intervention funds to States and localities which can demonstrate the presence of a winter-related energy need. Such a winter-related energy need will be deemed to exist when the Govenor of a State:

(1) Has declared that a winter-related energy emergency exists, and as a result of such declaration substantial state funds are made available to provide energy emergency assistance to low-income households; *or*

(2) Determines that the emergency exists because:

(i) There is within the State a shortage or unavailability of normal fuels on a temporary or permanent basis to low-income households, causing extraordinary expense—because of the necessity for purchase and delivery of fuel on an emergency basis, or substitution of alternative fuels; *or*

(ii) There has been within the State or an area within the State an increase of twenty percent (20%) or more in the price of a major fuel or utility service since May 1, 1978; *or*

(iii) The State or an area within the State is experiencing excessively cold weather that represents, any time after January 1, 1979, *both* a cumulative total of population-weighted heating degree days for the year beginning July 1, 1978, which is at least three hundred (300) heating degree days higher than the normal cumulative total for that date, *and* at least six hundred (600) heating degree days for the month or four-week period for which assistance is requested; *or*

(iv) A specified area within a state is experiencing daily temperatures for fourteen (14) consecutive days which compute to an average of twenty-five (25) degrees Fahrenheit or less. This subsection qualifies a specific portion of a state for supplemental assistance, *not* the entire state.

(b) *Limitation on Grants.* Once the existence of a winter-related energy need has been determined by the Director of CSA, grants will be made in amounts calculated by CSA to best meet that need in an equitable manner, taking into consideration the existing or potential needs in other areas. Grantees must recognize that

no additional funds for winter-related energy needs will likely be available to them for the balance of the winter season, and that they should plan the use of these resources accordingly. The only anticipated exception would be in the case of funds for Winter-Related Disaster Relief under § 1061.52-9, funds for which are severely limited, and would only be made available after a finding that a disaster has in fact occurred.

(c) *Application Process.* (1) Eligible grantees will ask the Governors of their States to make a determination that a winter-related energy need exists in their area, and to request the Director of CSA to provide funds to meet the needs. (Governors will initiate requests for areas not served by a CAA.) The request will include a description of the extent of the need, a description of the basis for the determination that the need exists, a finding that there is a lack of readily available resources to meet that need, the amount and type of funding committed by the State for energy emergency assistance, and identification of areas within the State in which the need exists. The SEOO will advise the Governor of the accuracy of the data on which the request is based.

(2) The Governor of any State may, without a request from any eligible grantee within the State, initiate a request to the Director of CSA for assistance to the entire State or any area within the State on the basis of a determination of need as set forth in paragraphs (a) (1) and (2), of this section. Such requests shall include the elements described in subparagraph (1) of this paragraph.

(3) Upon the approval of a Governor's request by the Director of CSA, CSA Regional Directors will be immediately requested to supplement the grants of existing CSA Crisis Intervention grantees in the area covered by the request. In the case of requests from Governors of States which have not previously received funds under this program, CSA regional offices may make new grants to Community Action Agencies in the affected area (or in the case of an area not served by a CAA, to other eligible grantees recommended by the Governor of the State). CSA Regional Directors may authorize existing CSA grantees to transfer needed funds from other program accounts, pending receipt of grant funds. Such authority will be limited by CSA Regional Directors to transfer of an amount no greater than the amount of the anticipated grant. If the grant is finally approved, funds thus transferred will be reimbursable with grant funds.

(4) Grantees may expend up to ten percent (10%) of grant funds for administrative and program support costs. In the case of grantees not previously having received funds under § 1061.52-7, Regular Crisis Intervention Program, the provisions of § 1061.52-7(a)(3) apply.

§ 1061.52-9 Winter-related disaster relief program.

(a) *Purpose.* Funds will be available to deal with situations which arise from winter-related disasters creating energy emergencies in any section of the country to assure that low-income needs are met pending receipt of other disaster resources. This is seen as short-term, gap-filling assistance, designed to meet the immediate disaster-related energy needs of the poor and the elderly. These funds may be used for all activities outlined in § 1061.52-3, including payment of utility and fuel bills during the disaster period, *if there is no other way of meeting the needs of eligible households.*

(b) *Application Process.* (1) When a Governor requests the declaration of a winter-related disaster by the Federal government, that request may also be used as the basis for a request for aid from CSA to assure that low-income people facing life and health threatening conditions in the affected State will receive immediate assistance. Such a request shall be made to the appropriate CSA Regional Director for transmittal to the Director of CSA. The request shall indicate the extent of the need, the agencies which are to receive the funds, and the views of the State.

(2) If, after consultation with the Federal Disaster Assistance Administration (or its successor), the Director determines that a winter-related disaster has created conditions which will endanger the health of and/or cause severe hardship to eligible low-income individuals and households, CSA will immediately inform by telegram the Governor and the appropriate CSA Regional Office of the amount of funds available for the affected disaster area. CSA Regional Directors will be requested to supplement grants of existing CSA Crisis Intervention Grantees in the disaster affected area. In states or areas of states which have not previously received funds under this program, CSA Regional Offices will make new grants to Community Action Agencies in the disaster affected area or, in the case of an area not served by a CAA, to other eligible grantees recommended by the Governor of the State. CSA Regional Directors may authorize existing CSA grantees to transfer needed funds from other program accounts, pending receipt of grant funds. Such authority will be limited by CSA Regional Directors to transfer of an amount no greater than the amount of the anticipated grant. If the grant is finally approved, funds thus transferred will be reimbursable with grant funds.

(3) Grantees may expend up to ten percent (10%) of their Disaster Relief Grant funds for administrative and program support costs.

§ 1061.52-10 Who can be served by this program.

(a) Applicants for assistance who have access to direct assistance through other supportive service networks such as welfare may only receive assistance under this program where the grantee or local administering agency has determined that such other service networks cannot respond in a timely and effective manner.

(b) All households assisted by this program must meet both income and program eligibility requirements.

(1) *Income eligibility.* (i) Individuals and households whose income is no higher than 125% of the CSA poverty guidelines. (See Appendix A for income chart);

(ii) Individuals of age 60 and above, whose income does not exceed 125% of the CSA poverty guidelines and/or elderly individuals and couples (age 60 and over) who receive Supplementary Security Income (SSI). (See Appendix A for income chart).

(2) *Determination of income eligibility required of grantees.* Proof of income eligibility is required. The period for determining eligibility will be not more than 12 months nor less than the 90 day period preceding the request for assistance. If proof of income eligibility is unobtainable by the local administering agency, applicants may qualify for *other than money assistance in the paying of outstanding bills* by signing a certification of income eligibility; but no payment of outstanding bills shall be allowable without proof of income. In cases where income eligibility is based on a certification, grantees must make a reasonable number of recorded spot checks to verify income eligibility and so advise applicants in advance by printing such a notice on the application, together with reference to 18 U.S.C. 1001.

(3) *Program eligibility.* If a household meets income eligibility guidelines, program eligibility must be established before the household is eligible to receive assistance under this program. That is, the household must be experiencing an energy-related crisis which is endangering life or health and/or results in substantially increased energy costs.

(i) As noted in paragraph (a) of this section, applicants for assistance who have access to direct assistance through other supportive service networks such as welfare may only receive assistance under this program where the grantee or local administer-

ing agency has determined that such other service networks cannot respond in a timely and effective manner. As part of this determination, local administering agencies have an affirmative responsibility to assure that applicants have received the full measure of support that is due them from the supportive networks noted in paragraph (a) of this section before providing assistance under this program.

(ii) There are, in effect, two levels of program eligibility under this program, depending on the type of assistance provided. As noted in § 1061.52-3, to be eligible for assistance in payment of an outstanding utility or fuel bill, the applicant must have received a notice of shut-off, or, in the case of non-regulated fuel, have less than one week's supply of fuel on hand. In the latter case the local administering agency must certify that it has been unable to arrange for further fuel delivery without at least partial payment of the outstanding bill. In addition, local administering agencies must either verify the applicant's existing supply of fuel through on-site inspection or contact with the applicant's fuel dealer, or obtain a statement from the applicant as to the supply. In the latter case the agency must spot-check through on-site inspection a reasonable number of such statements.

(iii) The above restrictions are not applicable with regard to the provision of assistance *other than* the payment of outstanding fuel and utility bills. At the same time, if income-eligible families have ample supplies of fuel, and are *not* faced with another type of crisis such as an inoperative furnace or broken water pipes, they are not eligible for assistance under this program *just because* they have large energy bills outstanding. If, on the other hand, a family has paid at great sacrifice a large energy bill and as a result has insufficient money to buy needed food or other necessities, then they would be eligible for assistance.

(4) *Priorities.* Priority shall be given to persons facing life threatening situations and to elderly persons (age 60 and over) who meet all eligibility requirements.

(5) *Income disregard.* No payment made under this program shall be considered income for the purpose of determining eligibility for benefits or level of benefits under another program of assistance, including, but not limited to, public assistance, veterans benefits, food stamps, Supplemental Security Income, Medicaid-only, Indo-China Relief, or The WIC Program.

§ 1061.52-11 Reporting requirements for all grants made under this program.

(a) *Financial reporting.* Activities carried out under this program shall be reported as part of grantee's regular SF-269. Grantees shall follow normal procedures for submission of the SF-269, i.e., one copy to the appropriate CSA Regional Office and one copy to Grants Accounting Branch, Finance and Grants Management Division, CSA Headquarters, 1200 19th Street NW., Washington, D.C. 20506.

(b) *Project progress review reports.* Grantees will be required to submit Project Progress Review Reports covering grant activities under this program (CSA Form 440) to the appropriate CSA Regional Office with a copy forwarded to CSA Headquarters, Attention: Energy Progams. Reports will cover activities undertaken during the entire grant period, and will contain a separate narrative account of any assistance provided pursuant to a disaster declared under § 1061.52-5, above. These reports will be due July 1, 1979. The following activities completed during the reporting period shall be addressed in section 1A of the submission:

(1) Total number of households which were assisted under all of the eligible activities of this program. This should be a nonduplicative count, and of this number:

(i) Number of elderly individuals assisted whose income is 125% or less;

(ii) Total number of households whose outstanding utility/fuel bills were paid in whole or in part, and total dollar amount obligated for this purpose; and of that number of households, total number whose outstanding utility/fuel bills exceeded $250;

(iii) Total number of households which received other forms of emergency energy assistance under this program and total amount obligated for this purpose;

(2) Total number of individuals residing in households served as accounted for in subparagraph (1) of this paragraph.

(3) Number of reviews of denials of assistance requested and the results thereof.

§ 1061.52-12 Appeal from denial of assistance.

(a) Each local program operator shall establish and make known to all applicants procedures for review of the denial of assistance under this program to any household or person, which shall include at a minimum:

(1) Written application forms;

(2) Notification in writing of the reasons for denial of assistance, and of the opportunity to submit additional written information which the applicant believes would warrant favorable determination of eligibility;

(3) Provision for review of a denial of an application for assistance by the program operator's executive officer, or his/her designee; and an opportunity for provision of any additional information by the applicant; and

(4) Notice in writing of the program operator's final decision on review.

(b) A written description of these review procedures shall be maintained on file by the program operator and available for public inspection.

§ 1061.52-13 Non-Federal share requirement.

The non-Federal share requirements are waived for all Crisis Intervention activities under Program Account 80.

§ 1061.52-14 Clearinghouse review procedures (A-95).

CSA has requested and received on January 8, 1979, from the Office of Management and Budget (OMB), a waiver of the clearinghouse review procedures required under OMB Circular A-95. However, grantees are required to submit an information copy of all application(s) required under § 1061.52 to the appropriate clearinghouse(s).

§ 1061.52-15 Limitation of project expenditures.

(a) *Limitation on payments to any eligible household.* The sum of all forms of assistance made to and/or on behalf of any eligible household during this program may not exceed $250 in any fiscal year.

(b) *Recovery of unobligated funds.* CSA retains the authority to recover grant funds at any time sums remain uncommitted to eligible households.

(c) Prohibition against transfer to another grant. Funds remaining unobligated may not be transferred by the grantee to another grant.

(d) *Overexpenditures.* If the grantee incurs expenditures in excess of the total amount of the approved grant, the amount of the overexpenditure must be absorbed by the grantee.

(e) *Procurement.* In accordance with OMB Circulars A-110 and A-102 all proposed sole source contracts where only one bid or proposal is received in which the aggregate expenditure is expected to exceed $5,000 must receive prior approval by the appropriate CSA Regional Office.

§ 1061.52-16 Maintenance of effort.

Services provided with funds made available under this program shall be in addition to and not in substitution for services previously provided without Economic Opportunity Act assistance.

§ 1061.52-17 Delegations of Authority to Regional Directors.

This section provides for the immediate delegation to CSA Regional Directors of authority for final approval of grants under this program. When Section 601(c) was added to the Eco-

nomic Opportunity Act, its last sentence prohibited the delegation of final approval of grants and contracts to any regional offical after June 15, 1975. In the Economic Opportunity Amendments of 1978, this provision, which had proved to be administratively burdensome, was repealed and a requirement to promulgate rules and regulations for final approval of grants and contracts was substituted. The Community Services Administration fully intends to issue comprehensive regulations on this subject in the near future. However, in view of the fact that activities under this program will be undertaken to deal with winter-related energy *emergencies*, maximum efficiency in the processing of grants is immediately required. To achieve this administrative efficiency, it is necessary to return final grant-making power to Regional Directors for this program effective immediately.

APPENDIX A.—COMMUNITY SERVICES ADMINISTRATION

CSA POVERTY INCOME GUIDELINES FOR ALL STATES EXCEPT ALASKA AND HAWAII

Size of family unit	Non-farm family (125%)	Farm family (125%)
1	$3,925	$3,363
2	5,200	4,438
3	6,475	5,513
4	7,750	6,588
5	9,025	7,663
6	10,300	8,738

(For family units with more than 6 members, add $1,275 for each additional member in a nonfarm family and $1,075 for each additional member in a farm family.)

CSA POVERTY GUIDELINES FOR ALASKA

Size of family unit	Non-farm family (125%)	Farm family (125%)
1	$4,925	$4,225
2	6,513	5,563
3	8,100	6,900
4	9,687	8,238
5	11,275	9,575
6	12,863	10,913

(For family units with more than 6 members, add $1,588 for each additional member in a nonfarm family and $1,338 for each additional member in a farm family.)

CSA POVERTY GUIDELINES FOR HAWAII

Size of family unit	Non-farm family (125%)	Farm family (125%)
1	$4,525	$3,913
2	5,987	5,138
3	7,450	6,363

CSA POVERTY GUIDELINES FOR HAWAII—Continued

Size of family unit	Non-farm family (125%)	Farm family (125%)
4	8,913	7,588
5	10,375	8,813
6	11,838	10,038

(For family units with more than 6 members, add $1,463 for each additional member in a nonfarm family and $1,225 for each additional member in a farm family.)

APPENDIX B.—*Population-Weighted Normal Annual Heating Degree-Days by State* [1]

FIPS Code No.	Name of State	
Region I—(Boston)		
09	Connecticut	6,122
23	Maine	8,034
25	Massachusetts	6,264
33	New Hampshire	7,550
44	Rhode Island	5,913
50	Vermont	7,900
Region II—(New York)		
34	New Jersey	5,493
36	New York	5,925
73	Puerto Rico	
78	Virgin Islands	0
Region III—(Philadelphia)		
10	Delaware	4,756
11	District of Columbia	[2]4,211
24	Maryland	4,779
42	Pennsylvania	5,747
51	Virginia	4,284
54	West Virginia	5,085
Region IV—(Atlanta)		
01	Alabama	2,658
12	Florida	669
13	Georgia	2,649
21	Kentucky	4,303
28	Mississippi	2,375
37	North Carolina	3,351
45	South Carolina	2,654
47	Tennessee	3,776
Region V—(Chicago)		
17	Illinois	6,066
18	Indiana	5,708
26	Michigan	6,763
27	Minnesota	8,743
39	Ohio	5,767
55	Wisconsin	7,559
Region VI—(Dallas-Fort Worth)		
05	Arkansas	3,168
22	Louisiana	1,675
35	New Mexico	4,761
40	Oklahoma	3,492
48	Texas	2,008
Region VII—(Kansas City)		
19	Iowa	6,832
20	Kansas	4,881
29	Missouri	5,028
31	Nebraska	6,328
Region VIII—(Denver)		
08	Colorado	7,069
30	Montana	8,224
38	North Dakota	9,468
46	South Dakota	7,648
49	Utah	6,562
56	Wyoming	7,898
Region IX—(San Francisco)		
04	Arizona	2,303
06	California	2,701
15	Hawaii	
32	Nevada	4,353
75	Trusts	
Region X—(Seattle)		
02	Alaska	[2]11,492
16	Idaho	6,891
41	Oregon	5,217
53	Washington	5,725

[1] Source: *State, Regional & National Monthly and Seasonal Heating Degree Days Weighted by Population, July, 1931-June, 1978*, National Oceanic and Atmospheric Administration, Environmental Data and Information Service, U.S. Department of Commerce, September, 1978.

[2] Source: U.S. Department of Energy. Heating Degree Days is the total by which the average temperature for a day is less than 65 degrees Fahrenheit. Annual Heating Degree Days is the sum of all Heating Degree Days during a calendar year. Normal Annual heating Degree Days is the average of Annual Heating Degree Days from July, 1931, to June, 1978.

[FR Doc. 79-2244 Filed 1-19-79; 8:45 am]

[6712-01-M]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[FCC 79-14]

PART 0—COMMISSION ORGANIZATION

Change in Name of Office of Chief Engineer to Office of Science and Technology

AGENCY: Federal Communications Commission.

ACTION: Amendment of rules.

SUMMARY: This amendment changes the rules to reflect the Commission's decision to change the name of the "Office of Chief Engineer" to "Office of Science and Technology." The Commission has also determined that the head of this Office should be designated as the FCC's "Chief Scientist."

EFFECTIVE DATE: May 1, 1979.

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

FOR FURTHER INFORMATION CONTACT:

Bernard I. Kahn, Office of Executive Director, 632-7513.

SUPPLEMENTARY INFORMATION:

Adopted: January 12, 1979.

Released: January 19, 1979.

Order. In the matter of Amendment of the Commission's rules and regulations to reflect a change in the name of the Office of Chief Engineer to the Office of Science and Technology.

1. In response to the rapid and profound changes in technology experienced in recent years and expected to continue during the next decade, the Commission has determined that the name of the "Office of Chief Engineer" should be changed to the "Office of Science and Technology" and that the head of this office should be designated as the FCC's "Chief Scientist" rather than the FCC's "Chief Engineer." This change in name reflects the Commission's recognition that present and future developments in the broad field of communications require intensive study of applied and basic science and technology. The change will help to promote mutually supportive efforts in several fields of study, the physical sciences as well as engineering and electronics.

2. This change in the title of the unit primarily responsible for the Commission's research and engineering activity signifies the Commission's commitment to scientific and technical studies in all phases of communications. Implementation of this change requires the amendment of several portions of the FCC rules and regulations, most notably §§ 0.5(a)(2), 0.5(b)(2), 0.31, 0.32, 0.33, 0.241, and 0.243. All references in these sections to "Office of Chief Engineer" are hereby changed to read "Office of Science and Technology." Similarly, all references to "Chief Engineer" are changed to read "Chief Scientist." Editorial changes will also be necessary in other parts of the Commission's rules and regulations to complete the transition to Office of Science and Technology. These additional changes will be addressed in another order to be released in the near future.

3. The amendments adopted herein pertain to agency organization. The prior notice, procedure, and effective date provisions of section 4 of the Administrative Procedure Act, 5 U.S.C. 553, are therefore inapplicable. Authority for the amendment being adopted is contained in sections 4(i) and 5(b) of the Communications Act of 1934, as amended.

4. In view of the foregoing: *It is ordered,* Effective May 1, 1979, that Part 0 of the rules and regulations is amended as set forth below.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082 (47 U.S.C. 154, 155, 303).)

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is hereby amended as indicated below:

In §§ 0.5(a)(2), 0.5(b)(2), 0.31, 0.32, 0.33, 0.241, and 0.243, all references to "Office of Chief Engineer" are changed to read "Office of Science and Technology" and all references to "Chief Engineer" are changed to read "Chief Scientist."

[FR Doc. 79-2217 Filed 1-19-79; 8:45 am]

[6712-01-M]

[BC Docket No. 78-129; RM-3008; RM-3009; RM-3143]

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Station in Yermo and Mountain Pass, California; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and Order and Memorandum Opinion and Order.

SUMMARY: This action assigns Class B channels to Mountain Pass, California and to Yermo, California, to provide for a first local service to each. The assignments will also permit service to be provided to large unserved and underserved areas. In addition, an estimated eight million travelers along Interstate 15 will receive service from the proposed stations.

EFFECTIVE DATE: February 26, 1979.

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

FOR FURTHER INFORMATION CONTACT:

Mark N. Lipp, Broadcast Bureau (202-632-7792).

SUPPLEMENTARY INFORMATION: A petition to assign Channel 258 to North Las Vegas, Nevada, has been dismissed.

REPORT AND ORDER AND MEMORANDUM OPINION AND ORDER—PROCEEDING TERMINATED

Adopted: January 12, 1979.

Released: January 17, 1979.

In the matter of amendment of § 73.202(b), *Table of Assignments,* FM Broadcast Stations (Yermo and Mountain Pass, California), BC Docket No. 78-129, RM-3008, RM-3009, RM-3143.

1. The Commission has before it the revised *Notice of Proposed Rulemaking,* 43 FR 17979, adopted April 28, 1978, proposing the assignments of FM Channel 251 to Yermo, California, and FM Channel 258 to Mountain Pass, California. Comment and reply comments were submitted by petitioner, KIXV, Inc.[1] Opposing comments and reply comments were received from Mojave Valley Broadcasting, Inc., licensee of Station KWTC(AM) and permittee of Station KWTC-FM, Barstow, California.[2]

2. In the *Notice,* we acknowledged that the instant proposals did not conform to our policy of assigning Class B channels to large communities, but that a showing of service to unserved and underserved areas might justify the assignments. Thus petitioner was asked to revise its showings to support the proposals. In addition, data was requested as to the availability of FM channels to precluded communities. As for Mountain Pass more information was requested on its status as a community.

3. Yermo (pop. 1,304),[3] is located in San Bernardino County (pop. 682,233), approximately 18 kilometers (11 miles)

[1] The petitioner was identified in the *Notice* as Howard Anderson. Mr. Anderson has formed KIXV, Inc. for purposes of these FM channel assignments. See also 43 FR 31165, July 20, 1978.

[2] In addition, a counterproposal filed by D. Garry Munson and John Charles Larsh, proposing the assignment of FM Channel 258 to North Las Vegas, Nevada, conflicted with the Mountain Pass proposal and was made a part of this proceeding (RM-3143). However, that proposal was later withdrawn and amended to specify a different frequency for North Las Vegas, eliminating the conflict. By a separate letter Munson and Larsh have been advised that this latter proposal has been found unacceptable for filing for failure to comply with the Commission's minimum mileage separation requirements. Since the Channel 258 proposal was withdrawn and not later pursued, we have dismissed the proposal in paragraph 12, *infra.*

[3] Population data is taken from the 1970 U.S. Census.

east of Barstow, and approximately 144 kilometers (90 miles) west of the California-Nevada border on Interstate Highway 15. It has no local aural service.

4. Mountain Pass (pop. est. 250-260) [4] is also located in San Bernardino County, approximately 16 kilometers (10 miles) west of the California/Nevada border on Interstate Highway 15. It also has no local aural service.

5. Petitioner states that the purpose of the Yermo and Mountain Pass proposals is to provide a first aural service to a 150-mile stretch of highway (Interstate 15) between Barstow, California and Las Vegas, Nevada. Petitioner has estimated that an estimated eight million people travel along the highway each year. As for Mountain Pass, petitioner indicates that it is essentially a mining town, with the principal employer being Molycorp, which is engaged in mining Molybdenum. The permanent population is said to be 250-260 persons and services are provided to those residents by the county and by Molycorp. Petitioner also notes that Mountain Pass has its own post office and zip code (92366), a 15-man volunteer fire department and is part of the Baker-Mountain Pass school district. A road sign on Interstate 15 identifies the community as "MOUNTAIN PASS, ELEVATION 4,721 FEET, POPULATION 250," according to petitioner. With respect to the need for a radio station, we are told that Mountain Pass receives no broadcast services during the day from any California stations, that there is no newspaper delivery, and cable television carries only Las Vegas stations. Petitioner relates that an FM station at Mountain Pass operating with maximum Class B facilities would provide the following services:

	Pop.	Approximate area	
		Sq. Km.	Sq. Mi.
1st FM	671	6,055	2,329
2nd FM	91	517	199
1st nighttime aural	427	3,367	1,295
2nd nighttime aural	288	2,688	1,034

As for preclusion petitioner states that the only affected community without local service is Eagle Mountain to which Channel 249A is available for assignment.

6. Regarding Yermo, the need for service is again expressed by petitioner in terms of the absence of local service to residents and service to travelers on Interstate 15. A wide-area coverage channel is requested for Yermo to provide the following services (again assuming maximum facilities):

	Pop.	Approximate area	
		Sq. Km.	Sq. Mi.
1st FM	2,416	6,282	2,416
2nd FM	25,764	1,812	697
1st nighttime aural			
2nd nighttime aural	6,826	5,764	2,217

Petitioner has shown that other FM channels are available to communities over 1,000 population and without local service which would be precluded by the Yermo assignment.[5]

7. In opposition, Mojave Valley contends that a Class B channel should not be assigned to either Yermo or Mountain Pass since neither community is large enough to qualify for a wide-area coverage station under § 73.206(b)(2).[6] In this regard, it argues that the instant proposals are not intended to serve the requested communities but instead seek to serve a portion of the general public traveling along a highway. Moreover, Mojave Valley suggests that the Yermo request is intended to attract advertising from Barstow businesses away from existing Barstow stations. Mojave Valley also notes that the two requests, even if granted with maximum facilities, would leave a 15-mile stretch of highway unserved by the 1 mV/m contour of either station. It is asserted that several Class A stations if prudently located could provide better service to the travelers. Finally, it argues that the assignments should not be granted on the basis of serving a transient population because their needs could not be meaningfully ascertained.

8. In reply comments, petitioner confirms that it will apply to operate both stations with maximum facilities so as to provide optimum service to the Interstate 15 travelers. The 15-mile stretch of highway that would extend beyond the 1 mV/m contour of both stations would receive a minimum of 300 uV/m service, we are told by petitioner. Petitioner reaffirms that its primary interest is the mobile population along Interstate 15 but gives assurance that it will serve the needs of the residents of Yermo and Mountain Pass.

9. The Commission finds that petitioner has demonstrated that an adequate need exists for Class B assignments to Yermo and Mountain Pass. First, as to Mountain Pass, the nature of this place as a mining town provides the commonality of purpose which, as reflected in the services locally provided to the residents and employees, qualifies this place as a community. As such, the town is identified by a road sign and a community post office is assigned to it with a separate zip code number. In terms of need, the population of both communities Yermo and Mountain Pass, is extremely small for a Class B assignment. However, this portion of California near the Nevada border in which they are located is sparsely populated with few significant towns. More important the proposed stations would provide a first and second FM and nighttime aural service. In addition we recognize that the transient population on Interstate 15 also has a need for radio service though this need may well be unrelated to the needs of either Yermo or Mountain Pass. Petitioner admits that the programing of both stations will be primarily directed to the large number of travelers along Interstate 15.[7] Nevertheless, we believe that such a station can also provide an adequate portion of its programing to the community which it is licensed to serve as required by Commission policy. As to opponent's contention that the Yermo proposal will seek advertising from Barstow and become a Barstow station, we do not agree with that assessment. The Yermo request is part of a plan to provide much needed service to a large transient population and the location of Yermo appears to have been selected for this purpose. Thus, there is much public benefit from the proposal and the fact that Barstow will be served should not serve as an impediment.

10. In order to provide optimum service to large unserved and underserved areas, we are conditioning the assignments of Channels 251 and 258 to Yermo and Mountain Pass to the use of maximum facilities. In addition the transmitter site for the Yermo station must be located at least approximately 10 kilometers (6 miles) north-northeast of Yermo to comply with mileage separation requirements.

11. Mexican concurrence in the proposals has been obtained.

12. *Accordingly, it is ordered,* That pursuant to 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, the FM Table of Assignments (§ 73.202(b) of the Commission's rules) is amended, effective February 26, 1979, with respect to the cities listed below:

[4] Population estimate is provided by petitioner in its comments.

[5] Those communities (with the available channels noted) are as follows: China Lake (244A); Fort Irwin (221A); Searles Valley (228A); Nebo Center (257A); Kerwood (261A); California City (237A).

[6] Section 73.206(b)(2) states that a Class B station "* * * is designed to render service to a sizeable community * * * or to the surrounding area."

[7] Although a 15-mile segment of Interstate 15 will not be provided 1 mV/m service, the signal intensity will reach a minimum of 300 uV/m in this area which is a level of service recognized by the Commission as adequate in rural areas, in the absence of interference from other stations, as is the case here.

City and Channel No.
Mountain Pass, California, 258,[1]
Yermo, California, 251.[1]

13. *It is further ordered,* That the proposal of Munson and Larsh to assign Channel 258 to North Las Vegas, Nevada (RM-3143) is dismissed.

14. *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. 79-2218 Filed 1-19-79; 8:45 am]

[6712-01-M]

[SS Docket No. 78-146; FCC 79-5]

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

Permitting of Ship Radiotelegraph Stations To Communicate With Amateur Stations

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document deletes certain sections of the Commission's rules and regulations relating to the granting of licenses, modification of licenses, renewal of licenses, or special temporary authorizations permitting ship radiotelegraph stations to communicate with amateur stations. These rules no longer serve any useful purpose in the present regulatory scheme, consequently, the Commission is deleting them.

EFFECTIVE DATE: February 23, 1979.

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

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION:

REPORT AND ORDER—(PROCEEDING TERMINATED)

Adopted: January 8, 1979.

Released: January 18, 1979.

In the matter of amendment of Part 83 of the Commission's rules to delete §§ 83.50 and 83.70 which permit ship radiotelegraph stations to communicate with amateur stations, SS Docket No. 78-146.

1. The Commission released a Notice of Proposed Rule Making (43 FR 20249) on May 9, 1978, to delete §§ 83.50 and 83.70 from its rules. Under these sections, the Commission may authorize a ship station on board a vessel used, or intended to be used, for scientific research or expedition, or a vessel not engaged in commerce to communicate by radiotelegraphy directly with licensed amateur stations on land. This authorization may only be granted upon a showing that: (1) Unusual circumstances make direct communications with amateur stations extremely beneficial to persons on board or to persons responsible for the scientific expedition, (2) messages will not relate to commercial communications and (3) no harmful interference will result to stations in the maritime mobile service nor to stations in the radiolocation service.

2. The Commission now believes that these rule sections, which were adopted in 1939, serve no useful purpose under the present regulatory scheme. A review of our license file disclosed that no ship station is presently authorized under these sections to communicate with amateur stations. Moreover, if communications between a vessel and amateur stations are desired, an amateur mobile station, which is a radio installation separate from the ship station, can be operated aboard the vessel: *Provided,* The operator is a licensed amateur and the requirements of §§ 97.101 and 97.114 of the Amateur Rules are observed.

3. Mr. Benjamin Clark of Moncks Corner, South Carolina filed the only comments in this proceeding. In his comments Mr. Clark suggests that the Commission will be reconsidering the subject matter of this proceeding in ten years or less to determine whether amateurs should be permitted to use the Maritime Mobile Service frequencies on a secondary basis. According to Mr. Clark, the Amateur and Maritime Mobile Services are the only two remaining services making extensive use of manual radiotelegraphy, and both services use similar procedures. Within ten years Mr. Clark estimates that there will be over a million amateurs located in all parts of the world, most of whom are skilled and reliable operators. Mr. Clark believes that the use of Maritime Mobile Service bands in the high frequency (HF) part of the spectrum will decrease as ship stations shift their communications to satellites for economic reasons. Mr. Clark suggests that, as coast stations handling HF communications are phased out because of dwindling traffic, it may be wise to allow amateurs to use the Maritime Mobile frequencies on a secondary basis to insure their availability for use by ship stations needing communications and unable to communicate by satellite. Mr. Clark further suggests that it might even be well at this time to include in Amateur Radio Operator Examinations questions from Element 6 of the Commercial examination relative to handling of maritime distress communications to insure that amateurs will know what to do if and when they become a recognized part of the Maritime Mobile Service.

4. After reviewing Mr. Clark's suggestions, we have concluded that they would not benefit either the Maritime Mobile Service or the Amateur Radio Service. One objective of the Commission has been to minimize the possibility of congestion and interference on the maritime frequencies, especially on the medium and high frequencies. While use of manual telegraphy may diminish in the years ahead, we anticipate an increased use of automatic printing equipment on the high frequencies. A significant number of ships will continue to use these frequencies for their long distance communications in lieu of satellites. To allow over a million amateur stations to transmit on the maritime frequencies would result in an enormous amount of congestion and interference, especially on the medium and high frequencies, and would be contrary to this objective of the Commission to reduce congestion and interference on the maritime frequencies. Moreover, we do not believe that amateurs should be required to assume the responsibility of rendering what is essentially a common carrier service to ship stations. Consequently, we will not adopt Mr. Clark's suggestions.

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

6. *Accordingly, it is ordered,* That, pursuant to authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, Part 83 of the Commission's rules is amended effective February 23, 1979, as set forth below.

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

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

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

Part 83 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

Part 83—Stations on Shipboard in the Maritime Services.

§ 83.50 [Amended]

1. Section 83.50 is deleted and designated as [Reserved].

§ 83.70 [Amended]

2. Section 83.70 is deleted and designated as [Reserved].

[FR Doc. 79-2220 Filed 1-19-79; 8:45 am]

[1] Any application for this channel must specify maximum power and antenna height or equivalent.

[6712-01-M]

[RM-2134; FCC 79-7]

PART 87—AVIATION SERVICES

Permitting the Use of F2 Emissions by Civil Air Patrol Stations on the Frequencies 143.9 and 148.15 MHz

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action permits Civil Air Patrol stations to use frequency modulated telegraphy signals on two frequencies used only by the Civil Air Patrol. This action was taken at the request of the Civil Air Patrol. As a result of this change the CAP expects to improve its radiocommunications capabilities for the conduct of emergency and training missions.

EFFECTIVE DATE: February 23, 1979.

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

FOR FURTHER INFORMATION CONTACT:

Robert McNamara, Safety and Special Radio Services Bureau, (202) 632-7197.

SUPPLEMENTARY INFORMATION:

ORDER—PROCEEDING TERMINATED

Adopted: January 8, 1979.

Released: January 18, 1979.

In the matter of amendment of Part 87 of the rules to permit the use of F2 emissions by Civil Air Patrol stations on the frequencies 143.9 and 148.15 MHz, RM 2134.

BACKGROUND

1. The Civil Air Patrol (CAP), a civilian auxiliary of the United States Air Force, has requested that the Commission amend the rules (1) to permit the use of F2 emissions [1] on the frequencies 143.9 and 148.15 MHz for teleprinter operations, and (2) to exempt Civil Air Patrol station [2] operators from the provisions of § 87.133(a) which require a third-class or higher operator license to operate aircraft radio stations on certain frequencies.

2. The CAP states that as part of a modernization program it is converting from amplitude modulation (AM) equipment to frequency modulation (FM) equipment for voice communications (F3 emissions) on very high frequency (VHF) channels. The authorization of F2 emissions on 143.9 and 148.15 MHz would permit use of the same type of equipment for VHF teleprinter operations as is used for voice communications. The CAP indicates that this would allow it to discontinue the use of older, obsolete AM equipment and improve radiocommunications capabilities for conducting emergency and search and rescue missions as well as training.

3. In addition, the CAP states that CAP stations, apparently, were unintentionally included within the third-class operator license requirements of § 87.133(a)(1). The CAP, therefore, requests CAP stations be exempted from such requirements.

DISCUSSION

4. The two frequencies on which the CAP desires to use F2 emissions are utilized only by CAP stations. Further, although § 87.513 does not provide for the use of F2 emissions, it does permit CAP stations to employ amplitude modulated telegraphy signals (A1 and A2 emissions). Thus, no interference to other classes of stations or users would result from the requested rule change. It also appears that, for practical purposes, new AM equipment is not available in the frequency range of concern to the CAP.

5. In that such a rule change would likely improve the CAP's communications capability in conducting training, as well as emergency and search and rescue missions, we believe the public interest would be served by amending § 87.513 of the rules as requested.

6. However, the CAP's request for an exemption from the provisions of § 87.133(a)(1) [3] which require operators of certain aircraft stations to have a third-class operator license, is unnecessary. The subject provisions of § 87.133(a)(1) relate only to *aircraft* stations. As mentioned above, CAP stations are licensed as a separate and distinct type of radio station under Subpart O of Part 87 of the rules. Such stations may be located in automobiles, boats or aircraft. The platform the station may be located on is not determinative of its class. For example, a citizens band station installed on board a ship does not become a ship radio station. Therefore, CAP station operators may satisfy the operator license requirement by holding a restricted radiotelephone operator permit.

7. In that the amendment of the rules to permit the CAP to utilize F2 emissions on the two specified frequencies will not affect other users or classes of stations, and the amendment is one in which the public is not particularly interested, we find that the notice and procedure provisions of the Administrative Procedure Act, 5 U.S.C. 553, are unnecessary.

8. Regarding questions on matters covered in this document contact Robert McNamara (202) 632-7197.

9. In view of the foregoing: *It is ordered,* That pursuant to the authority contained in Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, § 87.513 of the Commission's rules is amended as set forth below, effective February 23, 1979.

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

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

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

Part 87 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

1. In § 87.513 paragraphs (h) and (i) are amended to read as follows:

§ 87.513 Frequencies available.

* * * * *

(h) 143.9 MHz, A1, A2, A3, F2, F3 emission, 30 watts maximum power.

(i) 148.15 MHz, A2, A3, F2, F3 emission, 50 watts maximum power.

[FR Doc. 79-2221 Filed 1-19-79; 8:45 am]

[6712-01-M]

[SS Docket No. 78-160; FCC 79-4]

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

PART 87—AVIATION SERVICES

Authorizing Broadcasts by Aircraft Radio Stations on Certain Frequencies in Accordance With FAA Recommended Traffic Advisory Practices

AGENCY: Federal Communications Commission.

[1] An F2 emission is defined as telegraphy by the on-off keying of a frequency modulating audiofrequency or by the on-off keying of a frequency modulated emission.

[2] A Civil Air Patrol station is a particular type of radio station which is licensed only to units or headquarters of the CAP under Subpart 0 of Part 87 of the rules.

[3] The applicable provisions of Rule 87.133(a)(1) read as follows:

"§ 87.133 General operator requirements.

(a) Except as provided for in §§ 87.135, 87.139 or as limited on the face of the operator license or permit, all stations in the Aviation Services shall be operated by persons holding any class of commercial radio operator license or permit issued by the Commission: Provided, That (1) Only a person holding a third-class or higher operator permit shall operate *aircraft stations* (i) Utilizing frequencies below 30 MHz not exclusively allocated to the aeronautical mobile service, or (ii) Utilizing frequencies above 30 MHz not allocated exclusively to aeronautical mobile services and which are assigned for international use; and * * *" (Emphasis added.)

ACTION: Final Rule.

SUMMARY: The rules are amended to specifically authorize "broadcasts in the blind" by aircraft radio stations on certain frequencies, in accordance with FAA recommended traffic advisory practices. This action was initiated as a result of a request by the FAA to review its recommended communciations procedures at nontower airports for compliance with the FCC regulations. The rules are intended to clarify any existing uncertainty regarding the compliance of these procedures with the Commission's rules.

EFFECTIVE DATE: February 23, 1979.

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

FOR FURTHER INFORMATION CONTACT:

Robert H. McNamara, Safety and Special Radio Services Bureau (202-632-7197).

SUPPLEMENTARY INFORMATION:

REPORT AND ORDER—PROCEEDING TERMINATED

Adopted: January 8, 1979.

Released: January 18, 1979.

BACKGROUND

In the matter of amendment of Part 87 of the rules to specifically authorize broadcasts by aircraft radio stations on certain frequencies in accordance with FAA recommended traffic advisory practices, SS Docket No. 78-160. See 43 FR 25150, June 9, 1978.

1. The Federal Aviation Administration (FAA) requested that we review FAA recommended airport traffic advisory practices at nontower airports for compliance with FCC regulations. These advisory communications practices have been recommended by the FAA since the issuance of Advisory Circular AC No. 90-42 in December 1968, and currently are contained in the "Airman's Information Manual."[1] The FAA indicated that recently a question was raised as to whether there possibly was a conflict between these FAA recommended procedures and FCC rules. In the event it was determined a conflict did exist, we were requested to initiate appropriate rulemaking to provide for the continuation of these recommended advisory procedures.

2. The subject FAA recommended airport traffic advisory procedures involve the transmission of an aircraft's position when it is inbound to or outbound from an airport not served by a control tower and, additionally, the airport has (1) a nonfunctioning FAA flight service station (FSS), or (2) no FSS facility and a nonfunctioning aeronautical advisory station (unicom),[2] or (3) no FSS facility and no unicom. The frequency used in the first instance is the assigned FSS frequency 123.6 MHz, in the second, the unicom frequency 122.8 MHz,[3] and in the third the multicom[4] frequency 122.9 MHz. Essentially, this procedure calls for a pilot of an aircraft inbound to an airfield not having an operating ground station to "broadcast in the blind" (that is, transmit information for the benefit of any monitoring aircraft station in the area) his or her position and intentions five miles from the airport and followup with position reports on the downwind, base and final legs of the landing pattern. When outbound the pilot transmits his or her position and intentions prior to taxiing and before taxiing on to a runway for take off. The FAA also recommends similar traffic advisories to be transmitted on the assigned control tower frequency when an airfield's control tower is not operating. The FAA feels that these communciations procedures reduce aircraft collision potential around airports without operating control towers by augmenting visual alertness with audio alertness.

3. The aviation radio service is primarily designed to provide the communications needs for the safe and expeditious operation of aircraft. The assigned frequencies are shared among users. The traffic advisory transmissions recommended by the FAA have not been considered to be in conflict with FCC regulations. Rather, such "broadcasts in the blind" are viewed as communications necessary to the safe operation of aircraft within the meaning of Rule 87.181. However, the Commission's rules do not specifically provide for these aircraft advisory communications. This apparently has lead to confusion on the part of some members of the flying public and the resulting concern of the FAA.

4. Possibly, some of the uncertainty regarding these FAA recommended advisory communciations may have resulted from a decision of the Review Board[5] which was based on the conclusion that the disclosure and use by third persons of communications between an aeronautical advisory station and aircraft is an "unauthorized interception" of communications within the meaning of Section 605 of the Communications Act. Among other things, Section 605 prohibits persons not so authorized from divulging or using for their own or another's benefit radio communications which they have intercepted. Radio communications which are broadcast or transmitted for the use of the general public are specifically excluded from the applicability of the section. Therefore, Section 605 of the Communications Act does not apply to the type of aeronautical communications which are transmitted for the use of members of the general public in the area who monitor such frequencies as a matter of standard operating procedure. To hold otherwise would lead to absurd results and impair aviation safety.

5. In view of the existence of some confusion and uncertainty as to the legality of aircraft stations "broadcasting in the blind" in accordance with FAA recommended traffic advisory procedures, we proposed to amend the rules to specifically state that these FAA recommended transmissions are permitted.[6]

COMMENTS

6. In response to our Notice of Proposed Rule Making in this docket we received three comments and one reply comment. The Experimental Aircraft Association (an international non-profit organization dedicated to the advancement of aviation education, homebuilt aircraft and sport aviation) and Wisconsin's Department of Transportation, Division of Aeronautics fully support the proposed rule amendment. The Wisconsin Division of Aeronautics further indicated that it believed that the FAA recommended advisory procedures are necessary to avoid confusion and potential collisions between aircraft at airports without radio facilities. The Aircraft Owners and Pilots Association (AOPA) which has a membership of more than 200,000 aircraft owners and pilots, opposes the proposed amendment. The FAA filed reply comments in opposition to AOPA's comments.[7]

[1] The Airman's Information Manual is a publication designed primarily as a pilots' operational and instructional manual for use in the National Airspace System of the United States.

[2] An aeronautical advisory station (unicom) is a non-government air/ground radio communication facility located at certain landing areas, which may provide airport advisory information.

[3] The Report and Order in Docket No. 20123, adopted April 5, 1977, 42 FR 20469, 64 FCC 2d 573, amended the Commission's rules to, among other things, make available additional unicom and multicom frequencies. FAA intends to amend the Airman's Information Manual to reflect these changes in the next printing.

[4] An aeronautical multicom station is a non-government radio facility which may provide, on a temporary, seasonal or emergency basis, communications pertaining to the coordination of aerial activities from the ground or ground activities from the air. Also, under certain conditions, a multicom station may provide airport advisory communications.

[5] *Roberts Flying Service, Inc.*, 30 FCC 2d 823 (1971).

[6] Notice of Proposed Rule Making, SS Docket No. 78-160, adopted May 31, 1978, 43 FR 25150.

[7] The time for filing reply comments ended on July 24, 1978. Although FAA's

Footnotes continued on next page

7. In essence, AOPA opposes our proposed amendment on two grounds. The first is congestion on the unicom frequencies. AOPA argues that these transmissions are a major source of congestion on unicom frequencies which continues despite the two additional frequencies made available at uncontrolled airports by the Commission in Docket No. 20123. As a result, AOPA urges that the subject transmissions not be permitted on unicom frequencies so that "normal" unicom communications can be conducted. The second reason for AOPA's opposition is that it views these "broadcasts in the blind" as a do-it-yourself air traffic control system which should be conducted on air traffic control frequencies.

8. In its reply comments FAA states that the purpose of the recommended transmissions is safety, not air traffic control. FAA points out that these communications procedures are also recommended for use on assigned air traffic control frequencies where a control tower or FSS is not operating at an airfield. FAA further indicates that the use of an air traffic control frequency for these transmissions at airfields where the unicom frequency is now recommended, would require pilots to switch back and forth between the unicom frequency and an air traffic control frequency. Thus, pilots in such an airport terminal area would likely miss transmissions of other aircraft in the same area. FAA, therefore, does not concur with AOPA's suggestion of a separate frequency for such communications at such airfields. In regard to the congestion problem experienced on unicom frequencies at nontower airfields, FAA notes that it was instrumental in the Commission's effort in Docket No. 20123 to provide two additional unicom frequencies for use at uncontrolled airports.

DISCUSSION

9. Essentially, AOPA's objections are limited to the use of the unicom frequencies for the subject transmissions. It does not object to "broadcasting in the blind" in principle or on the other frequencies recommended by FAA. As FAA points out in its reply comments, the object of the recommended calls is the safe operation of aircraft. In order for this "aural alertness" procedure to be effective it is necessary that aircraft approaching and departing nontower airports be on the same frequency. The FAA recommended procedure calls for pilots to transmit their position and other pertinent advisory information, in the blind, on the frequency which would normally be used to contact the particular airport (i.e., the local tower frequency, the FSS frequency, the local unicom frequency, or 122.9 MHz when no ground station is located on the airport).

10. We believe that the subject FAA recommended advisory communications practices are within the scope of the Commission's rules. These communications directly relate to the safe and efficient operation of aircraft and, as such, may be transmitted "in the blind" on the appropriate air traffic control, aeronautical advisory or aeronautical multicom frequency for the benefit and use of other aircraft. In regard to the aeronautical advisory (unicom) frequencies specifically, the FAA recommended transmissions are safety related and primarily advisory in nature and, thus, within the permissible usage of these frequencies. The fact that a unicom frequency may become congested in a given area when a unicom station at a nontower, non-FSS airport, is not operating (the recommended procedure does not apply when the station is operating) does not alter the nature of the communications, nor does it appear to require a substantive change in the Commission's interpretation of its rules. However, because of the apparent confusion as to whether the FAA recommended "broadcasts in the blind" are permitted, we feel it is in the public interest to specifically provide for such transmissions in the rules.

11. Further, in addition to the rule amendments proposed in the Notice of Proposed Rule Making in this proceeding, we are also herein amending footnote US 31 to § 2.106 (Table of Frequency Allocations) and § 87.195. These rule changes will provide for the use of unicom frequencies and the multicom frequency 122.9 MHz by air carrier aircraft for the transmission of advisory communications in accordance with FAA recommended procedures. Although only in rare circumstances do air carrier aircraft operate from airfields with only unicom or no radio facilities, the FAA recommended traffic advisory procedures apply generally to all aircraft (both air carrier and private). FCC regulations presently do not allow for the use of 122.9 MHz by air carrier aircraft. These additional amendments to the rules will eliminate this apparent inconsistency between FAA recommended procedures and FCC rules.

12. Regarding questions on matters covered in this document contact Robert McNamara (202) 632-7197.

13. In view of the above: *It is ordered*, That pursuant to the authority contained in Section 4(i) and 303 (b) and (r) of the Communications Act of 1934, as amended, the Commission's rules are amended as set forth below, effective February 23, 1979.

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

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

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

Parts 2 and 87 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

A. Part 2—Frequency Allocations and Radio Treaty Matters; General Rules and Regulations:

In § 2.106 the fourth paragraph of footnote US 31 is amended by adding the frequency 122.9 MHz, to read as follows:

§ 2.106 Table of frequency allocations.

* * * * *

U.S. Footnotes

* * * * *

US 31 * * *

Air carrier aircraft stations may use 122.000 MHz for communication with aeronautical stations of the Federal Aviation Administration and 122.700, 122.800, 123.000 and 122.900 MHz for communications pertaining to safety of flight with and in the vicinity of landing areas not served by a control tower.

* * * * *

B. Part 87—Aviation Services:

1. Section 87.181 is amended by adding a sentence at the end of the paragraph, to read as follows:

§ 87.181 Scope of service.

* * * However, aircraft stations may transmit pertinent advisory information on the appropriate air traffic control, aeronautical advisory or aeronautical multicom frequency for the benefit and use of other stations in the aeronautical mobile service lawfully monitoring these frequencies, in accordance with FAA recommended traffic advisory practices.

2. Section 87.195 is amended by adding a sentence to the end of paragraph (f) and new paragraph (g) to read as follows:

§ 87.195 Frequencies available.

* * * * *

(f) * * * In addition these frequencies are available to air carrier aircraft for the transmission of pertinent advisory information in accordance with FAA recommended traffic advisory procedures, for the benefit and use of other stations lawfully monitoring such frequencies. The recommended transmissions are permitted when in-

Footnotes continued from last page

reply comments were not received within the allotted period, we are considering them in this proceeding.

bound to or outbound from an airport that does not have an airdrome control station (control tower) or an FAA flight service station, and the aircraft is unable to establish radio contact with the advisory station located at the landing area.

(g) The frequency 122.900 MHz is available to air carrier aircraft for the transmission of pertinent advisory information when inbound to or outbound from an airport with no radio facility, in accordance with FAA recommended traffic advisory procedures.

3. Section 87.201 is amended by adding two sentences after the frequency list in paragraph (c) and to the end of paragraph (d), to read as follows:

§ 87.201 Frequencies available.

* * * * *

(c) * * * 122.700, 122.725, 122.750, 122.800, 122.950, 122.975, 123.000, 123.050 and 123.075 MHz.

Private aircraft may utilize these frequencies to transmit pertinent advisory information in accordance with FAA recommended traffic advisory procedures, for the benefit and use of other stations lawfully monitoring such frequencies. The recommended transmissions on these frequencies are permitted when inbound to or outbound from an airport that does not have an airdrome control station (control tower) or an FAA flight service station, and the aircraft is unable to establish radio contact with the advisory station located on the landing area. * * *

(d) * * * In addition, private aircraft stations may utilize the frequency 122.900 MHz to transmit pertinent advisory information in accordance with FAA recommended traffic advisory practices, for the benefit and use of other stations lawfully monitoring such frequencies. The recommended transmissions on this frequency are permitted when inbound to or outbound from an airport that does not have an airdrome control station (control tower), an FAA flight service station or an aeronautical advisory station located at the landing area.

* * * * *

[FR Doc. 79-2222 Filed 1-19-79; 8:45 am]

[6712-01-M]

[Docket No. 20846]

PART 90—LAND MOBILE RADIO SERVICE

Announcement of Effective Date for Reporting Requirements for Interconnected Private Radio Systems

AGENCY: Federal Communications Commission.

ACTION: Public Notice.

SUMMARY: The FCC establishes January 10, 1979, as the effective date for requiring applicants in the private land mobile radio services who seek authorization for communications systems in the 806-821 and 851-866 MHz bands to advise the Commission whether their systems are intended to be interconnected to the public, switched, telephone network and, if so, to describe the equipment or device which the licensee will employ to accomplish interconnection, as provided in § 90.129(1) of the Commission's rules (formerly § 89.951(e)). In August of 1978 the Commission had stated that November 17, 1978, was to be the effective date, but delays in obtaining GAO clearance necessitated postponing this date until January 10, 1979.

EFFECTIVE DATE: The effective date is January 10, 1979.

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

FOR FURTHER INFORMATION CONTACT:

John B. Letterman, Safety and Special Radio Services Bureau (202) 632-6497.

In the Commission's *First Report and Order* in Docket No. 20846 (43 FR 38396 (August 28, 1978), corrected, 43 FR 41987 (September 19, 1978)), it was stated that the reporting requirements in 89.951(e)[1] were subject to clearance by the General Accounting Office (GAO). The rule requirement was to be effective November 17, 1978; however, GAO clearance was not obtained by that date and the effective date of the new rule was postponed. GAO clearance has now been obtained; and the effective date of Section 89.951(e) is January 10, 1979, under GAO Approval No. B-180227 (RO389).

Accordingly, as to all proposals for interconnected service applicants should furnish the information and data required by Section 89.951(e). This information should include a statement that the applicant intends to interconnect his or her radio facilities with the facilities of the public, switched, telephone network. Further, a description of the equipment or devices to be used to accomplish interconnection should be furnished. This may be done by a simple block diagram of the system indicating where and how interconnection is to be accomplished. In this regard, the applicant should specify which of the three options for interconnected service is to be employed, that is, manually, under Section 89.954(a); or automatically under supervision of the licensee's control operator, as provided at Section 89.954(b); or automatically under the supervision of the licensee's mobile operator, as provided for at Section 89.954(c).[2] This information should be attached to FCC Form 400.

In connection with the filing of the application, attention is called to the requirement (set out in FCC Form 400) that the applicant have a current copy of the Commission's Rules governing the radio service in which his or her radio facilities are to be licensed.

FEDERAL COMMUNICATIONS COMMISSION
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 79-1497 Filed 1-19-79; 8:45 am]

[4910-59-M]

Title 49—Transportation

CHAPTER V—NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. FE 77-05; Notice 7]

PART 523—VEHICLE CLASSIFICATION

Technical Amendment

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Technical amendment.

SUMMARY: This notice amends the definition of the term "automobile" as it appears in the agency's fuel economy vehicle classification regulations. The amendment is intended to clarify the applicability of the light truck fuel economy standards for model year 1980 and thereafter.

DATE: This amendment is effective January 15, 1979.

FOR FURTHER INFORMATION CONTACT:

Francis J. Turpin, Office of Automotive Fuel Economy Standards,

[1] Section 89.951(e) has been redesignated as § 90.129(1).

[2] Section 89.954 has been redesignated as § 90.483.

National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590, (202-472-6902).

SUPPLEMENTARY INFORMATION: Section 501(1) of the Motor Vehicle Information and Cost Savings Act ("the Act"), 15 U.S.C. 2001(1), defines the term "automobile" for purposes of establishing the applicability of automotive fuel economy standards and other fuel economy-related requirements. That definition includes within the scope of that term any "4-wheeled vehicle propelled by fuel which is manufactured primarily for use on public streets, roads, and highways (except for any vehicle operated exclusively on a rail or rails), and which is rated at 6000 pounds gross vehicle weight or less." That section also authorizes the Secretary of Transportation to expand the "automobile" category and thereby regulate additional vehicles if certain findings are made. These findings relate to the feasibility of standards for such vehicles, the energy savings potential associated with regulating the vehicles, and the usage of the vehicles.

On March 23, 1978, in 43 FR 11995, the National Highway Traffic Safety Administration (NHTSA) published the required findings with respect to certain vehicles (called "light trucks") with gross vehicle weight ratings between 6001 and 8500 pounds. The vehicles in the 6001 to 8500 pound GVWR range which were excluded from the expanded automobile category were a relatively small number of vehicles with either curb weights in excess of 6000 pounds or with frontal areas of more than 46 square feet (principally step-vans), or both. These vehicles were excluded because of design features which would largely preclude personal use thus making regulation as heavy duty vehicles proper (41 FR 56316).

The Environmental Protection Agency (EPA), which conducts fuel economy testing under the Act, has recently informed NHTSA of an error encountered in measuring the frontal area of some of the step-vans. It appears that in order to exclude the intended larger-frontal area vehicles, the regulatory dividing line must be reduced from 46 to 45 square feet. The number of vehicles affected by this change is extremely small in relation to the number of light trucks in the 6001 to 8500 pound GVWR range. Therefore, NHTSA is amending the appropriate regulatory language to correct this error.

Since this amendment is in the nature of a technical correction and affects such a small number of vehicles, it is determined that a notice of proposed rulemaking is unnecessary and contrary to the public interest, within the meaning of 5 U.S.C. 553(b). Therefore, this notice will be issued as a final rule.

NHTSA has also determined that this document does not contain a significant regulation requiring a regulatory analysis under Executive Order 12044. Further, this action does not require an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.).

This amendment is effective immediately, since its effect is to relieve a restriction. See 5 U.S.C. 553(d)(1).

In consideration of the foregoing, 49 CFR, Chapter V, is amended as follows:

1. By changing the number "46" to the number "45" in section 523.3(b)(2)(i).

AUTHORITY: Sec. 9, Pub. L. 89-670, 80 Stat. 931 (49 U.S.C. 1657); sec. 301, Pub. L. 94-163, 89 Stat. 901 (15 U.S.C. 2002); delegation of authority at 41 FR 25015, June 22, 1976, and 43 FR 8525, March 2, 1978.

Issued on January 15, 1979.

MICHAEL M. FINKELSTEIN,
Associate Administrator for Rulemaking.

[FR Doc. 79-2080 Filed 1-19-79; 8:45 am]

[4910-57-M]

CHAPTER VI—URBAN MASS TRANSPORTATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 78-A]

PART 630—UNIFORM SYSTEM OF ACCOUNTS AND RECORDS AND REPORTING SYSTEM

Reporting Requirements for Urbanized Areas—UMTA Circular 2710

Correction

AGENCY: Urban Mass Transportation Administration, DOT.

ACTION: Correction.

SUMMARY: In FR Doc. 78-34826 appearing at pages 58928-58934 in the FEDERAL REGISTER of December 18, 1978, one paragraph concerning the scope of the regulations dealing with apportionment factors, and the section of Appendix B concerned with Bus Revenue Seat Miles were incorrectly stated. This document republishes the two incorrect sections in their proper form.

FOR FURTHER INFORMATION CONTACT:

John Barber, Office of Program Analysis, Urban Mass Transportation Administration, 400 7th Street, S.W., Washington, D.C. 20590. Phone (202) 472-7100.

SUPPLEMENTARY INFORMATION: The regulation stating the reporting requirements for an urbanized area containing both a fixed guideway system and a bus system inadvertently omitted the requirement for a metropolitan planning organization to comply.

In the Appendix dealing with reporting requirements for bus systems, the section concerning bus revenue seat miles was incomplete and thus misleading and confusing.

Accordingly, the following corrections are made:

1. In the third column of page 58928, § 630.31(c) should read as follows:

§ 630.31 Scope.

* * * * *

(c) If an urbanized area contains both a fixed guideway system and a bus system, then the designated recipient and/or metropolitan planning organizations must comply with the reporting requirements of both §§ 630.32 and 630.33.

2. In the third column of page 58932, the second paragraph of the section dealing with Bus Revenue Seat Miles (section IIIA3) should read as follows:

APPENDIX B—REPORTING REQUIREMENTS FOR BUS SYSTEM

* * * * *

3. Bus Revenue Seat Miles.

* * * * *

In cases where a particular transit service traverses two urbanized areas, the bus revenue seat mileage attributable to each is calculated in the same manner as described above in subparagraph 2 "Bus Revenue Vehicle Miles". Vehicle revenue seat mileages for all buses over twenty-two feet in length, including trolleybuses, must be included in the data submitted. Data need not be disaggregated by individual bus or by category or type of bus, however. Only a single total value for the urbanized area, or for each state part of a multi-state urbanized area, is required.

* * * * *

Dated: January 15, 1979.

RICHARD S. PAGE,
Urban Mass Transportation Administrator.

[FR Doc. 79-2234 Filed 1-19-79; 8:45 am]

[3510-22-M]

Title 50—Wildlife and Fisheries

CHAPTER II—NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

SUBCHAPTER F—AID TO FISHERIES

PART 251—FINANCIAL AID PROGRAM PROCEDURES—FISHERY FOR ATLANTIC GROUNDFISH

Subpart B—Conditional Fisheries

AGENCY: National Oceanic and Atmospheric Administration, National Marine Fisheries Service, Department of Commerce.

ACTION: Final rulemaking.

SUMMARY: This document incorporates in Subpart B of Part 251 a new section to adopt the "fishery for Atlantic groundfish" as a conditional fishery so that application of the National Marine Fisheries Service (NMFS) financial assistance in that fishery will be limited to that which does not add vessels to this fishery. It has been determined that there exists sufficient fleet capacity to harvest Atlantic groundfish (cod, haddock, and yellowtail flounder). The intended effect of this action is that NMFS financial assistance activities will be consistent with the wise use of the Atlantic groundfish resource and with its development, advancement, management, conservation, and protection.

DATES: Effective January 22, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Michael L. Grable, Chief, Financial Services Division, National Marine Fisheries Service, Washington, D.C. 20235, 202-634-7496.

SUPPLEMENTARY INFORMATION: On August 2, 1978, a notice of proposed rulemaking was published in the FEDERAL REGISTER (43 FR 33946) stating that the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration (Assistant Administrator), was considering an amendment to Financial Aid program Procedures (50 CFR Part 251) to incorporate in Subpart B of Part 251 a new section to adopt the "fishery for Atlantic groundfish" as a conditional fishery. For purposes of this regulation, the "fishery for Atlantic groundfish" was defined to include all U.S. commercial fishing vessels that are subject to regulations implementing the fishery management plan for Atlantic groundfish (FMP), developed by the New England Fishery Management Council (NEFMC) and implemented, with amendments, by the Secretary of Commerce.

Subpart A of CFR Part 251 sets forth the general policy under which financial assistance programs for the commercial fisheries will be administered, and establishes the procedure to be used in proposing and adopting a fishery as a conditional fishery. Each fishery adopted as a conditional fishery is enumerated under Subpart B of 50 CFR Part 251. The terms under which financial assistance related to a conditional fishery may be approved are set forth in the regulations on procedures and administration of the fishing vessel obligation guarantee program (50 CFR Part 255) and the fishing vessel capital construction fund program (50 CFR Part 259).

Several comments were received in response to the proposed rulemaking; some objecting to the proposed designation. The objections primarily refer to the impact of this action on those who are participating in the fishing vessel capital construction fund program and have objectives of acquiring additional vessels to operate for Atlantic groundfish. Reasons given for objecting were that the proposed designation: (1) Was based on incomplete scientific data which is at odds with information available to captains and vessel owners; (2) does not apply to Canadian vessels and strengthens the Canadian hand by reducing the U.S. presence and extractive efficiency; (3) seems inappropriate because other management tools are available; (4) will not help owners and processors to exploit potential export markets for fish; (5) will prevent upgrading of the fleet and discourage building of multipurpose vessels which might engage in this fishery for certain periods of the year and for various underutilized species during the balance of the year; and (6) will cause significant hardship to boat owners who have existing capital construction fund agreements by preventing them from replacing older vessels in four or five years as planned.

These comments set forth matters for consideration by the NEFMC in formulating amendments to the FMP and in developing a long-term fishery management plan for groundfish. The real issue, however, which this regulation addresses is whether or not application of NMFS financial assistance programs to add vessels to the fishery for Atlantic groundfish would be consistent with the wise use of that fishery and with its advancement, development, management, conservation, and protection.

Since August 2, the situation described in the notice of proposed rulemaking has deteriorated further, and as a result the fishery in the Gulf of Maine was closed on August 5, 1978, for trawlers in the 61-125 gross registered tons (GRT) vessel class and for vessels fishing fixed gear. The cod fishery in the Gulf of Maine was also closed on August 16, 1978, to vessels in the 0-60 GRT class and to vessels over 125 tons. On October 4, 1978, the National Marine Fisheries Service, by emergency regulation and proposed rulemaking, approved amendments to the FMP which (a) reinstated the optimum yields and quotas adopted by the New England Fishery Management Council in March of 1978 and (b) prescribed a fishing year which begins on October 1, and runs through September 30. On November 19, the cod fishery in the Gulf of Maine was closed to vessels over 125 GRT; the haddock fishery in the Gulf of Maine was closed to all but vessels fishing fixed gear; the haddock fishery on Georges Bank and South was closed to vessels in the 0-60 class and to vessels over 125 GRT; trip limit reductions were imposed on vessels in the 61-125 GRT class fishing for cod in the Gulf of Maine and Georges Bank as well as haddock on Georges Bank and South. An additional five closures became effective December 17; so that of a potential 18 defined fisheries, 11 were closed. This experience has demonstrated that the fishery is more difficult to manage than originally believed. Increased harvesting capacity in this fishery has affected the determination of optimum yield and repeatedly caused emergency closures of the fishery. While socioeconomic impacts of the management of this fishery have been more severe than anticipated, there is no clear evidence that the proposed designation will adversely affect vessel owners and processors with respect to export markets for fish. There is, on the other hand, evidence that there are substantial export market opportunities for currently underutilized species, which are readily available to existing underemployed groundfish vessels currently in the fleet. Moreover, this action does not prevent the use of the NMFS financial assistance programs for upgrading the existing fleet, or prevent vessel owners, who are participating in the fishing vessel capital construction fund program, from changing objectives so as to qualify for program benefits. Any hardship that this may cause has been considered.

Because of the unique issues surrounding multi-purpose vessels, which can be used to fish for underutilized species during a portion of the year, a special task group within the National Marine Fisheries Service is evaluating the conditional fisheries concept from the standpoint of combined fishing operations. The task group's report should be available soon.

The conditional fisheries regulatory mechanism is intended to ensure that NMFS financial assistance activities will be consistent with the wise use of the fisheries resources and with their development, advancement, management, conservation, and protection. When, upon review and evaluation of situations and conditions in a fishery, it is determined that certain fisheries demonstrably do not need additional harvesting capacity to meet management needs and objectives, those fisheries may be designated as conditional fisheries.

Fisheries designated as conditional fisheries are those in which application of NMFS financial assistance activities is controlled in a manner which, on balance, will be consistent with the needs and objectives of management. The New England Fishery Management Council has determined that a need for managing this fishery does in fact exist and has chosen to implement the optimum yield by vessel classes.

The recent events described above, as well as those described in the August 2, 1978; notice of proposed rulemaking clearly demonstrate that this fishery does not need additional harvesting capacity to meet management needs and objectives.

This regulation is not deemed to be significant pursuant to the provisions of Executive Order 12044, or a major federal action which may significantly affect the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act.

After due consideration, the Assistant Administrator concludes that the proposal to amend Part 251 of this Chapter, Subpart B—Conditional Fisheries, to add a new § 251.26 is hereby adopted as set forth below.

Subpart B—Conditional Fisheries

§ 251.26 Fishery for Atlantic Groundfish (cod, haddock, and yellowtail flounder).

Dated: January 15, 1979.

TERRY LEITZELL,
Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 79-2270 Filed 1-19-79; 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.

[6820-99-M]

PRESIDENT'S COMMISSION ON PENSION POLICY

[1 CFR Part 470]

PRIVACY ACT OF 1974

Proposed Regulations for Implementation

AGENCY: President's Commission on Pension Policy.

ACTION: Proposed Rule.

SUMMARY: The following proposed regulations drafted in accordance with section (f) of 5 U.S.C. 552a, the Privacy Act of 1974, are hereby offered for public comment. The purposes of these regulations are to establish procedures by which an individual can determine if the Commission maintains a system of records which included a record pertaining to that individual and also to establish procedures for purposes of review, amendment and/or correction.

DATE: Comments are due on or before February 21, 1979.

ADDRESS: Send comments to the Executive Director, President's Commission on Pension Policy, 736 Jackson Place NW., Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT:

Robert Roeder, (202) 395-5132.

Signed this 16th day of January 1979.

THOMAS C. WOODRUFF,
Executive Director.

It is proposed to add the following Part 470 to Title 1 of the CFR.

PART 470—PRIVACY ACT IMPLEMENTATION

Sec.

470.1 Purpose and scope.
470.2 Definitions.
470.3 Procedures for requests pertaining to individual records in a records system.
470.4 Times, places, and requirements for the indentification of the individual making a request.
470.5 Disclosure of the requested information to the individual.
470.6 Request for correction or amendment to the record.
470.7 Agency review of request for correction or amendment of the record.
470.8 Appeal of an initial adverse agency determination on correction or amendment of the record.
470.9 Disclosure of record to a person other than the individual to whom the record pertains.
470.10 Fees.

AUTHORITY: 5 U.S.C. 552a: Pub. L. 93-5.79.

§ 470.1 Purpose and scope.

The purposes of these regulations are to:

(a) Establish a procedure by which an individual can determine if the President's Commission on Pension Policy hereafter known as the Commission maintains a system of records which includes a record pertaining to the individual; and

(b) Establish a procedure by which an individual can gain access to a record pertaining to him or her for the purpose of review, amendment and/or correction.

§ 470.2 Definitions.

For the purpose of these regulations—

(a) The term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(b) The term "maintain" includes maintain, collect, use or disseminate;

(c) The term "record" means any item, collection or grouping of information about an individual that is maintained by the Commission, including, but not limited to, his or her employment history, payroll information, and financial transactions and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as social security number;

(d) The term "system of records" means a group of any records under control of the Commission from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual; and

(e) The term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

§ 470.3 Procedures for requests pertaining to individual records in a records system.

An individual shall submit a request to the Administrative Officer to determine if a system of records named by the individual contains a record pertaining to the individual. The individual shall submit a request to the Executive Director of the Commission which states the individual's desire to review his or her record.

§ 470.4 Times, places, and requirements for the identification of the individual making a request.

An individual making a request to the Administrative Officer pursuant to § 470.3 shall present the request at the Commission offices, 736 Jackson Place, N.W., Washington, D.C. 20006, on any business day between the hours of 9 a.m. and 5 p.m. The individual submitting the request should present himself or herself at the Commission's offices with a form of identification which will permit the Commission to verify that the individual is the same individual as contained in the record requested.

§ 470.5 Access to requested information to the individual.

Upon verification of identify the Commission shall disclose to the individual the information contained in the record which pertains to that individual.

§ 470.6 Request for correction or amendment to the record.

The individual should submit a request to the Administrative Officer which states the individual's desire to correct or to amend his or her record. This request is to be made in accord with provisions of § 470.4.

§ 470.7 Agency review of request for correction or amendment of the record.

Within ten working days of the receipt of the request to correct or to amend the record, the Administrative Officer will acknowledge in writing such receipt and promptly either—

(a) Make any correction or amendment of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(b) Inform the individual of his or her refusal to correct or to amend the record in accordance with the request, and the procedures established by the Commission for the individual to request a review of that refusal.

§ 470.8 Appeal of an initial adverse agency determination on correction or amendment of the record.

An individual who disagrees with the refusal of the Administrative Officer

to correct or to amend his or her record may submit a request for a review of such refusal to the Executive Director, President's Commission on Pension Policy, 736 Jackson Place, N.W., Washington, D.C. 20006. The Executive Director will, not later than thirty working days from the date on which the individual requests such review, complete such review and make a final determination unless, for good cause shown, the Executive Director extends such thirty day period. If, after his or her review, the Executive Director also refuses to correct or amend the record in accordance with the request, the individual may file with the Commission a concise statement setting forth the reasons for his or her disagreement with the refusal of the Commission and may seek judicial review of the Executive Director's determination under 5 U.S.C. 552a(g)(1)(A).

§ 470.9 Disclosure of record to a person other than the individual to whom the record pertains.

The Commission will not disclose a record to any individual other than to the individual to whom the record pertains without receiving the prior written consent of the individual to whom the record pertains, unless the disclosure has been listed as a "routine use" in the Commission's notices of its system of records, or falls within one of the special disclosure situations listed in the Privacy Act of 1974 (5 U.S.C. 552a(b).)

§ 470.10 Fees.

If an individual requests copies of his or her record, he or she shall be charged ten cents per page, excluding the cost of any search for review of the record, in advance of receipt of the pages.

[FR Doc. 79-2174 Filed 1-19-79; 8:45 am]

[6750-01-M]

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[Docket C-2940]

ALDENS, INC.

Correction

AGENCY: Federal Trade Commission.

ACTION: Correction

SUMMARY: This document corrects a Commission document previously published in the FEDERAL REGISTER on Thursday, December 21, 1978. It was incorrectly reported under "SUPPLEMENTARY INFORMATION" that no comments were received.

DATE: The correction is effective January 22, 1979.

FOR FURTHER INFORMATION CONTACT:

FTC/SSR, Gregory E. Hales, Washington, D.C. 20580. (202) 724-1184.

SUPPLEMENTARY INFORMATION: In FR Doc. 78-35495, appearing in FEDERAL REGISTER issue for Thursday, December 21, 1978, 43 FR 59478, in the "SUPPLEMENTARY INFORMATION", the second paragraph has been changed to read as follows:

"Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding."

CAROL M. THOMAS,
Secretary.

[FR Doc. 79-2114 Filed 1-19-79; 8:45 am]

[6750-01-M]

[16 CFR Part 13]

[File No. 721 0069]

FEDERATED DEPARTMENT STORES, INC.

Consent Agreement with Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Provisional consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this provisionally accepted consent agreement, among other things, would require a Cincinnati, Ohio operator of retail department stores to cease entering into or enforcing agreements which grant the firm the right to exclude certain tenants from shopping certers; control tenants' advertising, goods and prices; or otherwise restrict competition.

DATE: Comments must be received on or before March 23, 1979.

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

FOR FURTHER INFORMATION CONTACT:

William M. Gibson, Director, 2R, Boston Regional Office, Federal Trade Commission, 150 Causeway St., Rm. 1301, Boston, Mass. 02114. (617) 223-6621.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and provisionally accepted by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

UNITED STATES OF AMERICA BEFORE FEDERAL TRADE COMMISSION

AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST

In the Matter of FEDERATED DEPARTMENT STORES, INC., a corporation. File No. 721 0069.

The agreement herein, by and between Federated Department Stores, Inc., (hereinafter referred to as "Federated") a corporation, the respondent in the above-captioned proceeding, by its duly authorized officer and its attorney, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's rule governing consent order procedure. In accordance therewith the parties hereby agree that:

1. Federated is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business located at 222 West Seventh Street, Cincinnati, Ohio.

2. Federated admits all the jurisdictional facts set forth in the draft of complaint attached hereto.

3. Federated waives:

(a) Any further procedural steps;

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

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

4. This agreement shall not become a part of the official record of this proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it will be placed on the public record for a period of 60 days and information in respect thereto publicly released; and such acceptance may be withdrawn by the Commission if, within 30 days after the 60 day period, comments or views submitted to the Commission disclose facts or considerations which indicate that the order contained in the agreement is inappropriate, improper, or inadequate. The Commission may, at any time pending final acceptance of this order, require hearings on the relief requirements provided by this order.

5. This agreement has been executed by Federated for settlement purposes only and does not constitute, nor shall it be deemed, an admission by Federated that the law has been violated as alleged in the draft of complaint attached hereto.

6. This agreement contemplated that, if it is accepted by the Commission and if such acceptance is not subsequently withdrawn

by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to Federated, (1) issue its complaint corresponding in form and substance with the draft of complaint attached hereto and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Mailing of the complaint and decision containing the agreed-to order to respondent's address as stated in this agreement shall constitute service. Respondent waives any right it may have to any other manner of services. The complaint may be used in construing the terms of the order, but no agreement, understanding, representation, or interpretation not contained in the order or this agreement may be used to vary or contradict the terms of the order.

7. Federated has read the order contemplated hereby and understands that once this order has been issued, Federated will be required to file one or more compliance reports showing that it has fully complied with the order, and that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

ORDER

I.

For the purposes of this Order the following definitions shall apply:

(a) The term "respondent" refers to Federated and its operating divisions, officers, agents, representatives, employees, successors, and assigns.

(b) The term "shopping center" refers to a planned development of retail outlets in the United States of America, developed and managed as a unit in relation to a trade area which the development is intended to serve and containing (1) a total floor area designed for retail occupancy of 250,000 square feet or more, of which at least 50,000 square feet is for occupancy by tenants other than respondent, (2) at least two tenants other than respondent, (3) at least one major tenant, and (4) on-site parking.

(c) The term "tenant" refers to any occupant or potential occupant of retail space in a shopping center, which occupancy is for the sale of merchandise or services to the public, whether said occupant leases or owns said space, but the term does not refer to any occupant or potential occupant of space within respondent's store or other areas operated by respondent, which occupant is to operate a department for respondent pursuant to a lease or license from respondent.

(d) The term "major tenant" refers to a tenant providing primary drawing power in a shopping center. A tenant occupying 50,000 square feet or more shall be presumed to provide primary drawing power.

II.

IT IS ORDERED that respondent, in its capacity as a tenant in a shopping center, cease and desist from obtaining, making, carrying out or enforcing, directly or indirectly, any agreement or provision of an agreement which:

1. Grants respondent the right to approve or disapprove the entry into a shopping center of any other tenant;

2. Prohibits the admission into a shopping center of any particular tenant or class of tenants, including, without limitation, for purposes of illustration:

(a) other department stores;

(b) junior department stores;

(c) discount stores; or

(d) catalogue stores;

3. Limits the types or brands of merchandise or services which any other tenant in a shopping center may offer for sale;

4. Specifies that any other tenant in a shopping center shall or shall not sell its merchandise or services at any particular price or within any range of prices;

5. Grants respondent the right to approve or disapprove the location in a shopping center of any other tenant;

6. Specifies or prohibits the content of any advertising by any other tenant or grants respondent the right to approve or disapprove the content of any advertising by any other tenant;

7. Grants respondent the right to approve or disapprove the amount of floor space that any other tenant may occupy in a shopping center; or

8. Prohibits the owner or occupant of real property adjoining, abutting or adjacent to a shopping center in which respondent is a tenant from using such property for the sale of merchandise or services similar or identical to the merchandise or services sold in the shopping center; provided, however, that nothing in this paragraph shall apply to an agreement or provision thereof which affirmatively prescribes particular land uses or zoning for any real property.

III.

A. IT IS FURTHER ORDERED that this Order shall not prohibit respondent from negotiating to include, including, carrying out or enforcing any agreement or provision in any agreement relating to respondent's occupancy, or proposed occupancy, of space in a shopping center, which (1) identify in designated buildings respondent and those major tenants which have entered, or which are to contemporaneously enter, or which the developer or landlord represents in writing have stated an intention to enter, into agreements for occupying space in the shopping center, (2) recite that respondent and such major tenants have contracted or shall contract with the developer or landlord to maintain and operate their stores for a specified term, not to exceed 25 years, in such designated buildings, and (3) provide for respondent's right to cancel, terminate or modify its agreement for occupancy if such major tenants do not occupy such designated buildings or do not maintain and operate their stores for the specified term.

B. IT IS FURTHER ORDERED that this Order shall not prohibit respondent from negotiating to include, including, carrying out or enforcing an agreement or provision in any agreement which:

1. Requires that in selecting other tenants in a shopping center the developer shall select businesses which are financially sound and which will in the aggregate provide a balanced and diversified grouping of retail stores, merchandise and services in the shopping center;

2. Requires that specified standards of appearance, signs, maintenance, heating, air conditioning, lighting and housekeeping be maintained in a shopping center;

3. Establishes a layout of a shopping center which layout may designate: (a) respondent's store and stores which are to be occupied by other major tenants; (b) the location, size and height of all structures (including any structure that is to be occupied by only one tenant) but not the amount of floor space that any other tenant may occupy in the shopping center; (c) the minimum floor space to be occupied by respondent and by major tenants; (d) uses of all structures to be used for purposes other than the retail sale of merchandise or services to the public; (e) parking ratios, parking areas (including stall sizes and arangement), roadways, utilities, entrances, exits, walkways, malls, landscaped areas and other common areas; and (f) expansion areas and may within such areas establish a layout incorporating items (a) through (e) of this subsection 3;

4. Requires that any change or expansion of a shopping center not provided for in the initial layout:

(a) shall not interfere with efficient automobile and pedestrian traffic flow into and out of the shopping center and between respondent's store and perimeter and access roads, parking areas, malls and other common areas of the shopping center;

(b) shall not interfere with the efficient operation of respondent's store, including its utilities, and shall not interfere with the visibility of its signs from within the shopping center or from public highways adjacent thereto;

(c) shall not result in a change of (i) the shopping center's parking ratio, (ii) the location of a number of parking spaces reasonably accessible to respondent's store, (iii) the entrances and exits to and from respondent's store and any malls, and (iv) those parking area mall entrances and exits which substantially serve respondent's store; or

(d) shall be accomplished only after any and all covenants, obligations and standards (for example, construction, architecture, operation, maintenance, repair, alteration, parking ratio, and easements) of the shopping center, exclusive of the expansion area and (i) shall be made applicable to the expansion area and (ii) shall be made prior in right to any and all mortgages, deeds of trust, liens, encumbrances, and restrictions applicable to the expansion area, and (iii) shall be made prior in right to any and all other covenants, obligations and standards applicable to the expansion area;

5. Prohibits occupancy of space in a shopping center by types of tenants that create undue noise, litter or odor;

6. Permits respondent to establish reasonable categories of tenants from which the developer or landlord of a shopping center may select tenants to be located in the areas immediately proximate to respondent's store; provided that such categories shall not include specifications of (a) trade names, (b) store names, (c) trademarks, brands or particular lines of merchandise, or (d) identity of particular retailers, including the listing of particular retailers as examples of a category; provided that such area shall not exceed the greater of (i) 150 lineal feet from respondent's store on each level of the center, or (ii) 20% off the total

lineal mall front footage, exclusive of respondent's store, on each level of the center;

7. Prohibits occupancy of space in a shopping center by clearly objectionable types of tenants, including, for purposes of illustration, establishments selling or exhibiting pornographic materials;

8. Requires that any space designated for occupancy by a major tenant in the initial layout of the shopping center not be leased for occupancy by other than a major tenant, that any sub-division of such space for occupancy by more than one tenant not result in any tenant occupying less than 50,000 square feet of such space or that each successive occupancy of such space be for the sale of merchandise or services to the public;

9. Prohibits or establishes limitations on the location in the shopping center of commercial office buildings, hotels, motor inns, new and used automobile dealers or funeral parlors; or

10. Establishes reasonable limitations on the location in the shopping center of fast food outlets, grocery supermarkets or movie theaters.

IV.

IT IS FURTHER ORDERED that respondent shall;

A. Within thrity (30) days after service of this Order upon respondent, distribute a copy of this Order to each of its directors, officers, and to each of its operating divisions;

B. Within thirty (30) days after service of this Order upon respondent, notify each landlord of a shopping center in which respondent is a tenant, of this Order by providing each landlord with a copy thereof by certified mail;

C. Within ninety (90) days after service of this Order upon respondent, file with the Commission a report showing the manner and form in which it has complied and is complying with each and every specific provision of this Order; and

D. Notify the Commission at least thirty days (30) days prior to any proposed change in the respondent such a dissolution, assignment or sale resulting in the emergence of a successor, corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which would affect compliance obligations arising out of the Order.

FEDERATED DEPARTMENT STORES, INC.

[File No. 721 0069]

ANALYSIS OF PROPOSED CONSENT ORDER TO AID IN PUBLIC COMMENT

The Federal Trade Commission has accepted an agreement containing a proposed consent order from Federated Department Stores, Inc. which owns and operates over 150 department or specialty stores nationally, through 15 of its operating divisions.

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

The Commission's complaint alleges that the respondent violated the Federal Trade Commission Act, as amended, through various acts and practices in its capacity as a tenant in shopping centers throughout the country. The acts and practices alleged in the Commission's complaint are based upon Federated's agreements with developers and major tenants in numerous shopping centers in which it operates retail department or specialty stores. These shopping center agreements contain various kinds of restrictive convenants which have allegedly enable Federated to protect itself from certain kinds of competition by excluding other tenants or potential tenants from shopping centers.

The complaint further alleges that Federated has enforced or caused the enforcement of restrictive provisions in these shopping center agreements. The alleged effects of Federated's acts and practices have been to lessen and prevent competition in the retail sale of goods and services by allowing Federated to choose its competitors, hinder discount operations and to restrict developers in their choice of tenants in shopping centers.

The proposed order is designed to eliminate the restrictive acts and practices alleged in the complaint by prohibiting Federated from enforcing existing restrictive provisions in shopping center agreements or entering into any future agreements in shopping centers which contain similar or identical provisions granting Federated certain restrictive powers.

Section II. of the proposed order prohibits Federated from: excluding department, junior deparment, discount or catalogue stores form shopping centers; limiting the types or brands of merchandise which other tenants may sell; disapproving the location of certain tenants in the shopping center; prohibiting the content of other tenants' advertising; disapproving the amount of floor space other tenants may occupy; and, prohibiting property adjoining, abutting, or adjacent to a shopping center in which Federated is a tenant from being used for the sale of merchandise or services which compete with the merchandise or services sold in the shopping center in which Federated is located.

Sections III. A. and B. set forth acts and practices which Federated may engage in without violating the proposed order. Under these sections Federated may agree with the shopping center developer that the center conform to a mutually agreed upon layout and that the center as a whole will offer a balanced grouping of merchandise and services by tenants who shall observe reasonable standards of appearance and who shall refrain from creating to much noise, litter or odor. Section III. B. of the proposed order also contains provisions which permit Federated to agree with the developer that any expansion of the shopping center shall not interfere with or adversely affect respondent's store.

Section IV. of the proposed order requires Federated to send the landlord of each shopping center in which Federated is a tenant a copy of the proposed order. Federated must also send a copy of the proposed order to each of its directors, officers and to each of its operating divisions.

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

CAROL M. THOMAS,
Secretary.

[FR Doc. 79-2247 Filed 1-19-79; 8:45 am]

[6750-01-M]

[16 CFR Part 455]

SALE OF USED MOTOR VEHICLES

Availability of Economics Articles Through the Public Reference Branch

AGENCY: Federal Trade Commission.

ACTION: Additional documents made available through the Public Reference Branch.

SUMMARY: To insure public access to two theoretical economic papers which may be useful in understanding the record of this proceeding, the Commission has determined to make these documents available through its Public Reference Branch as a part of Public Record No. 215-54. (44 FR 914, January 3, 1979.)

These articles are S. Salop, "Parables of Information Transmission in Markets," in *The Effects of Information on Consumer Market Behavior* (A. Mitchell ed., 1978) and G. Akerloff, *The Market for "Lemons": Quality Uncertainty and the Market Mechanism*, 84 Q.J. of Econ. 488 (1970).

DATE: The close of the comment period in this proceeding remains February 13, 1979.

ADDRESSES: Comments should be directed to: Office of the Secretary, Federal Trade Commission, Washington, D.C. 20580.

Requests for copies of either article should be sent to: Public Reference Branch, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580, telephone 202-523-3667.

FOR FURTHER INFORMATION CONTACT:

Bernard J. Phillips, Attorney, Federal Trade Commission, Washington, D.C. 20580, telephone 202-523-1642.

SUPPLEMENTARY INFORMATION: Comments at this stage of the proceeding are received pursuant to § 1.13(h) of the Commission's Rules of Practice. Accordingly, comments must be confined to information already in the record, new evidence will not be accepted.

Comments should be submitted, when feasible in four copies.

These articles have not been reviewed or adopted by the Commission, and their availability should not be interpreted as reflecting the views of the Commission or any individual member thereof.

CAROL M. THOMAS,
Secretary.

[FR Doc. 79-2250 Filed 1-19-79; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[18 CFR Part 285]

[Docket No. RM79-10]

POWERPLANT AND INDUSTRIAL FUEL USE ACT OF 1978

Proposed Criteria for Powerplant's Design Capacity

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Proposed Rule.

SUMMARY: The Powerplant and Industrial Fuel Use Act of 1978 requires the Commission to promulgate rules under which a powerplant's design capacity may be determined. Determination of a powerplant's capacity is necessary because it is an element of various statutory definitions in the Act. By this notice, the Commission has established certain criteria for the design rating and requests comments on how well the proposed rules support the criteria established by the Commission.

DATES: Comments due on or before January 30, 1979.

ADDRESS: Comments referencing Docket No. RM79-10 should be sent to: Kenneth F. Plum, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

Kenneth F. Plum, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, 202-275-4166.

SUPPLEMENTARY INFORMATION: Section 103(a)(18)(D) of the Powerplant and Industrial Fuel Use Act of 1978 (Act) Pub. L. 95-1749, requires the Federal Energy Regulatory Commission (Commission) to promulgate rules under which a powerplant's design capacity may be determined. The determination of a powerplant's design capacity is necessary because it is an element of each of the statutory definitions of the terms "peakload powerplant", "intermediate load powerplant", and "base load powerplant" as provided in section 103(a)(18) of the Act. The definitions of those terms will be used to determine the applicability of certain temporary and permanent exemptions from sections 201 and 202 of the Act, which proscribe the use of natural gas or petroleum as a primary energy source in new electric powerplants, under sections 212(g) and 212(h). The definitions are also to be used to determine the applicability of certain temporary and permanent exemptions from sections 301 and 302 of the Act, relating to existing electric powerplants, under sections 311(f), 312(f), and 312(g) of the Act. Finally, determinations regarding design capacity are necessary under section 501 of the Act, Electric Utility System Compliance Option, in order to determine if existing electric utilities are in compliance with Title III of the Act.

DISCUSSION

The Commission proposes that the rules contained herein be used to determine a powerplant's design capacity. There are a number of powerplant capacity ratings used by the electric power industry. However, these are used principally for operational purposes, reflecting seasonal weather conditions, degradation of a powerplant, or other factors, and may be substantially different from a powerplant's design capacity. The Commission has established criteria that the design rating should be (1) determinable unequivocably from the manufacturer's data and ordinarily not change during a powerplant's physical life, unless there is substantial modification of the unit; (2) a familiar and recognizable quantity throughout the electric power industry; and (3) a published value readily available to any party interested in obtaining it. These criteria and the proposed rules evolving therefrom were developed in consultation with the Staff of the Secretary of Energy. The proposed rules are summarized below:

(1) The design capacity of a steam-electric generating unit shall be its maximum generator nameplate rating which has been reported to the Energy Information Administration on EIA Form —— (formerly FPC Form 12).

(2) The design capacity of a combustion turbine shall be its peak load rating as defined by both the American National Standards Institute (ANSI) and by the International Standards Organization (ISO). This peak load rating, which applies to units operating for peaking service with a maximum of 2,000 hours per year operation, is based on an ambient temperature of 59 degrees Fahrenheit (15 degrees Celcius) and a pressure of 14.696 psia (sea level). This should be the capacity rating reported to the Energy Information Administration on EIA Form —— (formerly FPC Form 12). If those reported ratings are based on different conditions, they will be adjusted to ISO standard conditions for the purposes of the Powerplant and Industrial Fuel Use Act.

(3) The design capacity of a combined cycle unit shall be the sum of its combustion turbine peak load rating, based on ANSI/ISO standard conditions, and the maximum generator nameplate rating of the steam turbine portion of the unit.

(4) The design capacity of an internal combustion engine shall be the capacity rating which has been reported to the Energy Information Administration on EIA Form —— (formerly FPC Form 12).

The Commission solicits comments from interested parties concerning how well the proposed rules support the criteria established by the Commission. Also, the Commission is interested in any problems or concerns regarding the applicability of the proposed rules in meeting the requirements of the Act.

PUBLIC COMMENT PROCEDURES

Interested persons may participate in this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before January 30, 1979. Each person submitting a comment should include his name and address, identify the notice (Docket No. RM79-10), and give reasons for any recommendations. An original and 14 conformed copies should be filed with the Secretary of the Commission.

Comments should indicate the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. Written comments will be placed in the Commission's public files and will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street,

N.E., Washington, D.C. 20426, during regular business hours.

(Department of Energy Organization Act, Pub. L. 95-91, E.O. 12009, 42 F.R. 46267, Powerplant and Industrial Fuel Use Act of 1978, Pub. L. 95-1749)

In consideration of the foregoing, the Commission proposes to amend Chapter I of Title 18, Code of Federal Regulations, as set forth below.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

Chapter I of Title 18 is amended by adding a new Subchapter J, Part 285 Consisting of § 285.101 to read as follows:

SUBCHAPTER J—REGULATIONS UNDER THE POWERPLANT AND INDUSTRIAL FUEL USE ACT OF 1978

PART 285—RULES GENERALLY APPLICABLE TO POWERPLANT AND INDUSTRIAL FUEL USE

§ 285.101 Determination of powerplant design capacity.

For purposes of this subchapter, a powerplant's design capacity shall be determined as follows:

(a) *Steam-electric generating unit.* The design capacity of a steam-electric generating unit shall be taken as the maximum generator nameplate rating which has been reported to the Energy Information Administration on EIA Form —— (formerly FPC Form 12).

(b) *Combustion turbine.* The design capacity of a combustion turbine shall be taken as its peak load rating as defined by both the American National Standards Institute (ANSI) and by the International Standards Organization (ISO). This peak load rating, which applies to units operating for peaking service with a maximum of 2,000 hours per year operation, is based on an ambient temperature of 59 degrees Fahrenheit (15 degrees Celcius) and a pressure of 14.696 psia (sea level). If capacity ratings as reported to Energy Information Administration on EIA Form —— (formerly FPC Form 12) are based on different conditions, these reported ratings will be adjusted to ISO standard conditions.

(c) *Combined cycle unit.* The design capacity of a combined cycle unit shall be taken as the sum of its combustion turbine peak load rating, based on ANSI/ISO standard conditions, and the maximum generator nameplate rating of the steam turbine portion of the unit.

(d) *Internal combustion engine.* The design capacity of an internal combustion engine shall be taken as the capacity rating which has been reported to the Energy Information Administration on EIA Form —— (formerly FPC Form 12).

[FR Doc. 79-2312 Filed 1-19-79; 8:45 am]

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Part 8370]

USE AUTHORIZATIONS

Special Recreation Permits—Allocations and Transfers; Extension of Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of Comment period.

SUMMARY: The Bureau of Land Management extends the time for filing comments on its notice of intent regarding use authorizations for river areas requiring limited use or river areas of scarce recreation resources.

DATE: The comment period is extended to February 23, 1979.

ADDRESS: Send comments to: Mr. William Brown, Bureau of Land Management (D-370), Denver Federal Center, Building 50, Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT:

Mr. William Brown, Bureau of Land Management, 303-234-5094 or Mr. Larry R. Young, Bureau of Land Management, 202-343-9353.

SUPPLEMENTARY INFORMATION: In a notice of intent to develop proposed rulemaking published in the FEDERAL REGISTER on December 6, 1978 (43 CFR 57167), the Bureau of Land Management gave notice of its intention concerning special recreation permit allocations and transfers in river areas of the public lands adminsitered by the Bureau of Land Management.

In the notice comments were requested by February 8, 1979. It has now been determined to extend the comment period by 15 days. Comments received on or before February 23, 1979, will be considered before action is taken to develop the proposed rulemaking.

ARNOLD E. PETTY,
Acting Associate Director.

JANUARY 15, 1979.

[FR Doc. 79-2156 Filed 1-19-79; 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 Communications 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 review of comments filed in the proceeding.

DATE: Reply comments must be filed on or before February 16, 1979.

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

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau (202-632-7792).

SUPPLEMENTARY INFORMATION:

In the matter of amendment of § 73.606(b), Table of Assignments, Television Broadcast Stations. (San Diego, California); Order extending time for filing reply comments. See 43 FR 59404, December 20, 1978.

Adopted: January 12, 1979.

Released: January 15, 1979.

By the Chief, Broadcast Bureau:

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 January 12, 1979.

2. On January 5, 1979, counsel for Center City Complex, Inc., filed a timely request seeking an extension of time for filing reply comments to and including February 16, 1979. Counsel states that the additional time is needed to analyze the whole allocation situation in the San Diego-Mexico border area, taking into account such matters as existing U.S. and Mexican assignments. Counsel adds that the Land Mobile and Translator objections also require legal review and analysis in close conjunction with the engineering facets developed by the consulting engineers.

3. We are of the view that the public interest would be served by this extension so that 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 February 16, 1979.

5. This action is taken pursuant to authority found in Sections 4(i), 5(d)(1) and 303(r) of the Communications Act of 1934, as amended, and Section 0.281 of the Commission's Rules.

FEDERAL COMMUNICATIONS COMMISSION.
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 79-2097 Filed 1-19-79; 8:45 am]

[6712-01-M]

[47 CFR Part 73]

[Docket No. 20642; FCC 78-863]

CLEAR CHANNEL BROADCASTING IN THE STANDARD BROADCAST BAND

Further Notice of Proposed Rulemaking

AGENCY: Federal Communications Commission.

ACTION: Further Notice of Proposed Rulemaking.

SUMMARY: FCC proposes to reject requests that it increase the permissible power of the dominant station on each of the 25 Class I-A AM clear channels, it appearing preferable to retain the longstanding 50 KW maximum power in order to maximize the opportunities for the assignment of additional unlimited-time AM stations to those channels.

Additional stations made possible by proposed rule revisions would serve such purposes as providing first aural nighttime primary service to persons lacking it, establishing a first or second local radio outlet in places where FM channels are not available, and enhancing the number of minority-owned stations.

Licensees of daytime-only stations would be able to apply for authorization to operate unlimited-time on Class I-A channels wherever they can comply with the proposed conditions of § 73.37(e)(2) of FCC's rules, or show good cause for waiver of those conditions.

DATES: Comments must be received on or before April 9, 1979, and reply comments on or before May 9, 1979.

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

FOR FURTHER INFORMATION CONTACT:

Louis C. Stephens, Broadcast Bureau (202-632-6302), or Gary L. Stanford, Broadcast Bureau (202-632-9660).

SUPPLEMENTARY INFORMATION:

Adopted: December 19, 1978.

Released: January 15, 1979.

In the matter of Clear Channel Broadcasting in the AM Broadcast Band, Docket No. 20642. See also 42 FR 21629, April 28, 1977.

TABLE OF CONTENTS

	Paragraph
I. Summary	1-6
(A) The Essential Issues	1-5
(B) FCC's Basic Proposals	6
II. THE RECORD	7-44
(A) Original Clear Channel Objectives	8-10
(B) Previous Reallocations	11-15
(C) Questions Now Pending	16-17
(D) Urgings by the Parties	18-44
(1) Higher Power	18-34
(a) The proposals	18-21
(b) Service Potential	22-25
(c) Economic Effects	26
(d) Technical Effects	27-31
(i) Blanketing	28
(ii) Ionospheric Cross Modulation	29
(iii) Other Ionospheric Effects	30-31
(e) Diversification of Program Sources	32
(f) Programming and Listening	33-34
(2) "Duplication"	35-44
III. EXTENT OF EXISTING PRIMARY SERVICE	45-54
IV. ACTIONS NOW PROPOSED BY FCC	55-161
(A) Preservation of the 50-kW Power Maximum	58-123
(1) Balancing Public Benefits	59
(2) Potential for Expanded Services	60-66
(3) Program Services	67-70
(4) Listener Surveys	71-90
(a) Arbitron	71-78
(b) Listener Surveys by Stations	79-82
(c) Doane Farm Broadcast Studies	83-90
(5) Interference from Foreign Stations	91-96
(6) Other Considerations	97-115
(a) Competitive Impact	98-103
(b) Concentration of Control	104-109
(c) Technical Effects	110-115
(1) Blanketing	111-113
(2) Interference to Adjacent Channel Stations	114
(3) Ionospheric Effects	115
(7) Across-the-Board 9-Times Power Increase	116-119
(8) The Decisive Factor: Service	120-123
(B) Shared Use of Class I-A Clear Channels	124-160
(1) Protected Class I-A Service Areas	124-133
(2) Objectives	134-135
(3) Opportunity for More Minority-Owned Stations	136-137
(4) Daytime-Only Stations	138-141
(a) Extended Hours of Operation	138-140
(b) New Daytime-Only Stations	141
(5) Noncommercial Broadcasting	142-144
(6) Other Demands for Clear Channel Spectrum	145-160
(a) KOB and 770 kHz	145-155
(b) Use of AM Clear Channels in Alaska	156-160
(C) Additional Facilities on Adjacent Channels	161
(D) Applications Processing	162-165
V. INVITATION TO COMMENT	166-169

ATTACHMENTS

1. Map of Nationwide Aural Broadcast (AM and FM) Nighttime Primary Services.
2. Summary of Comments by the Parties.

FURTHER NOTICE OF PROPOSED RULE MAKING

I SUMMARY

(A) The Essential Issue

1. The basic issue has not changed in half a century: should the reach of 25 dominant Class I-A AM stations on the 25 Class I-A clear channels, many hundreds of miles from their transmitters, be preserved and extended, or should it be limited in order to make room for more radio stations serving nearby listeners? On balance, we think the latter, and invite comment on methods proposed for accomplishing that result.

2. The nighttime propagation of radio signals by "skywave", which carries both the service and interference potential of AM stations much farther at night than during the daytime, necessitates making the basic choice between maximizing the protected *reach* of the wide-area service stations, or increasing the *numbers* of stations on the channel.

3. We think the public's needs will be optimally served by enlarging the possibilities for additional stations on the Class I-A clear channels beyond the initial steps we took in this direction in 1961, 31 FCC 565. We base this on our fresh evaluation of the circumstances affecting the public's needs today. These circumstances have undergone notable changes, including the continuing growth of FM as a fully recognized part of the U.S. radio service, the growth of television broadcasting and the growth of cable TV, with consequent reduction of the need to rely on far-distant AM stations at night.

4. Dependence on distant stations, when it applied to many more millions of people and to a far larger proportion of the population than today, provided justification for permitting each of the 25 Class I-A clear channel stations the exclusive use of an AM channel at night. Later, nighttime sharing of some Class I-A frequencies was permitted, but only on a narrowly restricted basis because many millions were still considered to be dependent on distant stations at night.

5. Now, recognizing the lessening of that dependence, we propose changes in the use of Class I-A clear channels which we think optimally balance present day competing needs.

(B) FCC's Basic Proposals

6. In opening the way to additional station assignments on the Class I-A clear channels we propose we propose to: (1) Settle the old issue of higher

power for the dominant stations by maintaining the present ceiling of 50 kW; and (2) look to additional AM and FM stations as the preferable means of providing for today's radio service needs, among the most prominent of which is enhancement of oportunities for minority ownership and operation of stations.

II THE RECORD

7. We do not here minutely retrace the long and involved course of clear channel inquiry and rulemaking proceedings which started with the inauguration of the predecessor Docket No. 6741 in 1945. That is already set out at length elsewhere, primarily in:

Our 1961 *Report and Order* in Docket 6741, 31 FCC 565
Our *Memorandum Opinion and Order* denying reconsideration, 45 FCC 400, and
The 1975 *Notice of Inquiry and Notice of Proposed Rulemaking* adopted in this Docket 20642, 40 FR 58467, December 17, 1975.

By way of introduction we pause only to note the basic circumstances and developments which form the context of the continuing tug of war over AM clear channel spectrum space.

(A) Original Clear Channel Objectives

8. Recognizing the inherent conflict between maximizing the service range or the numbers of stations assigned to any AM broadcast frequency, the Federal Radio Commission in 1928 adopted the practice, continued by this Commission, of establishing differing conditions for the use of different groups of AM frequencies. The group which came to be known as the "Clear Channels" was set aside primarily for use by stations so protected from interference as to enable them to provide services at long distances by day and considerably greater distances at night, when reflection from the ionosphere carries nighttime AM transmissions may hundreds of miles farther out from the transmitter than during the daytime. When protected from interference from other stations, this skywave service from existing Class I-AQ stations is generally usable, although varyingly intermittent, at distances up to about 750 miles from the transmitter.

9. Under some conditions, skywave reception occurs even farther out, although more intermittently. Given this, and the early paucity of the more steady but less far-ranging groundwave AM signals, Class I-A clear channels were set aside for the exclusive use of a single station operating during the nighttime hours.

10. Subject to a few limited exceptions, this nighttime exclusivity continued until 1961 for the 25 Class I-A unlimited time stations assigned—one each—to the 25 Class I-A Class I-A frequencies, the reallocation of which is under consideration in this proceeding.

(B) Previous Reallocations

11. Between 1945 and 1961 the Commission in a major predecessor proceeding—Docket 6741—examined numerous possible modification of the rules governing the use of the AM clear channels. Confining their use to a single station operating at night on each such channel with 50 kW power was recognized as questionable. This exclusivity protected the Class I-A stations far beyond any areas where they could provide a reliable signal.

12. In Docket 6741 the Commission considered many alternative plans which reflect two essentially opposed views. One was that the 25 Class I-A stations should continue to enjoy exclusive nighttime occupancy of their respective channels while their permissible maximum power would be raised to 500 kW or 750 kW. (For several years during the 1930's experimental operations had been conducted Class I-A station WLW at Cincinnati, using 500 kW).

13. The opposing view was then, as it now remains, that the 50 kW maximum should be retained, and that the sole Class I-A station on each channel should be required to share the use of the channel with other unlimited time stations.

14. In 1961 the Commission decided to permit one additional unlimited time Class II-A station on each of 11 (now 12) Class I-A channels[1] for the primary purpose of providing nighttime groundwave AM service to places which had none. These 12 Class II-A stations have brought a first nighttime AM primary service to approximately 400,000 persons in the western half of the country. Each is required to protect the 0.5 mV/m 50 percent skywave contour of the co-channel Class I-A station, a radial distance of about 750 miles. Four other unlimited-time Class II stations have been authorized to operate on Class I-A channels, two of them on channels used by Class II-A stations.

15. When it marked 12 Class I-A channels for shared use by Class II-A stations the Commission reserved for future decision the options to be exercised regarding the 13 remaining Class I-A channels. The generally exclusive nighttime use by Class I-A stations of the remaining Class I-A channels was meanwhile continued, and the use of adjacent channels was so restricted as to avoid significant preclusions of the potential use of the reserved Class I-A channels either for additioinal Class II-A stations or for higher power operation by the Class I-A stations.

[1] 670, 720, 770, 780, 880, 890, 1020, 1030, 1100, 1120, 1180, and 1210 kHz.

(C) Questions Now Pending

16. In our Notice inaugurating this proceeding we noted the results of our 1961 action, inaugurated formal inquiry into a number of matters bearing on the use of Class I-A clear channels under present day conditions, and invited comment also on desirability of:

"(1) Amendment of the rules to permit the authorization of power in excess of 50 kilowatts for selected Class I-A stations.

"(2) Amendment of the rules to permit additional unlimited-time Class II stations on the 'duplicated' Class I-A channels, either in limited number and in designated areas (the present 'II-A' plan), or to permit the addition of new stations in all instances where adequate protection for the clear channel station's secondary service and for other stations is afforded.

"(3) Amendment of the rules to permit the assignment of unlimited-time Class II stations to those I-A channels which are presently unduplicated, either on a designated basis, or generally, with protection, in each instance, afforded the I-A station's secondary service.

"(4) Amendment of the rules to permit the employment of some or all of the present I-A channels by a multiplicity of stations which are intended to render only local or regional groundwave service."

Recognizing the variety of possible actions under these alternatives, and reserving the possibility of proposing still other kinds of actions, we announced our expectation that, after review of the responses filed to the questions propounded in the Inquiry portion of the Notice, we would proceed with a Further Notice of Proposed Rule Making defining more specifically those particular modes of amending the clear channel rules on which it appeared desirable to focus our further consideration.

17. The subjects of our Inquiry, which were set out and explained at some length in the text of the 1975 Notice, encompassed:

—The service potential of FM;
—The economic and social effects of higher power;
—Power levels at which licensees desiring higher power would propose to operate;
—Sources and levels of interference on the Class I-A channels;
—Effects of using standard radiation patterns; and
—The use of secondary (skywave) service from clear channel stations in areas without nighttime primary service.

(D) Urgings by the Parties[2]

(1) *Higher Power*—(a) *The Proposals:*

18. The 17 licensees of the 25 Class I-A stations took the following positions on possible raising of the 50 kW power maximum:

—9 licensees stated their intent, if permitted, to increase the power of their 11 Class I-A stations to:

[2] Attachment 2 is a fuller summary of the comments.

100 kW at 1 station
200 " " 1 station
250 " " 5 stations
300 " " 1 station
450 " " 1 station
500 " " 2 stations

—3 licensees of 3 other stations indicated they were exploring or considering the possible use of higher power at their stations if permitted, but were not committing themselves to do so.
—CBS, licensee of 4 Class I-A stations, did not object to permitting higher power, but would not use it for CBS stations.
—NBC and ABC, each licensee of 2 Class I-A clear channel stations, opposed authorizing the use of higher power.
—The two licensees of the remaining 3 Class I-A stations filed no comment.

19. The Clear Channel Broadcasting Service (CCBS), an organization of which 12 licensees of 16 Class I-A stations are members, strongly urged increase of the 50 kW power limit, and supported their position with voluminous data and argument. In their individual comments, only 9 of the 12 CCBS members stated a clear intention to use higher power at their 10 Class I-A stations.

20. Among other supporters of higher power were a number of farm organizations, consulting engineers and othe individuals. There are possible benefits from exceptional and narrowly limited use of higher power for certain specific and highly limited purposes which the National Black Media Coalition and the Corporation for Public Broadcasting thought might merit consideration.

21. We next note the principal contentions for and against higher power, which we will evaluate in later sections of this Further Notice.

(b) *Service Potential:*

22. The prime justification advanced for higher power is that it would provide new and improved service to underserved areas and populations. The proponents put forward CCBS studies showing that at night over half the land area of the United States and 26 million people lack primary (ground wave) AM service, and they discount the showings, in studies conducted by the former Office of Telecommunications,[3] of extensive FM radio services to much of those areas.

23. Higher power, coupled with the prohibition of additional unlimited time co-channel stations on the Class I-A could, say the proponents, provide much needed increments of first or additional groundwave services. They also claim that higher power would provide extended and improved skywave services to allegedly large numbers of people who they say cannot be otherwise provided with needed radio service. Only limited attempts were made, however, even to approximate the numbers of people lacking AM nighttime primary service, or an FM signal with a field strength of at least 1 mV/m, who would gain a first nighttime primary service free both from objectionable interference from other stations and from distortion through interaction between the stations' own skywave and groundwave signals.

24. Some of the licensees proposing higher power did offer figures indicating the numbers of people who would receive the station's skywave signals for the first time, or would receive an improved skywave signal, if the station were permitted higher power.

25. Proponents also argued that higher power is needed to offset interference received within the United States from stations in other countries.

(c) *Economic effects:*

26. As in earlier clear channel proceedings, parties who oppose higher power argued adverse competitive impact on other stations within the service areas of Class I-A stations using power in excess of 50 kW. Proponents either rejected such claims or felt that they should be adjudicated only on the explicit facts of individual proposals under established *Carroll* principles and procedures.

(d) *Technical effects:*

27. Opponents also challenged higher power on technical grounds which proponents debated with counter-arguments:

(i) *Blanketing.* 28. The question here was whether stations operating with powers in excess of 50 kW can reasonably overcome certain potentially adverse effects which could occur near the transmitting system, such as:

—Overloading the input of receivers, thereby blocking reception of other stations serving the area;
—The electrical charging of metallic objects—such as wire fences—by the higher power radiations;
—Interference to the operation of such equipment as electronic switches at telephone central offices;
—The possible exposure of human beings to harmful levels of radiation.

(ii) *Ionospheric Cross-Modulation.* 29. On this point, the parties argued for and against the likelihood that AM signals transmitted at higher power would significantly induce cross-modulations of other radio signals in the ionosphere, thus superimposing the broadcast programs on other radio transmissions, both broadcast and non-broadcast.

(iii) *Other Ionospheric Effects.* 30. Additionally, the parties offered conjectural argument as to the possibility that higher powered transmissions would deteriorate the functioning of the ionosphere as a reflector used for skywave transmissions of both broadcast and some non-broadcast signals.

31. We discuss these opposed technical contentions in section IV.

(e) *Diversification of Program Sources:*

32. Some parties charged that Class I-A stations operating with higher power would become so dominant that undue concentration of media control would result. The proponents of higher power felt the multiplicity of other broadcast services and non-broadcast media would preclude this potentially damaging effect. Some cited the Fairness Doctrine and other requirements broadcasters must meet.

(f) *Programming and Listening:*

33. The parties debated at length the value of program services to distant listeners and drew supportive, but contradictory, inferences from listener data. The latter included data compiled from a national radio listening survey conducted by Arbitron in 1975, telephone and mail responses to 25 listener surveys conducted between 1969 and 1976 by the licensees of 10 Class I-A stations, and a number of surveys of farm listening to radio stations in Iowa and nearby states conducted in 1976 by Doane Agricultural Service, Inc. Some of the surveys by the broadcast stations were directed to listening by automobile and truck travelers.

34. We discuss in Section IV the factual submissions and the opposed contentions as to the value of clear channel and local radio services—a prime question bearing on the choices we have to make.

(2) *"Duplication"—*

35. Many parties commented in support of action to end the exclusive nighttime occupancy of any Class I-A channel by a single dominant station, and advocated opening all 25 of them to unlimited-time use by additional stations. More than one station on a channel is referred to as "duplication."

36. Some parties would curtail the degree of protection generally afforded to Class I stations by other Class II co-channel stations. Class II-A stations thus far authorized to operate on each of the 12 Class I-A channels afford nighttime protection to the 0.5 mV/m 50% skywave contour of the dominant Class I-A co-channel stations. This conforms with the long-established general norm for nighttime protection to the Class I-B clear channel stations.

37. Some parties would confine protection solely to the groundwave (primary) service areas of the Class I stations. This would subject to destructive interference all of the skywave service rendered by the Class I stations. If, as proposed by some, this were applied to Class I-B stations as

[3] Now part of the National Telecommunications and Information Administration.

well, AM skywave service would be destroyed altogether. Whatever deprivation that would represent to users of skywave service who are within the primary service areas of other stations, it would fall most heavily on those who live or travel in places which receive no AM or FM primary service.

38. Although differing as to the degree of protection Class I stations should have, the parties advocating duplication all join in urging that the value of broadcast services originating from distant stations has become enormously reduced since the days when AM was the only radio service and distant clear channel stations were the only source of broadcast programming to many millions more than today. They contend that, given the enormous increase in the numbers of AM stations, the establishment, growth and wider availability of FM, the establishment of television broadcasting, and its emergence as the dominant broadcast service whose viewing peaks during the nighttime hours when radio listening has fallen off, there is far less dependence on transmissions by distant clear channel stations than in the days when the protection standards were developed to enable them to render service free from other-station interference at extreme distances from their transmitters.

39. While extolling the superior values of originations from stations close to listeners, the supporters of duplication seek differing kinds of benefits from the multiplications of new unlimited time stations on the clear channels.

40. The Corporation for Public Broadcasting (CPB), joined by National Public Radio (NPR), proposes a grid of non-commercial educational AM stations for which clear channel spectrum space would be reserved. They specify three sources: space made available by authorizing duplicating station assignment on the clear channels; reduction of the "separation" between AM frequencies from the present 10 to 8 or 9 kHz; and the allocation of AM broadcasting on frequencies below and above the present 545 to 1605 kHz AM band.

41. The National Black Media Coalition (NBMC) stresses the desirability of using at least part of any clear channel spectrum space which may be made available, to enhance the numbers of minority-owned and operated stations. The Daytime Broadcasters Association (DBA) and the licensees of numbers of daytime-only stations see the clear channels as a spectrum resource for enabling stations now limited to daytime hours, to operate unlimited time.

42. The common contention of all the various proposals favoring duplication is greater value to listeners of radio programming originating from nearby stations, as compared with the value of programs from distant stations. Weather, farm market reports, local news and local public affairs programming were particularly singled out in this respect.

43. The CCBS and licensees of Class I-A clear channel stations generally opposed duplication, and made arguments conforming with some of the arguments they used to support higher power, stressing importance of preserving, if not extending, the range of service available from Class I-A stations under the present rules.

44. The Association for Broadcast Engineering Standards (ABES) submitted detailed illustrative studies showing possible distributions of new 1-kW unlimited-time stations. They estimated 78 such stations on the unduplicated Class I-A channels.

III. EXTENT OF EXISTING NIGHTTIME PRIMARY SERVICE

45. The starting point in considering how best to use the spectrum space on the Class I-A channels is the extent to which a major allocations objective—some service to all of the people of the United States—remains to be achieved. This question is particularly pertinent during nighttime hours when skywave propagation by unlimited time AM stations causes much mutual interference.

46. In 1961 when we last made significant changes in the clear channel allocations rules we again assessed the extent of existing radio service on the basis of the areas and populations with interference-free AM groundwave service, and estimated the numbers of those lacking it and therefore considered dependent on the inherently less satisfactory skywave signals from Class I stations. Then, as now, studies and maps of nationwide AM service indicated that over half the land area and about 26 million persons lacked interference-free groundwave AM service during the nighttime hours.

47. Since 1961, however, FM broadcasting has undergone widespread growth and acceptance, and we have for some time based our approach to radio licensing on recognition of the fact that AM and FM are contributing elements to a single aural broadcast service. Thus, as we pointed out in the Notice inaugurating this proceeding, it is no longer appropriate to consider AM service—its existence or its lack—independently of FM service, the other component of the nation's aural broadcast service. For this reason, the nationwide depiction of AM groundwave service at night prepared by and recently updated by CCBS no longer provides a useful indication of those areas dependent for radio service upon the skywave transmissions of distant Class I stations.

48. Studies prepared by the Office of Telecommunications and submitted as part of the record of this proceeding show the extent of existing FM service. This was shown on two bases. One showing depicted the area served by FM signals with a field strength of at least 50 uV/m. Another showing depicted nationwide FM service with a field strength of at least 1 mV/m.

49. For our purpose here—establishment of the nationwide picture of where primary aural broadcast service exists and where it is lacking—we find it appropriate to use OT's depiction of FM service of 1 mV/m or greater. While our rules recognize that in some circumstances an FM signal of at least 50 uV/m is sufficient for usable service, we have customarily (as in § 73.37(e) of the rules) used 1 mV/m as the minimum level of FM signal whose presence or absence is treated as significant in establishing the number of FM services available at a particular place or area. This criterion has been used, for example, in determining the extent to which the proposals of individual applicants for a new AM station would provide a first radio service in the sense that the area or population to be served presently has neither interference-free AM groundwave service nor FM service of a least 1 mV/m field strength.

50. Some parties presented technical arguments against relying on OT's depiction of areas served with FM signals of at least 1 mV/m, but we find in them no adequate reason to reject the use of OT's depiction of such service in assembling a broad nationwide picture which, for the spectrum allocation purposes of this proceeding, sufficiently approximates the extent and locations of nighttime aural primary service. This depiction furnishes useful guidance in determining service needs and in considering how clear channel spectrum space may best be used to meet them. CCBS's depictions of AM nighttime primary service are open to some question and adjustment because of departures from the conventional methods of ascertaining the existence of interference-free AM service. However, as in the case of the FM service depictions by OT, for purposes of assembling a nationwide picture of AM nighttime groundwave service, we may satisfactorily use the showings made by CCBS in its updated depictions on this record of what it calls "Type B" nighttime primary AM service. We think it clear that further refinement of either the AM or FM showing would not be useful because it could not be expected to result in a substantial or significant difference in the nationwide measure of the area or

count of the population lacking nighttime primary aural radio service.

51. Consolidating CCBS's mapped depictions of nighttime primary service with OT's depictions of FM signals of at least 1 mV/m, we developed a map which, on a reduced scale, is associated herewith as Attachment 1. It shows that only about one-third of the land area of the contiguous 48 States lacks a nighttime primary aural broadcast service, as contrasted with the more than half of such area depicted as unserved on CCBS' AM maps. According to a population count derived from the 1970 U.S. Census map, fewer than 3¾ million people out of the 200 million who reside in the contiguous 48 States lack nighttime primary aural service as defined. This compares with the 26 million persons estimated by CCBS to lack nighttime AM primary service.

52. Our count of 3,750,000 lacking nighttime primary service is conservatively high for two reasons: We counted as unserved the entire population of all towns located on the borderline of the served area; and we treated FM translators as serving no one outside small towns in which they are located.

53. It must also be recognized that uncounted but substantial numbers of people who live where there are FM signals with a field strength of less than 1 mV/m but at least 50 uV/m are in fact provided with satisfactory FM service. A count by the Columbia Broadcasting System indicates that only about 1¼ million persons who lack AM nighttime groundwave service in the 48 contiguous states also lack FM signals with a field strength of at least 50 microvolts per meter (50 uV/m). On this reckoning, approximately 2½ million people (the difference between 3¾ million and 1¼ million) who lack AM nighttime primary service have FM signals with field strengths ranging from 50 uV/m up to 1 mV/m. Making generous allowance for the effects of conditions which CCBS argues will preclude satisfactory reception of FM signals in that range, it would grossly underestimate the probabilities not to recognize that a substantial number of the foregoing 2½ million people have satisfactory FM service, although of a field strength under the 1 mV/m level denoted as the lower limit of primary FM service. Even making the implausible assumption that only a third of that 2½ million persons (830,000) have satisfactory FM service, deducting 830,000 from our count of 3,750,000 lacking primary service at night, it can be conservatively estimated that fewer than 3 million persons have neither AM primary service nor a satisfactorily usable FM service at night. But we place no reliance on this since, even were the actual number of unserved persons to be assumed—most implausibly—to be as much as a million higher than our 3¾ million figure, that would still indicate the substantially similar result of nighttime primary aural service being available to about 97.5% of the 200,000,000 inhabitants of the 48 contiguous states instead of the 98.2% who are served according to our count. Such a difference is not significant for purposes of establishing or revising nationwide allocations policy.

54. The essential point here is that the future use of clear channel spectrum space must now be determined in recognition of the fact that today all but about 2% of the population in the 48 contiguous states have nighttime aural primary broadcast service. This is far smaller than the proportion lacking nighttime *AM* primary service, on which CCBS and the station licensees seeking higher power heavily rely.

IV. ACTIONS NOW PROPOSED BY FCC

55. The basic pattern of Class I-A channel usage was established over 50 years ago and remains essentially unchanged except for the addition of a single unlimited-time Class II-A station on each of 12 channels.

56. We here set out those conditions for the future use of the 25 Class I-A clear channels which, after considering the comments so far filed, we think would optimally serve recognized allocations objectives under the much changed conditions of today.

57. We reserve our final decision on all the questions arising in this proceeding until we have the benefit of further comment directed to the specific proposals here announced. We accordingly limit our discussion in this Further Notice to the more basic circumstances and considerations which at this stage make the actions we propose appear preferable to the numerous alternatives. We thus endeavor to facilitate further comment by the parties by stating the controlling considerations which have led us to the present proposals, and the purposes to which they are directed.

(A) Preservation of the 50 kW Power Maximum

58. For the reasons which follow, we propose to retain the present 50 kW maximum power for Class I-A stations.

(1) *Balancing Public Benefits—*

59. Much has been said for and against authorizing Class I-A stations to operate at powers greater than the present 50 kW maximum. The question is not whether higher power could yield some public benefit, but whether, on balance, the public interest would be better served by the use of higher power or by retaining the present 50 kW ceiling, thereby opening wider possibilities for a large number of additional stations serving audiences in their local communities and nearby areas.

(2) *Potential For Expanded Services—*

60. The provision of a first nighttime aural primary service to persons now without AM groundwave or FM service is the most significant kind of gain which could be invoked in support of higher power. Yet only 4 Class I-A stations provided estimates of the numbers of people who would acquire their first nighttime aural primary service if they increased power. Those figures, rounded, indicate that 2 of the stations would each provide a first aural nighttime primary service to about 15,000 people. Another claimed 59,000, and the remaining station claimed 180,000.

61. It does not appear, however, that, in arriving at the foregoing figures, the parties took account of limitations imposed on the radius of useful groundwave service by the station's own skywave signals. This is caused by differences in the path traveled by a station's groundwave and skywave signals to points where both are received. The skywave signal travels upward and outward to the ionosphere, which reflects it back over another path down to a place of reception on the earth's surface which the station's groundwave signals have previously reached over the more direct and therefore shorter path which groundwave signals follow along the earth's surface.

62. The resultant time interval between the reception of a station's groundwave and skywave signals and phasing changes cause distortion or fading which interferes with satisfactory reception. This is considered to occur noticeably in the so-called "distortion zone" where the field strength of the station's skywave signal is in the range of half to twice the field strength of its groundwave signal. This distortion zone often ocurs geographically where its effect is to shorten the range of a station's satisfactory groundwave service at night to something less than the distance to the 0.5 mV/m groundwave contour.

63. At higher power, with the present antenna system, the field strengths of both the skywave and groundwave signals of a station at any point of reception would increase by the same ratio. Since their relative values would therefore not change, the distortion zone would not shift geographically with the use of increased power, and the range of satisfactory groundwave service rendered by the station would consequently remain essentially unchanged, unless there were modifications to the antenna which resulted in an appropriate change of the radiation angle. The re-

sults of doing this would vary considerably, however, depending on numbers of factors including the frequency, the pertinent soil conductivities, and the amount of the power increase. Calculations by A. Earl Cullum, Jr. and Associates submitted on behalf of the licensee of WCCO, a Class I-A station at Minneapolis, show that, under differing combinations of the foregoing controlling variables, the potential for primary service gains through power increases is restricted in varying degrees. The estimates of primary service gains which have been submitted on this record do not appear to reflect the distortion zone. They therefore cannot be accepted as realistically reflecting the meaningful primary service gains which could be reliably expected to be realized if the stations in question used higher power.

64. Estimates were submitted for two other stations indicating the numbers of persons to whom higher power would bring a first *AM* primary service. Such figures do not, however, bear significantly on the questions before us since—as we announced in the Notice inaugurating this proceeding—we will evaluate the extent of and the need for service by treating AM and FM not as separate services, but as component parts of the nation's aural broadcast service. Persons who receive FM service with a field strength of a least 1 mV/m cannot be treated as unserved for the purpose of establishing meaningful figures showing the potential of higher power for creating a first nighttime primary aural service.

65. Certain other kinds of potential service gains quantified by several Class I-A station licensees similarly offer little of controlling significance in evaluating the pros and cons of higher power. This applies, for example, to counts of people who would, as a result of higher power, receive a stronger skywave signal where the station already provides at least the recognized minimum standard of secondary service—i.e., 0.5 mV/m 50% skywave signal. We are unable to find convincing support for higher power in estimates of the numbers of people who would gain a new or improved skywave service which take no account of the numbers of persons in such gain areas who already have primary service. Some skywave service is already available everywhere in the contiguous 48 states, and most of the population can receive four or more skywave signals. Ten or more skywave services of at least the long recognized standard (0.5 mV/m 50% skywave signals) are available in much of the country. Considering the long distances, ranging into hundreds of miles, between transmitting stations and their outer skywave service areas, as well as the limited extent of listening to distant stations, we cannot find that improved or extended skywave service would sufficiently offset the disadvantages of higher power even with respect to the scattered and relatively few persons who lack nighttime primary service.

66. Nor does higher power appear to promise the provision of a first primary service to enough persons to justify authorizing it at the expense of reducing the numbers of new stations which could otherwise be authorized to provide for needed services to much closer audiences. In any case, whatever numbers of people might be shown to gain a first primary aural broadcast service at night through power increases of Class I-A stations, we believe, for reasons discussed later, that the value of programming services transmitted by stations located relatively distant from the listener cannot be equated with, or even considered as approaching, the presumptive value of service which could otherwise be provided by new stations located much closer to the listeners if power continues to be limited to a 50 kW maximum.

(3) *Program Service*—

67. The argumentation among the proponents and opponents of higher power focuses in part on the value of radio programming to persons living many miles away from the station. The licensees of the stations seeking high power, the Clear Channel Broadcasting Service (CCBS), a number of farm and other organizations, and some individual persons strongly assert that the programming of clear channel stations is beneficial both to rural residents and nighttime highway travelers. They base their statements chiefly on the following grounds:

—That the larger stations are able, with their greater resources, to provide useful national and world agricultural market information and other agricultural news and program services of interest over wide areas; and that smaller stations lack the resources to provide programming of this kind or quality.

—That the general programming of clear channel stations, as well as their specialized farm programming, is of interest to both residential and mobile audiences far from the stations, citing listener surveys which we briefly note in the next section of this Further Notice.

68. Those who oppose higher power challenge the value of the programming of Class I-A stations to distant listeners on numbers of grounds. They find in the differences in crops and agricultural pursuits circumstances which preclude Class I-A stations from being responsive to particular local needs for information about local weather, local market conditions, local pest and disease problems, local calendars of farm organizations and local news and public affairs programming focused on local community problems. The opponents of higher power also stress the extent to which television provides programming of general nationwide interest, and the presentation of national and international news over the facilities of FM stations and smaller AM stations as well.

69. We think the truth lies between the extremities of the positions argued by the contenders, but that stations serving their own and nearby communities generally are in a decidedly better position to provide aural broadcast services which are meaningful and informative and beneficial to their listeners. It is a subject endlessly debated, on which some data take the form of listener surveys, which we turn to next. The Class I-A stations differ considerably in the extent to which they devote staff resources and broadcast time to the provision of programming of the kind which has traditionally been invoked as a prime justification for preserving the long reach of Class I-A clear channel stations with distant rural areas: their farm and agricultural programming. Of the 25 Class I-A clear channel stations, 8 reported that they retain the services of at least one fulltime farm service director. They vary considerably in the amount of time devoted to the broadcast of farm news, farm market reports and other programming primarily of agricultural interest. Several of them reported no such programming. It amounted to at least one hour per week day in only three cases. There was much variation in the performance of stations with respect to programming of particular interest to farm populations in the areas lacking nighttime groundwave service.

70. Among the more concrete indications of the value of radio programming from distant sources are the data which we next note reflecting the patterns and extent of listening to the Class I-A stations.

(4) *Listener Surveys*—(a) *Arbitron:*

71. Some indication of the extent of listening to clear channel stations in areas lacking primary service may be gleaned from data on this record compiled from Arbitron's 1975 nationwide radio survey.

72. At FCC's request, Arbitron compiled, from its national survey, data on 159 of the counties we had preliminarily designated as lacking FM signals with a field strength of at least 1 mV/m. Arbitron had received usable listener diaries from those 159 counties but not from other counties we had additionally named.

73. One of the compilations prepared by Arbitron is entitled "Nighttime Radio Use in Pre-Selected Counties." After eliminating 33 of the 159 counties in that report, which our subse-

quent studies show as having AM groundwave service at night, we note the following data on listening to Class I-A clear channel stations in the remaining 126 counties, all or the larger parts of which lack nighttime primary service.

74. As Arbitron itself acknowledged, and some parties point out, too few diaries came from many of the individual counties to permit reliable conclusions as to listening habits within those counties individually. We think, however, that enough diaries were received in the aggregate to throw useful light on questions pertinent to the basic allocations issues before us in this proceeding.

75. Arbitron received 888 usable diaries from the 126 underserved counties in our study. Only 352 (39.6%) of those 888 diaries indicated any nighttime radio listening at all. Among those 352, only 37 diaries reported listening to one or more Class I-A stations. Those 37 diaries constituted 4.1% of the 888 usable diaries from the 126 counties.

76. The 352 *diaries* had collectively made 525 separate *mentions* of particular radio stations listened to at night. Of those 525 mentions, 47 (fewer than 1 out of 10) were mentions of Class I-A stations. Only 8 of those 47 mentions were made by diarists located more than 750 miles from the Class I-A station mentioned.

77. In all 7 counties where diarists made 8 mentions of listening to distant Class I-A clear channel stations, there were mentions of listening to 1 or more (up to 7) other stations as well.

78. It is possible that a survey based on a larger sampling (i.e., more diarists) might reflect more listening to clear channel skywave signals than this Arbitron survey indicates. There is, however, no rational basis for expecting the figures reflecting listening to attain the magnitude which would be necessary to offset the clear showing of relative disinterest in nighttime listening to distant Class I-A stations or the advantage of radio programming from nearby sources over that produced far away.

(b) *Listener Surveys by Stations:*

79. Reports (and in some instances copies) of communications received by mail and telephone from listeners to 11 of the Class I-A clear channel stations showed some scattered listening on home or vehicle radios far from the stations. But the 20 such surveys on this record which appear to provide at least minimally usable data indicated that, generally, an overwhelming preponderance of listeners were located within a 750-mile radius of the stations. A substantial portion of them are located considerably closer to the station than that.

80. While fully recognizing the indications in the station surveys that some persons living or traveling at greater distances do listen to far away Class I-A stations, we have been unable to find merit in further extending the outer reach of Class I-A stations by permitting them to operate at powers exceeding 50 kW, particularly at the cost of diminishing the potential for adding new co-channel and adjacent channel stations able to serve people living much closer to the principal communities served.

81. We recognize that listening to Class I-A stations may increase to some extent in areas where higher power would provide additional skywave signals or improve existing ones by increasing their field strength and making them less subject to intermittent fading. But again, such listening would have to increase to levels far beyond any reasonable expectancy to offset the enormous qualitative preference we think clearly attaches, under today's conditions, to creating the opportunities for large numbers of new stations serving nearby listeners. This objective is best served by retaining the present 50 kW maximum power.

82. The preferability of optimizing the potential for new stations by holding the power maximum at 50 kW is not offset by such figures as CCBS gleans from Arbitron. Certain of these data indicate that the few diarists in underserved counties who did listen to clear channel stations reported doing so an average of 17 partial or full quarter hours between 9:00 pm and 4:45 am—almost as much as the 19 quarter hours similarly reported for greater numbers of listeners in the home markets of those stations. Nor do we think the case of higher power is significantly strengthened by CCBS's derivation from Arbitron data of a showing that 43% of the clear channel listeners in the underserved counties listened to Class I-A stations at least 3 nights per week, 28% on 4 or more nights, and 10% on six or more nights.

(c) *Doane Farm Broadcast Studies:*

83. Among the listener surveys submitted were a number prepared under the auspices of the National Association of Farm Broadcasters. Conducted for the most part in 1976 and entitled "Doane Farm Broadcast Study" for particular stations, each of these surveys compiled data indicating listening by farmers to a particular radio station and to other radio stations within that station's principal service area.

84. One such study was prepared for WHO, the Class I-A clear channel station operating on 1040 kHz, at Des Moines. That survey covers 69 central Iowa counties and 5 contiguous counties in northern Missouri. These counties appear to lie within the 0.5 mV/m ground service contour of WHO as indicated on Figure 1 attached to the engineering exhibit accompanying the comments filed in this proceeding by Palmer Broadcasting Company, licensee of WHO. As might be expected, WHO led all other radio stations in the percentages of farmers in the survey area listening during 9 half-hour periods (5 morning, 3 mid-day and 1 early evening). Listening in those periods to WHO was reported by 42.9% to 67.7% of the farm homes surveyed. WHO was named by 44.2% of the farmers surveyed as the radio station they feel "provides the most useful and reliable programs and information on weather, farm markets and farm news and information"—over 3 times the percentage for the next most popular station in that respect.

85. Doane farm broadcast studies prepared for other stations in Iowa indicate that WHO commands substantially less of an audience than other stations in numbers of counties within WHO's primary service area. For example, a Doane survey conducted in 28 eastern Iowa counties indicates that WMT, a 5 kW station at Cedar Rapids, Iowa was named by 41.1% of the listening farmers as the most useful and reliable for farm program services, while 17% named WHO. It is significant that 22 of those 28 counties lie wholly within WHO's 0.5 mV/m groundwave (primary service) contour, while substantial parts of the remaining 6 counties also fall within that contour.

86. During 4 morning, 3 mid-day and 2 early evening half-hour periods, between 36.0% and 58.4% of the farms surveyed listened to WMT, while 9.1% to 24.8% of them listened to WHO. These figures give some indication of the extent to which, even within the primary service area of a major clear channel station which devotes considerable staff and programming to farm needs, the farm listeners tend to patronize a closer station.

87. Another instance of this is reflected in a Doane survey prepared for station KMA, a 5 kW AM station at Shenandoah, Iowa. It was named by 44.9% of the farmers surveyed as the most useful and reliable source of programming of interest to farmers—nearly 4 times the nearest competitor. KMA's farm audience shares were higher than those of the other stations surveyed, and ranged from 27% to 54.8%, while WHO's shares for the same periods ranged from 6.8% to 23.9%. WHO's listening exceeded KMA in 2 of the 10 periods while in 8 it ranged from 13% to 49% of KMA's share. Every county in KMA's listening area surveyed is within the .5 mV/m groundwave contour of WHO.

88. Another Doane survey indicates that even a small Class IV station at Burlington, Iowa (KBUR) could, during some periods, attract larger audiences than WHO, whose groundwave service covers all of the 4 southern Iowa counties and 1 contiguous Illinois county included in the KBUR listener survey. While KBUR was reported to have a sharply lower farm audience share than WHO during 2 half hours KBUR was moderately lower than or tied with WHO in 3 other periods and exceeded WHO in 2 periods.

89. Doane surveys thus show that closer by stations can exert a highly significant draw on listeners even within the primary service area of Class I-A stations.

90. To sum up, the several sources of listener data in the record of this proceeding indicate the relative lack of value of distant signals, especially distant skywave signals, as compared with the much more heavily patronized program service provided by nearby stations. This illustrates the waste of spectrum space which would result from permitting Class I-A stations to use higher power, as a means of further extending the already long reach of their usable groundwave signals, or of extending the range—already counted in hundreds of miles—of their usable skywave signals. These listening data underscore the preferability of retaining the 50 kW power maximum in order to maximize the numbers of stations able to provide the more useful, and more used, programming services nearby stations can offer.

(5) *Interference from Foreign Stations—*

91. Some proponents argued that higher power would help to overcome interference received within the United States from stations outside this country.

92. A report of monitoring conducted by FCC's Field Operations Bureau on May 20 and May 22, 1976 at twelve locations distributed throughout the 48 contiguous states records 197 instances of interference detected from stations outside the United States. Only 21 of those 197 instances were monitored at locations within the 750-mile radius of the US Class I-A station's transmitter—the general range of skywave service of the standard of 0.5 mV/m 50% skywave signal or better.

93. Of the 21 instances, 7 were on the channels occupied by Class I-A stations which did not state any clear intention to adopt higher power even if permitted. All of the remaining 14 instances were monitored from locations about 600 miles or more from the Class I-A stations concerned. That is to say, the only 21 instances reported at locations within the 0.5 mV/m 50% skywave contours of the U.S. Class I-A stations were nevertheless detected so far away from the Class I-A station that improvement achieved by the use of higher power could only serve to bring programming in more clearly from very distant stations at the cost of reducing the numbers of new stations which could otherwise be assigned to the Class I-A channels concerned.

94. Studies indicating interference from foreign sources to the service areas of three Class I-A stations (WSM at Nashville, WGN at Chicago and WWL at New Orleans) were submitted as part of an engineering statement submitted on behalf of the CCBS. In the case of WSM the interference was indicated to occur in areas extending from about 250 to 750 miles from the station. A similar showing was made for WGN. In the case of WWL the interference calculated from a station in Havana, Cuba was indicated on a map as interfering with reception in a wide area which included all of the primary (groundwave) service area of the station. This depiction appears to be based on skywave-to-skywave interference, and does not reflect interference-free groundwave service which is rendered by WWL.

95. Primary service, not indicated on CCBS' submission, is available from other stations throughout most of the areas in which foreign interference to the three foregoing stations is depicted. Multiple shywave services numbering for the most part 5 or more are available throughout those interference areas.

96. Neither these nor other pertinent submissions have demonstrated that higher power—at the cost of reducing or eliminating the potential for new stations—could be justified as a means of overcoming interference from foreign stations. In so evaluating the data and argument on this subject, we do not rely on speculation advanced by some parties that if U.S. Class I-A stations were to increase power, others (who are in violation of NARBA in some cases, or who in other cases are not NARBA signatories) would make offsetting power increases which would nullify the effect of power increases by U.S. Stations.

(6) *Other Considerations Affecting Higher Power—*

97. Opponents additionally object to higher power on economic, social, and technical grounds: Excessive competitive advantage, excessive concentration of control and excessive radiation.

(a) *Competitive Impact:*

98. The contention that the use of higher power by Class I-A stations would inflict intolerable economic injury on competing stations, to the detriment of their capacity to serve the public, was urged by the licensees of 17 AM stations, the National Radio Broadcasters Association (representing over 700 AM and FM stations), several state and local broadcasters' associations and others. The 17 included licensees of 2 Class I-B stations operating at 50 kW power in the same city as the pertinent Class I-A station. The remaining 15 included 4 Class II stations, 8 Class III stations and 3 Class IV stations. Of the 17, 5 (including the two Class I-B stations already mentioned) are located in the same city as the Class I-A station whose power increase they object to, and 12 were located outside those cities. The 17 included 14 unlimited-time stations, 2 daytime only stations and one limited time station.

99. Some of the objectors offered only unsupported assertions such as that higher power would "injure thousands of local stations financially" or would cause "economic devastation" or "irreparable financial harm" to smaller stations in the area. Others rationalized their objections with argument that, with higher power, Class I-A stations would siphon or fractionalize audiences of the smaller local stations, and would capture or divert undue shares of the advertising dollars previously available to the smaller stations. Supporting data were not furnished.

100. Counter arguments by CCBS and the Class I-A stations seeking higher power included contentions that:

—The claims of economic injury were unsupported;
—The proponents of higher power should not be called upon to prove a negative;
—Questions about economic injury were more suitable for resolution in adjudicatory hearing on specific applications for higher power.

101. A study prepared by Professor Edward J. Mitchell of the University of Michigan's Graduate School of Business Administration indicates that an additional signal may be expected to reduce the audiences and revenues of existing stations only by very small amounts.

102. We are unable to find that a convincing case has been made for the proposition that higher power may generally be expected to exert competitive impact adverse to the public interest. We agree with those who contend that the question of economic injury here, as in other instances, is better suited to evaluation and decision in *ad hoc* adjudications based on the facts of particular cases.

103. We do not pause to discuss the pros and cons of the comments on economic injury in more detail because the preference for maintaining the present power limit—which we believe is clearly demonstrated on other grounds—moots this issue. In making this assessment, we have not relied on the contraverted and thinly supported

contention about the potential of higher power to inflict economic injury.

(b) *Concentration of Control:*

104. Opponents of higher power argue that permitting it would disserve the objectives of diversification of control over mass media, and would unduly concentrate in a few stations an objectionable degree of mass media control.

105. Energetic pumping may be needed to keep this contention afloat in the sea of broadcast signals flooding places where the American populace predominantly lives, with multiple waves of broadcast programming transmitted by 8,500 AM and FM radio stations, nearly 1,000 TV stations, and further disseminated by additional thousands of FM an TV translators and cable television systems.

106. In noting that most Americans are thus assured multiple broadcast services from diverse—and for most part, numerous—sources, we neither intimate that we think the goal of diversification of broadcast programming has been fully attained nor discount the importance of continuing efforts to enhance the degree to which it has so far been achieved. Nor do we mean to suggest that we see the enlargement of what are already the most extensive service areas of any class of station as devoid of any potential of undue media concentration.

107. It is noteworthy, however, that it was not in derogation of the importance of diversification that the Class I-A stations have always been afforded protection from interference greater than that provided to any other AM stations. Class I-A stations have thereby been afforded wider reach for the explicit purpose of enabling them to provide usable skywave signals to people living in more sparsely settled areas where primary service is not available from stations closer by.

108. As a result of being enabled to place interference-free signals far out from their transmitters, Class I-A stations typically place serviceable signals over areas encompassing tens of millions of persons. Service needs as they existed in the past justified—if not commanded—the establishment of such vast service areas and such potentially vast audiences for clear channel stations, which are unavoidably limited in numbers by the relentless imperatives of nighttime propagation conditions in the AM band.

109. As we now re-examine Class I-A clear channel allocations, we believe we should similarly give controlling weight to service needs as we find them today. Accordingly, in choosing between divergent courses of allowing higher power or of opening the way to more new co-channel and adjacent-channel stations than could be attained if higher power were permitted, we have been impelled to our preference for the latter not because we can perceive in higher power a demonstrably damaging diminution of media diversity or realistic opportunity for Class I-A stations to exert dominating "concentration of control". Rather, we have found under today's conditions that the need for more stations able to serve the public in and relatively near their principal communities has been convincingly shown to be greater than the need for augmenting the capacity of clear channel stations to extend the reach of their signals through the use of higher power. In so finding we have not placed reliance on the questionable claim that Class I-A stations with higher power would become devouring mass media monsters. Such a contention es hardly borne out by fifty years of experience with the operation of Class I-A stations protected, either totally, or to a degree greater than any other class of station, against interference from co-channel operations at night.

(c) *Technical Effects:*

110. Opponents objected to higher power for several alleged terrestrial and ionospheric effects. We discuss them only briefly because, for the below-stated reasons, none of the technical arguments has been accorded controlling weight in arriving at our proposal to reject higher power.

111. (i) *Blanketing.* We do not question the arguments presented that blanketing problems would occur with the use of power greater than 50 kW. With field strength running extremely high out as far as five or more miles from the transmitter site, there would be problems involving receiver overloading, electrical charging of objects, interference to the operation of telephone office equipment, internal and external cross-modulation, and others. However, these anticipated problems are not of such magnitude as to be beyond state-of-the-art techniques for resolving them.

112. We would expect and require, if higher power were authorized, that transmitter sites be selected in areas where the least number of potential problems would be incurred; and our rules (see § 73.88) require a licensee "to satisfy all reasonable complaints of blanketing interference within the 1V/m contour." Objects which might be electrically charged could be grounded or detuned. Also, interference to the operation of nearby telephone equipment could be corrected through the use of shielding or other devices. The principal contention of AT&T appears to be that its subsidiary operating companies should be spared the cost of such needed corrections, not that such correction could not be made.

113. A question has been raised as to the potential biological effects that might result from the use of higher power. At the present time there are no meaningful standards for determining what levels of radiation at the subject frequencies could be expected to be biologically harmful. In light of our proposal to retain a 50 kW maximum power level, we need not defer acting on clear channel reallocations until such indefinite future time as adequate data and reliable standards have been developed.

114. (ii) *Interference to Adjacent Channel Stations.* Another ground of objection advanced against higher power is resultant interference to adjacent channel stations. The remedy of a low pass audio filter has been plausibly suggested; but we do not, in any event, propose to authorize higher power.

115. (iii) *Ionospheric Effects.* Objections that signals transimitted at powers in excess of 50 kW would induce interfering cross-modulation with other signals reaching the ionosphere, or would appreciably deteriorate the capacity of the ionosphere to function as a reflector of radio signals, were neither supported nor refuted conclusively. The Office of Telecommunications advised that additional testing programs would be needed to evaluate the merits of so-far insufficiently supported claims. It is unnecessary, however, to incur either added cost or delay for such testing since, on the entirely independent grounds of service needs, we in any event propose to retain the present 50 kW power maximum.

(7) *Across-The-Board 9-Times Power Increase—*

116. The licensee of Class I-A station WCCO at Minneapolis proposed that all AM broadcast stations of all classes operating on all channels be authorized to increase power to 9 times the present levels. On this basis, WCCO proposed to increase its own power 9 times to 450 kW. Two additional licensees support this approach.

117. This proposal is beyond the scope of Docket 20642, which encompasses only the Class I-A channels. Apart from the fact that this proposal involves all AM broadcast channels, it would necessitate prior negotiation and agreement with the neighboring countries whose use of AM frequencies is governed by international agreements.

118. Also, this proposal would call for large outlays for transmitting equipment which may be beyond the means of many stations whose service areas would be much reduced if the increased field strength of interfering signals were not offset by corresponding power increases of their own.

119. These, in any event, are not questions which we could appropriately attempt to deal with in this proceeding.

(8) *The Decisive factor: Service—*

120. The fulcrum on which the arguments for and against higher power balance most decisively is potential service gain, We have therefore sought to weigh carefully the service gains realizeable with higher power against others best attainable if power continued to be restricted to the present 50 kW maximum.

121. In comparing service gains foreseeable with and without higher power, mere head counts of the numbers of persons standing to benefit in some fashion or other cannot be permitted to dictate the choice. When dealing, as we do here, with basic spectrum allocations, some qualitative differences among various kinds of service gains bear much more significantly on the legislated goal of a "fair, efficient and equitable distribution of radio service" than mere comparative enumerations of populations in gain areas.

122.We do not overlook the enthusiasm for distant stations displayed in some testimonials filed on behalf of higher power when we recognize the predominant—in some cases the virtually exclusive—orientation of radio stations to their own and relatively nearby communities. With the shift of most broadcast programming of national interest to television, the predominant fare of aural broadcasting has become a combination of recorded programming and locally oriented live program services. Because of this, the value of adding even primary service out at the periphery of the groundwave service area of Class I-A stations—which is usually up to 100 or more miles from the transmitter—does not weigh comparably, under today's very much changed patterns of broadcast programming and listening, with the patent benefit which a first primary service, (or the fulfillment of some other kinds of needs noted later) can provide to audiences living much closer to a station. We accordingly believe that mere comparative counts of populations in primary gain areas cannot govern our election between higher power and the maximization of the potential for new stations able to serve listeners who live closer by, although they may aggregate smaller numbers.

123. In sum, under today's conditions the preferability of aural broadcast service from a closer source, as compared with far-distant sources, is so marked that it decisively impels us to favor retaining the present 50 kW maximum power in order to maximize the opportunities for providing additional services.

(B) Shared Use of Class I-A Clear Channels

(1) *Protected Class I-A Service Areas—*

124. Some parties urge that, whether or not we authorize higher power, we should in any event permit no further duplication of station assignments on the Class I—A clear channels. This is proposed on the essential basis that there should be no curtailment—by interference from added cochannel stations—of the service Class I-A stations can render if further channel sharing is barred at night within the 48 contiguous states. We are asked to maintain such a barrier alike for the 11 channels now occupied exclusively by a single Class I-A station, the 12 on which one additional station now operates, and the remaining two, the use of which the Class I-A station now shares with two other unlimited time stations located in the 48 contiguous states.

125. This position is extreme. Even in 1961, when we still counted persons lacking nighttime primary service as numbering over 25 million, we recognized that it would not be appropriate to continue indefinitely to confine the nighttime use of 25 AM clear channels to a single station operating at 50 kW. That evaluation is strongly reinforced with the recognition, today, that fewer than 4 million persons lack nighttime primary radio service, and by the fact that—making generous allowance for the imprecision of available listener data—there is scant listening on any regular basis to 50 kW stations located more than 750 miles away. The showings that a relatively few more distant residents or travelers do listen to far away Class I-A stations do not justify the preservation of the possibility of such reception at the cost of barring additional stations needed for the far more useful purpose of providing local service to relatively nearby audiences.

126. We are thus unable to see merit in the status quo, which would amount to the perpetuation of a now outmoded barrier to placing any additional stations on Class I-A clear channels.

127. On the other hand, we are urged to end protection to any skywave service provided by Class I-A stations. Some would go even further and permit new stations to place interfering signals even within the present primary (groundwave) service areas of the Class I-A stations. One proponent advocated establishing the 2.5 mV/m groundwave service contour as the protected service contour. Others would have us reduce substantially the maximum power now permitted for Class I-A stations, thus effectively reducing their status and curtailing their capacity to serve their metropolitan areas which, in some instances, are extensive.

128. Proposals such as the last-mentioned one go, we think, to unwarranted extremes, and depart excessively from the previously established nighttime protection standard for duplicated clear channel Class I stations: *i.e.*, protection by co-channel Class II stations to the 0.5 mV/m 50% skywave contour of the Class I station. This standard applies to already duplicated Class I-A channels and conforms with the even longer established degree of protection accorded to Class I-B clear channel stations. It protects from objectionable interference areas where the Class I station provides reasonably usable signals. It permits interference to areas—generally more than 750 miles or so from the station—where intermittence, fading, and weakness of signal preclude generally satisfactory service and permit only random or sporadic reception. Always of questionable value, such service cannot on any reasonable basis be viewed today as warranting preservation at the cost of barring the addition of needed stations on the least crowded portion of the AM spectrum.

129. We accordingly propose, as one alternative, to establish the 0.5 mV/m 50% skywave contour of the Class I-A stations as defining the areas which new stations must individually preserve from objectionable interference. Any lesser standard of protection to Class I-A stations would remove some usable signals now available to some places dependent on skywave services.

130. In referring to the location of a protected 0.5 mV/m 50% skywave contour as 750 miles or so from the transmitter, we have for convenience used an approximation from which departures occur in practice. First, the precise location will vary by some tens of miles with differences in antenna systems. Also, numbers of co-channel Class II stations, each individually protecting the 0.5 mV/m 50% skywave contour, may be expected—because of cumulative effects—to create some additional interference within that contour. There is no rational basis, however, on which to expect shrinkage of the service area within that contour to be large enough to upset the balance of basic considerations underlying our present proposals. That balance does not teter precariously on the 0.5 mV/m 50% skywave contour, and it remains unaffected by cumulative interfering effects such as those now experienced, and permitted, in the case of Class II stations on Class I-B clear channels.

131. We also invite comments on and will consider the alternative of ending protection for skywave services areas of some or all of the Class I-A stations, particularly those located east of the Mississippi River, where AM and FM primary service is more plenti-

ful than in the West. Nighttime protection would, instead, be afforded to the 0.5 mV/m groundwave contour of the Class I-A station. Proponents of this protection standard should submit showing as to the additional numbers of new stations which this step would make possible and comparisons of the needs they could serve with the value of the skywave services so eliminated.

132. Although, as stated in Section IV(B)(4)(b), we propose initially to defer acceptance of applications for new daytime-only Class II stations on the Class I-A channels, we invite comment at this time on the question of whether protection to the Class I-A stations should be changed from their 0.1 mV/m contour to their 0.5 mV/m contour.

133. Having reviewed the sparse comments in this docket on standard radiation patterns, we see no reason not to require their use by new Class II stations on the Class I-A clear channels.

2. *Objectives—*

134. We propose to provide for acceptance of applications for unlimited-time facilities on the 25 Class I-A clear channels which would either serve one of the purposes set out in Rule § 73.37(e)(2), or merit waiver of those threshold requirements because they would help to remedy the dearth of minority-owned stations, or present other sufficiently meritorious grounds for waivers.

135. The application of § 73.37(e)(2) would permit the filing of applications which assure:

(i) That at least 25 percent of the area or population which would receive interference-free primary service at night from the proposed station does not receive such service from an authorized AM broadcast station or service from an authorized FM broadcast station with a signal strength of 1 mV/m, or greater, or,

(ii) That the proposed station would provide the community designated in the application with a first or second authorized nighttime aural transmission service, and no FM channel is available for use in the community, or,

(iii) That at least 20 percent of the area or population of the community designated in the application receives fewer than two aural services at night from authorized stations, and that no FM channel is available for use in the community.

These purposes, well established for AM stations on other channels, are similarly suitable for new unlimited-time stations or nighttime facilities for authorized daytime-only stations on the Class I-A channels; and we propose to permit use of the full range of operating powers which are permissible for Class II stations generally: from 0.25 to 50 kW. Geographic limitations such as for Class II-A stations would not be useful under our present proposals.

(3) *Opportunities for More Minority-Owned Stations—*

136. The Commission, the Executive Branch, and the Courts, noting the marked dearth of minority-owned broadcast stations, have recently expressed increasing recognition of the deficiency this represents in fulfilling the public interest objectives of the nation's broadcast service.[4] It will accordingly be our policy to give attentive consideration to the possible merit of granting waivers of the above-noted rules to minority applicants. We do this in recognition of the large unsatisfied need for minority-owned stations which exists in numbers of large multiple-stations communities where large numbers of minority persons live, and where new stations could not meet the stated threshold requirements of the rules. It may be easier to meet such requirements in the case of stations serving minorities living on Indian reservations, but we would of course consider waiver requests, where needed, for them also.

137. We believe this waiver process is the method most conducive to advancing the goal of enhanced minority ownership and operation of broadcast stations, while avoiding exclusions of non-minority applicants or the preclusion of opportunities, either under the rules or under rule waivers, for new stations on the Class I-A clear channels which would serve other purposes. In according due recognition to the dearth of minority ownership of broadcast stations and the public purposes which could be served by enlarging such participation by minorities in this broadcast service, we establish no quotas or automatic exclusions or inclusions, but leave the way open to consider, on the facts of each case, the public benefits promised by minority applicants, as against the public benefits which may be expected to flow from use of the spectrum by any others, either for purposes recognized in the rules or for any other purpose for which rule waivers may be shown to be meritorious.

(4) *Daytime-Only Stations—T1(a) Extended Hours of Operation:*

138. The Daytime Broadcasters Association and numbers of station licensees urged that Class I-A clear channels be used to accommodate unlimited-time operations (or extended hours) for daytime-only and limited-time stations.

139. To the extent that they could meet proposed requirements set out in Sections IV-B(1), (2) and (3), the licensees of existing daytime-only and limited-time stations would be able to apply for authorization to operate unlimited-time on Class I-A clear channels.

140. Some licensees, who may be unable to meet the foregoing requirements, have urged special considerations such as that extended hours of operation would enable them to provide agricultural programs, in which they specialize, at convenient morning hours to much larger numbers of farm listeners located over a much wider area. The appropriate way to obtain consideration of proposals believed to have special merit, but which doe not comply with general requirements, or the rules, would be to submit duly supported requests for waivers of such requirements. We cannot appropriately act upon such *ad hoc* proposals in this broad, nationwide allocations proceeding.

(b) *New Daytime-Only Stations:*

141. We propose to defer accepting applications for new daytime-only stations on the Class I-A clear channels until we find such deferral no longer necessary to avoid preclusion by daytime-only stations of potential for needed services gains realizable from unlimited-time Class II stations.

5. *Noncommercial Broadcasting—*

142. The Corporation for Public Broadcasting (CPR), in comments supported by National Public Radio (NPR), which were accompanied by much impressively detailed supporting data, analysis and documentation, proposed three methods for making possible the assignment of considerable numbers of additional noncommercial AM radio broadcast stations.

143. Two of those methods—use for AM broadcasting of frequencies below and above the present AM band, and the reduction of AM channel separations from the present 10 kHz to eight or nine kHz—are beyond the scope of this proceeding, and would require international concurrence.

144. We have been unable to evaluate the third proposal—reservation of clear channel spectrum space for noncommercial educational use—as commanding a preference over the other needs we have noted in this Further Notice, only a part of which could in any event be met with the Class I-A spectrum space we are able to make available. In these circumstances, while recognizing the worthwhile nature of the purposes for which CPB and NPR seek a reservation of AM spectrum space for noncommercial use, we must regretfully decline to adopt their proposals to add a substantial reservation of AM spectrum space to the existing provisions for exlusive noncommercial use of 20 FM channels.

---

[4] *TV 9, Inc.* v. *FCC*, 495 F. 2d 929 (1973), cert. denied 418 U.S. 986. *Garrett* v. *FCC*, 513 F. 2d 1056 (1975).

FCC Statement of Policy on Minority Ownership of Broadcasting Facilities, FCC 78-322, May 25, 1978.

Office of Telecommunications Policy (OTP) Petition for Issuance of Policy Statement, filed with FCC, January 31, 1978.

6. *Other Demands for Clear Channel Spectrum.*—(a) *KOB and 770 kHz:*

145. The licensee of KOB, authorized to operate at Albuquerque, New Mexico as a Class II-A station on Class I-A channel 770 kHz, recurs in this proceeding to a long-standing request for authorization to operate in the manner of a Class I-B station, mutually protecting and receiving directionalized protection from the dominant Class I-A co-channel station, WABC at New York City. WABC, wishing to continue omni-directional operation, objects.

146. Questions about the appropriate mode of KOB operation on 770 kHz have been before us for 37 years, since November, 1941, when its operation was shifted to 770 kHz as necessitated by international agreement on the use of AM channels in North America. No other station assignment among the thousands so far established has approached this one in the length, complexity, and thoroughness of the consideration that has been accorded in adjudicatory and rulemaking proceedings before the Commission, and in repeated judicial reviews. It required five pages of the Report and Order we adopted in 1976 on this matter in Docket 6741, 59 FCC 2d 32-36, even to outline the major developments affecting KOB's use of 770 kHz since 1941. We concluded in that proceeding that KOB should function as a Class II-A station directionalized to protect the 0.5 mV/m 50 percent skywave contour of co-channel Class I-A station WABC at New York City operating omni-directionally. This decision was affirmed by the Court of Appeals of the District of Columbia, *Hubbard Broadcasting, Inc.* v. *FCC,* ——— F. 2d ——— (1978). The United States Supreme Court denied certiorari, ——— U.S. ——— (1978).

147. In comments filed in this proceeding, KOB would have us conduct still further proceedings through which it persists in seeking what we considered and rejected in the above-cited Report and Order (authorization to operate on 770 kHz in the manner of a Class I-B station at Albuquerque, mutually protecting and receiving mutual protection from WABC, which would be obliged to be directionalized in the manner of a Class I-B station). The specific question of whether to provide for the Class I-B mode of operation on 770 kHz has been before us since 1944, when we instituted an adjudicatory proceeding in Docket 6584 to consider it and other possible modes of operation by KOB. In 1958, we concluded in favor of Class I-B type operations by KOB and WABC sharing 770 kHz. The Court of Appeals of the District of Columbia, when it affirmed this decision, *American Broadcasting-Paramount Theatres, Inc.,* 280 F. 2d 631 (1960), noted and characterized as an "inequity" the fact that WABC was being required to directionalize its operation while the other two network "flagship" stations, WCBS on 880 kHz and WNBC on 660 kHz, would be permitted to continue to operate omni-directionally. The court indicated its expectation that the Commission would provide opportunity in appropriate proceedings to deal with this disparity, which the court considered objectionable.

148. In 1961, in our decision in the general Clear Channel rulemaking proceeding in Docket 6741, we rejected, as undesirable, the general pairing of Class I-A stations with another Class I co-channel station, and adopted, instead, reallocation plans in conformance with which WCBS and WNBC were permitted to continue omni-directional operation. Pursuant to the above-noted 1960 mandate of the Court, we proceeded then to consider (in further adjudicatory proceedings in Docket No. 6584) whether, taking into account all the relevant circumstances, the disparity in requiring WABC to directionalize while WCBS and WNBC remained omni-directional was justified. We concluded that it was. 35 FCC 36 (1963).

149. Upon review, the Court of Appeals for the District of Columbia reversed, *American Broadcasting-Paramount Theatres, Inc.* v. *FCC,* 345 F. 2d 954 (1965), and directed the Commission to conduct still further proceedings to remedy what the Court found to be unacceptable distinctions in the treatment of the three New York network-owned AM stations. For that purpose, we reopened the Clear Channel Docket 6741 to consider how KOB could best be authorized to operate on 770 kHz while meeting the Court's requirements with respect to equivalent treatment of the network-owned "flagship" stations. On April 21, 1976, after considering detailed submissions by the licensees of KOB, WABC and other interested stations, we adopted our above-cited Report and Order definitively establishing KOB's status as a Class II-A station obliged to protect WABC operating omni-directionally as the Class I-A station on the channel, at New York City.

150. In the present proceeding, KOB asks that we issue a supplementary notice of proposed rulemaking looking toward permitting applications for a second Class I station operating in a Class I-B mode which would mutually protect and receive protection from the present Class I-A station operating on 13 of the Class I-A clear channels: 660, 670, 720, 770, 780, 880, 890, 1020, 1030, 1100, 1120, 1180, and 1210 kHz. This proposal is similar to, but much more sweeping than the proposal on which we invited comments in our 1958 Further Notice of Proposed Rulemaking in Docket 6741, in which we proposed I-B type pairing of two Class I stations on five of the Class I-A clear channels. After considering responsive comments, we subsequently rejected Class I-B pairing as an undesirable general method of reallocating the use of the Class I-A clear channels for reasons stated in our 1961 Report and Order in Docket 6741, 31 FCC 565, 570.

151. We have again, in the instant proceeding in Docket 20642, considered this general mode of clear channel reallocation under the changed conditions of today. Again, we find it undesirable. The delays and problems in accommodating new directional antennas which in crowded metropolitan areas would meet zoning, environmental, aircraft safety and other requirements, contribute to the undesirability of ordering directionalization of Class I-A stations. That is in any event undesirable because service gains from a second co-channel Class I station could be achieved only at the excessive cost of uprooting patterns of service to metropolitan areas and in some cases, virtually throughout the home state of the present Class I-A station, on which the public has come to rely over a period of decades.

152. The service gains which directionalizing the Class I-A station would make it possible for a co-channel station to provide would occur beyond the outer reach of the interference-free signal a Class II station can provide with the Class I-A continuing undisturbed omni-directional operation. Thus, the gains achieved at the cost of dislocating longstanding service by the Class I-A station would generally fail to achieve today's goal of service from radio stations able to orient their broadcasts to the needs of persons living relatively nearby.

153. A general program of I-B type pairing on Class I-A channels would be subject to the additional disadvantage that it would trade primary service gains in some areas for primary services losses in others. This would be especially objectionable for persons who would thereby lose their only nighttime primary service. The extent of such losses would vary from channel to channel, but they would be objectionable wherever they occur. KOB has presented data in this preceding going to the relative gains and losses which directionalizing the three New York Class I-A stations would provide. In doing so, KOB would have us once again entertain its *ad hoc* proposal which has been litigated and relitigated all the way to the Supreme Court in the most prolonged proceedings in the history of this Commission.

154. Having again considered Class I-B pairing on a general, nationwide

scale, and still believing it to be undesirable—and clearly less desirable under today's conditions than the alternative nationwide reallocations we propose in this Further Notice—we do not now reopen or re-evaluate the merits of the exceptional, *ad hoc* Class I-B type pairing which KOB again proposes for 660 kHz, 770 kHz and 880 kHz.

155. Nor do we relitigate the question on which the Court of Appeals has spoken twice: whether 770 kHz alone might be I-B paired while the CBS and NBC "flagship"-stations are left omni-directional.

(b) *Use of AM Clear Channels in Alaska:*

156. Three licensees of AM stations in Alaska propose revision of the present method of calculating the field strength of the skywave signal which Alaskan stations lay down at night within the lower 48 states. By Section 73.25(a)(4) of the Rules, Class II stations operating in Alaska on the Class I-A channels are forbidden to place a signal within the 48 states greater than 0.025 mV/m-10 percent skywave.

157. Essentially, the Alaskan stations claim that the curves which the rules now oblige Alaskan stations to use neglect the effect of high latitudes of the transmission path between Alaska and the 48 contiguous states, and that due cognizance of those latitude effects would indicate a much lower field strength for their signals within the 48 states. It is accordingly requested that Alaskan stations be permitted to use a different curve that would reduce the indicated interfering potential of their signals within the 48 states enough to enable them to use higher nighttime powers, thereby bringing service to needful areas in Alaska. This is opposed by the licensees of stations in the lower 48 states, who offer counter arguments.

158. Lacking adequate factual basis for doing so, we do not endeavor to resolve this matter in this proceeding. We have, however, taken steps to set up a program for securing field strength measurements needed for the evaluation and resolution of this question. If the data we obtain adequately support revision of the present curves, we would proceed by way of a separate proceeding appropriate for that purpose.

159. It is useful that this matter has been raised, and we regret our inability to deal with it in this proceeding on the basis of the information so far available to us. In pursuing this matter separately we remain mindful of the desirability of expanding the services available in Alaska.

160. We propose, in any event, that Class II stations operating on Class I-A channels in Alaska no longer be required to provide border protection to the 48 contiguous states, but that they be expected to meet the same standards of protection to Class I-A stations and other stations as apply to Class II stations located within the 48 contiguous states.

(c) *Additional Facilities on Adjacent Channels:*

161. We also propose that, upon the adoption of new rules governing the use of the Class I-A clear channels, the limitations, in § 1.569 of the rules, on adjacent channels be rescinded.

(D) Applications Processing

162. Our proposals for opening up spectrum space on the 25 Class I-A clear channels and adjacent channels may be expected to attract the filing of numerous applications, many of which may be mutually exclusive with numbers of others. The Commission is considering means by which the delays and costs of long, complicated comparative hearings may be reduced.

163. For one thing, we are studying possibilities for assisting with the resolution of conflicts without hearings by facilitating negotiations leading toward the voluntary adjustment of station proposals so as to eliminate mutual exclusivities wherever the parties may find it feasible and in their interests to do so.

164. We also believe it worthwhile to inquire into the possibilities for resolving remaining conflicts by other means, such as by using lotteries or auctions—methods which are now under consideration as possible alternatives to time-consuming hearings which are financially exhausting for some applicants, prohibitive for others, and unduly burdensome to the public.

165. Comment is invited on how alternative means, such as the foregoing, of resolving mutual exclusivities without hearings may be feasibly employed.

V. INVITATION TO COMMENT

166. Accordingly, pursuant to authority under Sections 1, 4 (i) and (o), and 303 (a) through (d), (f), (g), (h), and (r) of the Communication Act of 1934, as amended, it is proposed to amend the rules governing the use of the AM Class I—A clear channels and of adjacent AM channels so as to permit their use, and impose associated requirements, substantially as basically proposed in this *Further Notice of Proposed Rule Making*, or in accordance with such variants, modifications or alternatives within the scope of the issues of this proceeding as we may find preferable after considering the entire record.

167. Pursuant to applicable procedures set forth in § 1.415 of the Commission's rules, interested parties may file comments on or before April 9, 1979, and reply comments on or before May 9, 1979.

168. In accordance with the provisions of § 1.419 of the Commission's rules, an original and 5 copies of all comments, replies or other documents filed in this proceeding shall be furnished to the Commission. Participants filing the required copies who also desire that each Commissioner receive a copy of the comments may file an additional 6 copies. Members of the general public who wish to participate informally may submit one copy of their comments, specifying the docket number. Responses will be made available for public inspection during regular business hours in the Commission's Reference Room at its headquarters, 1919 M Street NW., Washington, D.C.

169. For further information concerning this proceeding contact:

Louis C. Stephens, Staff Attorney (202) 632-6302, or

Gary L. Stanford, Staff Engineer (202) 632-9660.

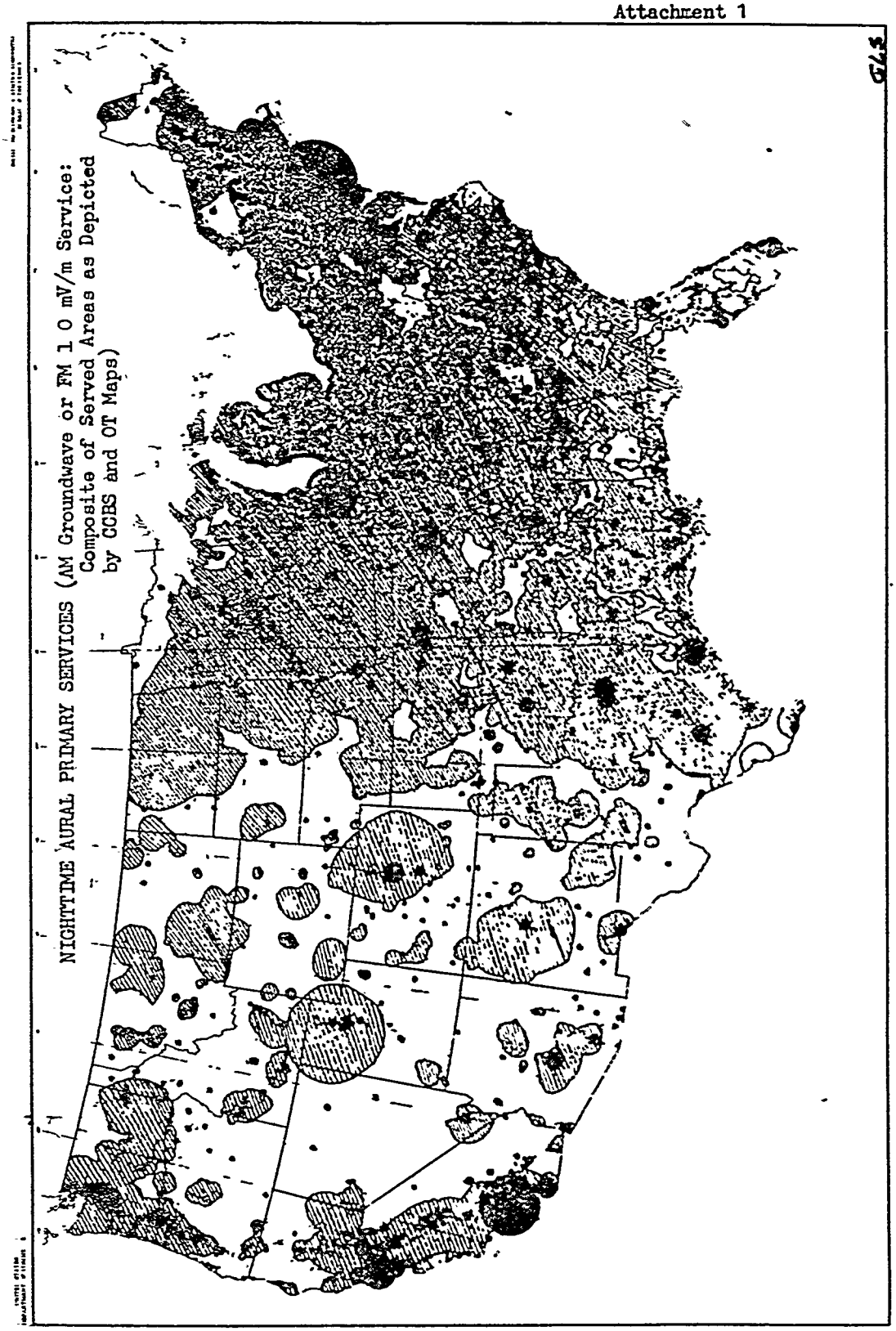
Members of the public should note, however, that from the time a notice of proposed rule making is issued, and until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings such as this one, which involves present and future AM station assignments and channel utilization. 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,
WILLIAM J. TRICARICO,
Secretary.

---

* Copies of Attachment 2 to this Further Notice of Proposed Rule Making may be obtained by writing to the Federal Communications Commission, Public Information Office, Room 202, 1919 M Street NW., Wash., D.C. 20554 or may be seen in the FCC Docket Reference Room.

Attachment 1



[6712-01-C]

[FR Doc 79-2242 Filed 1-19-79; 8:45 am]

FEDERAL REGISTER, VOL 44, NO 15—MONDAY, JANUARY 22, 1979

[6712-01-M]

[47 CFR Part 97]

[Docket No. 20672; FCC 79-8]

AMATEUR RADIO SERVICE

Modifying Procedures for Renewal and Modification of Licenses

AGENCY: Federal Communications Commission.

ACTION: Termination of Docket 20672.

SUMMARY: The Commission is terminating Docket 20672 that proposed to require amateur licenses to submit their original license document upon application for renewal or modification of that license.

EFFECTIVE DATE: Non-Applicable.

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

FOR FURTHER INFORMATION CONTACT:

Ms. Stephanie Spernak, Personal Radio Division, (202) 632-7175.

SUPPLEMENTARY INFORMATION:

REPORT AND ORDER—(PROCEEDING TERMINATED)

Adopted: January 8, 1979.

Released: January 18, 1979.

In the matter of amendment of Part 97 of the Commission's rules modifying procedures for renewal and modification of licenses in the Amateur Radio Service. (Docket 20672): See 40 FR 59453.

By the Commission: 1. On December 16, 1975 the Commission released a Notice of Proposed rulemaking (40 FR 59453) to change slightly the application procedure for renewal and modification of Amateur Radio Service operator and station licenses. Under current procedure, a licensee may submit either the original license, or photocopy, with a renewal or modification application. The Commission found that some amateurs abused this option by altering the original license, photocopying it, and sending the photocopy with the application. Invariably, such alteration was done in order to obtain operating privileges or examination credit for which the licensee did not qualify. The majority of forgeries were by Technician Class operators who had been examined by volunteers and then altered their licenses to resemble those issued to Commission examined Technicians, thereby gaining credit for the examination elements passed.

2. To insure a reliable and fair procedure for license renewal and modification, the Commission proposed to amend rule Sections 97.13 and 97.47 to require a licensee to submit the original license with the FCC Form 610. The Commission proposed to amend rule Section 97.83 to exempt a licensee who is renewing or modifying a license from the requirement that the original license be in his or her possession at all times.

3. The Commission received eight comments on these proposed amendments. Seven comments expressed disapproval of the proposed changes. One commentator "reluctantly" agreed with the Commission's need to require the original license. In general, the comments suggested the Commission change its administrative and processing procedure to detect the few alteration attempts rather than penalize the bulk of the licensees by requiring submission of the original license, a document cherished by most amateurs.

4. After proposing these amendments, the Commission changed the type of license document (FCC Form 660) issued to amateur service operators. These licenses are printed on paper that readily shows any attempt to alter them. Further, in Docket 20282, the Commission granted examination credit to Technician Class licensees who were examined by volunteers. On the basis of these changes and negative public reaction from the amateur community, the Commission believes that the public interest, convenience and necessity is best served by termination of this proceeding. For further information, contact Stephanie Spernak, Personal Radio Division, FCC, 1919 "M" St. NW., Washington, D.C. 20554 (202-634-6619).

5. Accordingly, pursuant to authority contained in Sections 4(i), 303 of the Communications Act of 1934, as amended, IT IS ORDERED that this proceeding is TERMINATED.

WILLIAM J. TRICARICO,
FEDERAL COMMUNICATIONS COMMISSION,
Secretary.

[FR Doc. 79-2219 Filed 1-19-79; 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.

[3410-02-M]

DEPARTMENT OF AGRICULTURE

Agriculture Marketing Service

COWTOWN HORSE AUCTION TURLOCK, CALIFORNIA, ET AL.

Posted Stockyards

Pursuant to the authority delegated under the Packers and Stockyards Act, 1921, as amended (7 U.S.C. *et seq.*), it was ascertained that the livestock markets named below were stockyards within the definition of that term contained in section 302 of the Act, as amended (7 U.S.C. 202), and notice was given to the owners and to the public by posting notices at the stockyards as required by said section 302, on the respective dates specified below.

Facility No., Name, and Location of Stockyard and Date of Posting:

California

CA—173 Cowtown Horse Auction, Turlock—Dec. 1, 1978.

Georgia

GA-185 Deep South Horse Action (Formerly: South Georgia Horse Auction, Inc., Quitman—Dec. 5, 1978.

Michigan

MI-144 St. Johns Horse Auction, Ashley—Jan. 5, 1979.

MI-143 Fenton Horse Sales, Inc., Fenton—Jan. 3, 1979.

Oklahoma

OK-198 Erin Springs Livestock Auction, Erin Springs—Nov. 25, 1978.

Texas

TX-316 San Saba Cattle Auction, Inc., San Saba—Dec. 1, 1978.

Virginia

VA-152 Farmers Livestock Market, Rose Hill—Nov. 30, 1978.

Done at Washington, D.C. this 15th day of January, 1979.

EDWARD L. THOMPSON,
Chief, Registrations, Bonds, and Reports Branch, Livestock Marketing Division.

[FR Doc. 79-2157 Filed 1-19-79; 8:45 am]

[3410-07-M]

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

COOPERATIVE AGREEMENT WITH NATIONAL SOCIETY OF PUBLIC ACCOUNTANTS

Gratuitous Services for Applicants and Borrowers/Grantees

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The Farmers Home Administration (FmHA) gives notice that it has entered into a Cooperative Agreement with the National Society of Public Accountants (NSPA) who will provide gratuitous services upon request, from FmHA applicants and borrowers/grantees in the areas of management assistance, recordkeeping, reporting, and preparation of financial statements.

FOR FURTHER INFORMATION, CONTACT:

Harry Puffenberger, 202-447-3394.

The Cooperative Agreement between FmHA and NSPA reads as follows:

Cooperative Agreement Between the U.S. Department of Agriculture, Farmers Home Administration (FmHA) and the National Society of Public Accountants (NSPA)

PREAMBLE

This joint agreement affirms the mutual desire of the Farmers Home Administration (FmHA) and the National Society of Public Accountants (NSPA) to cooperate in the establishment of their respective policies and procedures, to complement the activities of each other and for the NSPA to provide voluntary, technical and management assistance to FmHA applicants, borrowers and/or grantees.

I. PRIORITY

Both FmHA and NSPA place a high priority on providing sound financial advice and guidance to FmHA. applicants, borrowers and/or grantees in areas of management assistance, recordkeeping, and preparation of financial reports and statements.

Realizing that such assistance is available and desirable, it is therefore, appropriate for FmHA and the NSPA to enter into this agreement.

II. general guidelines

A. The FmHA administers its loan and grant programs through its State and County Offices. The NSPA will administer this program through the use of its local (chapter director) State affiliate president.

B. The FmHA State Directors and the NSPA (chapter directors) State affiliate presidents, or their designees, and appropriate officials at the National level will establish a liaison and periodically coordinate their activities to:

1. Assure that intended recipients receive the services needed and requested.
2. Define areas of mutual cooperation.
3. Provide maximum public benefit from the use of their respective resources.

III. AGREEMENT

A. The NSPA agrees to participate either independently or in conjunction with FmHA in educational programs, management counseling, training meetings, and other assistance in the areas of, but not limited to, recordkeeping, reporting and preparation of financial statements as requested by FmHA.

B. Upon request for assistance by the applicant, borrower/grantee the FmHA State Director will notify the NSPA who will designate an appropriate member at the local (chapter) level to provide the requested service.

C. The FmHA State Director's request will be forwarded directly to the appropriate (chapter director) State affiliate president as designated by the NSPA.

D. Upon completion of any counseling to applicants, borrowers and/or grantees and at monthly intervals during extended counseling cases, the local NSPA member through the (chapter director) State affiliate president will provide the FmHA State Director with a report of assistance rendered.

E. It is understood that such counseling or other assistance shall be performed by the NSPA members free of charge.

F. All information received and developed in the course of counseling by the NSPA member shall be kept in strict confidence. During the period of counseling the members will not:

1. solicit or accept compensation for any services to clients assigned to them;
2. recommend the purchase of goods or services from sources in which NSPA members have an interest or represent;
3. request or accept fees or commission from third parties who have supplied goods or services to a client upon NSPA members' recommendation; and
4. concurrently serve competing clients without full disclosure to all parties.

G. Upon completion of NSPA member services rendered voluntarily in accordance with the provisions of this agreement and the agreement between NSPA and the client, said members shall not be precluded from performing such services for compensation as requested by the client.

H. Since NSPA member's services are given voluntarily and gratuitously, it is understood and agreed that neither the NSPA nor any of its members will assert any claim for compensation for such services against FmHA, it's officials or employees prospec-

tive or existing, or the business-person counseled pursuant to this agreement. It is further understood and agreed that FmHA cannot assume any liability for any expense including, but not limited to, transportation and subsistence expenses incurred in providing services under this agreement. The NSPA reserves the right to accept or decline assignment and any member may withdraw from assignment and/or as volunteer at any time upon written notice to the FmHA and the client.

This Cooperative Agreement shall take effect upon the date of its execution, may be amended at any time by agreement of both parties, and shall remain in force until it is expressly abrogated by either of the parties.

For the United States Department of Agriculture, Farmers Home Administration.

Dated: September 22, 1978.

GORDON CAVANAUGH,
Administrator.

For the National Society of Public Accountants.

Dated: January 2, 1979.

MINOR S. SHIRK,
President.

[FR Doc. 79-2248 Filed 1-19-79; 8:45 am]

[6310-02-M]

CENTRAL INTELLIGENCE AGENCY

PRIVACY ACT OF 1974

New and Amended Records Systems

AGENCY: Central Intelligence Agency.

ACTION: Proposed New and Amended Record Systems.

SUMMARY: The Central Intelligence Agency proposes to add seven new records systems to the existing records systems subject to the Privacy Act of 1974, 5 U.S.C. 552(a), Pub. L. 93-579. Also proposed is the amendment of two records systems previously promulgated in the FEDERAL REGISTER. The Agency's systems of records were most recently published in the FEDERAL REGISTER at Vol. 42, No. 184, pp. 48050-48074, 22 September 1977.

DATES: All written comments received by the Central Intelligence Agency will be considered before final notice is promulgated in the FEDERAL REGISTER. These must be received by 19 March 1979.

ADDRESS: Interested persons are invited to participate in the formation of these systems by submitting such written data, views, or comments as they may desire to: Chief, Information and Privacy Staff, Central Intelligence Agency Washington, D.C. 20505

FOR FURTHER INFORMATION CONTACT:

Mr. George W Owens, Chief, Information and Privacy Staff, Central Intelligence Agency, Washington, D.C. 20505; phone 703-351-7486.

SUPPLEMENTARY INFORMATION: With the adoption of the proposed new systems of records, the Central Intelligence Agency would be permitted, in the case of: CIA—62, Office of Data Processing Security Clearance Records, to maintain current information on the clearance status of contractors, vendors, persons in the private sector and individuals in other government agencies that are associated with the Office of Data Processing; CIA—63, Security Access Records, to monitor accessing of Agency buildings by badged individuals and aid in the effective assignment of security personnel by the Office of Security; CIA—64, Inquiries from Private Individuals About CIA and its Mission, to ensure that inquiries from the general public were properly answered; CIA—65, Contact with the News Media and Index, to prepare a daily memorandum for the Director of Central Intelligence apprising him of the substance of telephone conversations with members of the various news media, which information is maintained on index cards; CIA—66, Manuscript Review, to maintain a record of what information proposed for release to the general public through speeches and published works of present and former Agency employees; CIA—67, Publishing and Speaking Engagement Clearances, to record clearance data for external speaking and publishing activities of present and former employees and permit awareness of what information was released to the public; and, CIA—68, CIA Personnel in Contact with Press, to maintain index cards on present and former employees who have had contact with the media. The amendment of CIA—20, Logistics Security Clearance Records, would permit its more efficient use through computer support. With the designation of CIA—64 through CIA—68 as records systems, certain changes were necessary in the description of CIA—39. Among other changes, the system name has been changed to read, "Publicity."

JOHN F BLAKE,
Deputy Director for Administration.

CIA—62

System name:

Office of Data Processing Security Clearance Records.

System location:

Central Intelligence Agency, Washington, D.C. 20505.

Categories of individuals covered by the system:

Commercial contractors and vendors, persons in the private sector associated with the Agency, and individuals in other government agencies contacted for liaison purposes.

Categories of records in the system:

Biographic data (name, date and place of birth, Social Security Account Number), company name and security clearances held.

Authority for maintenance of the system:

National Security Act of 1947, as Amended-Pub. L. 80-253.

Central Intelligence Agency Act of 1949, as Amended-Pub. L. 81-110.

Section 506(a), Federal Records Act of 1950 (44 U.S.C., Section 3101).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by Staff employees in conducting Agency business with the commercial sector and liaison with other government agencies.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Magnetic disc. Paper product is stored in combination lock safes or vaulted areas.

Retrievability:

By individual or company name, and Social Security Account Number.

Safeguards:

Access is limited to staff employees having a need-to-know and a coded password identifier.

Retention and disposal:

Records destroyed by degaussing or pulping upon expiration of clearance. Clearances may be revalidated three years after initial approval.

System manager(s) and address:

Director, Office of Data Processing, Central Intelligence Agency, Washington, D.C. 20505.

Notification procedure:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to:

Information and Privacy Coordinator, Central Intelligence Agency, Washington, D.C. 20505.

Identification requirements are specified in the CIA rules published in the FEDERAL REGISTER (32 CFR Sec. 1901.13). Individuals must comply with these rules.

Record access procedures:

Request from individuals should be addressed as indicated in the notification section above.

Contesting record procedures:

The Central Intelligence Agency's regulations for access to individual records, for disputing the contests thereof, and for appealing an initial determination by CIA concerning access to or correction of records, are promulgated in the CIA rules section of the FEDERAL REGISTER.

Record source categories:

Information obtained from individual concerned and certification of clearance from Office of Security.

CIA—63

System name:

Security Access Records.

System location:

Central Intelligence Agency, Washington, D.C. 20505.

Categories of individuals covered by the system:

Agency employees and other badged individuals accessing Agency buildings.

Categories of records in the system:

Badge number, building/entrance, year, Julian day, hour, entry or exit code.

Authority for maintenance of the system:

National Security Act of 1947, as Amended-Pub. L. 80-253.

Central Intelligence Agency Act of 1949, as Amended Pub. L. 81-110.

Section 506(a), Federal Records Act of 1950 (44 U.S.C., Section 3101).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

For routine administrative, managerial and security purposes in order to: a. Determine the frequency of access to Agency buildings of certain badged individuals to facilitate administration of badge reissuance criteria; b. Provide selected Agency managers with statistical data on building access patterns for resource planning purposes; c. Ascertain whether a give badged individual has accessed a specific Agency building entrance, including the date and time of such access.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper and magnetic media.

Retrievability:

Badge number, Julian date, time (hours/minutes), building/entrance, and entry or exit code.

Safeguards:

Records are maintained in a vault or combination lock safes. Access by Agency employees having a need-to-know and a coded password identifier.

Retention and disposal:

Records on individuals are retained for a maximum of six years after date of access. Records are destroyed by degaussing, pulping or burning.

System manager(s) and address:

Director of Security Central Intelligency Agency, Washington, D.C. 20505.

Notification procedure:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to:

Information and Privacy Coordinator, Central Intelligence Agency, Washington, D.C. 20505.

Indentification requirements are specified in the CIA rules published in the FEDERAL REGISTER (32 CFR Sec. 1901.13). Individuals must comply with these rules.

Record access procedures:

Request from individuals should be addressed as indicated in the notification section above.

Contesting record procedures:

The Central Intelligence Agency's regulations for access to individual records, for disputing the contents therof, and for appealing an initial determination by CIA concerning access to or correction of records, are promulgated in the CIA rules section of the FEDERAL REGISTER.

Records source categories:

Agency's magnetically encoded badge system, after-hours building log and "Visitor-No-Escort" badge record cards.

CIA—64

System name:

Inquiries from Private Individuals about CIA and its Mission.

System location:

Central Intelligence Agency, Washington, D.C. 20505.

Categories of individuals covered by the system:

Members of the general public who have written to CIA on matters of interest to the Office of Public Affairs.

Categories of records in the system:

Correspondence from the general public and the Agency's letter of response.

Authority for maintenance of the system:

Section 506(a), Federal Records Act of 1950 (44 U.S.C., Section 3101).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To ensure responsiveness to legistimate public concerns about the mission and function of CIA.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper.

Retrievability:

By name.

Safeguarads:

Files are stored in vaulted room or in combination lock safes; access is on a need-to-know basis.

Retention and disposal:

Destroyed by pulping after two years.

System manager(s) and address:

Office of Public Affairs, Central Intelligence Agency, Washington, D.C. 20505.

Notification procedure:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to:

Information and Privacy Coordinator, Central Intelligence Agency, Washington, D.C. 20505.

Identification requirements are specified in the CIA rules published in the FEDERAL REGISTER (32 CFR Sec. 1901.13). Individuals must comply with these rules.

Record access procedures:

Request from individuals should be addressed as indicated in the notification section above.

Contesting record procedures:

The Central Intelligence Agency's regulations for access to individual records, for disputing the contents thereof, and for appealing an initial determination by CIA concerning access to or corrections of records, are promulgated in the CIA rules section of the FEDERAL REGISTER.

Record source categories:

Correspondence from the general public for the Office of Public Affairs.

CIA—65

System name:

Contact with the News Media and Index.

System location:

Central Intelligence Agency, Washington, D.C. 20505.

Categories of individuals covered by the system:

Media representatives.

Categories of records in the system:

Written record of telephonic discussions with members of the press, radio, television or other news media. Includes daily memoranda to Director Central Intelligence—"Contacts with the Press." Cards 5" × 8" contain name and date of telephone call and index the written record of discussion.

Authority for maintenance of the system:

Section 506(a), Federal Records Act of 1950 (44 U.S.C., Section 3101).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by Agency officials to record the interests of journalists and to account for Agency information provided to them.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper.

Retrievability:

By name.

Safeguards:

Files stored in a vaulted room or combination lock safes; access upon request on a need-to-know basis.

Retention and disposal:

Permanent.

System manager(s) and address:

Office of Public Affairs, Central Intelligence Agency, Washington, D.C. 20505.

Notification procedure:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to:

Information and Privacy Coordinator, Central Intelligence Agency, Washington, D.C. 20505.

Identification requirements are specified in the CIA rules published in the FEDERAL REGISTER (32 CFR Sec. 1901.13). Individuals must comply with these rules.

Record access procedures:

Requests from individuals should be addressed as indicated in the notification section above.

Contesting record procedures:

The Central Intelligence Agency's regulations for access to individual records, for disputing the contents thereof, and for appealing an initial determination by CIA concerning access to or corrections of records, are promulgated in the CIA rules section of the FEDERAL REGISTER.

Record source categories:

Telephone inquiries from news media representatives and response.

CIA—66

System name:

Manuscript Review.

System location:

Central Intelligence Agency, Washington, D.C. 20505.

Categories of individuals covered by the system:

Present and former employees.

Categories of records in the system:

Manuscripts submitted for review.

Authority for maintenance of the system:

Section 506(a), Federal Records Act of 1950 (44 U.S.C., Section 3101).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Review manuscripts of proposed publications or speeches authored or given by present or former employees to prevent unauthorized disclosure of classified information.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper

Retrievability:

By name.

Safeguards:

Files are stored in a vaulted room or combination lock safes; access is on a need-to-know basis.

Retention and disposal:

Permanent.

System manager(s) and address:

Office of Public Affairs, Central Intelligence Agency, Washington, D.C. 20505.

Notification procedure:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to:

Information and Privacy Coordinator, Central Intelligence Agency, Washington, D.C. 20505.

Identification requirements are specified in the CIA rules published in the FEDERAL REGISTER (32 CFR Sec. 1901.13). Individuals must comply with these rules.

Record access procedures:

Request from individuals should be addressed as indicated in the notification section above.

Contesting record procedures:

The Central Intelligence Agency's requirements for access to individual records, for disputing the contents thereof, and for appealing an initial determination by CIA concerning access to or corrections of records, are promulgated in the CIA rules section of the FEDERAL REGISTER.

Record source categories:

Present and former employees.

CIA—67

System name:

Publishing and Speaking Engagement Clearances

System location:

Central Intelligence Agency, Washington, D.C. 20505.

Categories of individuals covered in the system:

Present and former employees.

Categories of records in the system:

Clearances for speeches and published works proposed for or in the public domain.

Authority for maintenance of the system:

Section 506(a), Federal Records Act of 1950 (44 U.S.C., Section 3101).

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

Used by Agency officials to review and provide clearance for external speaking and publishing activities and to be aware of information released into the public domain.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper.

Retrievability:

By name.

Safeguards:

Files are stored in a vaulted room or combination lock safes; access is on a need-to-know basis.

Retention and disposal:

Destroyed by pulping after three years.

System manager(s) and address:

Office of Public Affairs, Central Intelligence Agency, Washington, D.C. 20505.

Notification procedure:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to:

Information and Privacy Coordinator, Central Intelligence Agency, Washington, D.C. 20505.

Identification requirements are specified in the CIA rules published in the FEDERAL REGISTER (32 CFR 1901.13). Individuals must comply with these rules.

Record access procedures:

Request from individuals should be addressed as indicated in the notification section above.

Contesting record procedures:

The Central Intelligence Agency's regulations for access to individual records, for disputing the contents thereof, and for appealing an initial determination by CIA concerning access to or corrections of records, are promulgated in the CIA rules section of the FEDERAL REGISTER.

Record source categories:

Current and former CIA employees.

CIA—68

System name:

CIA Personnel in Contact with Press

System location:

Central Intelligence Agency, Washington, D.C. 20505.

Categories of individuals covered by the system:

Present and former CIA employees.

Categories of records in the system:

Card index of CIA employees who have reported a media contact.

Authority for maintenance of the system:

Section 506(a), Federal Records Act of 1950 (44 U.S.C., Section 3101).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

To maintain a record of employee press contacts.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper.

Retrievability:

By name.

Safeguards:

Files are stored in a vaulted room; access upon request on a need-to-know basis.

Retention and disposal:

Permanent.

System manager(s) and address:

Office of Public Affairs, Central Intelligence Agency, Washington, D.C. 20505.

Notification procedure:

Individuals seeking to learn if this system of records contains information about them should direct inquiries to:

Information and Privacy Coordinator, Central Intelligence Agency, Washington, D.C. 20505.

Identification requirements are specified in the CIA rules published in the FEDERAL REGISTER (32 CFR Sec. 1901.13). Individual must comply with these rules.

Record access procedures:

Request from individuals should be addressed as indicated in the notification section above.

Contesting record procedures:

The Central Intelligence Agency's regulations for access to individual records, for disputing the contents thereof, and for appealing an initial determination by CIA concerning access to or corrections of records, are promulgated in the CIA rules section of the FEDERAL REGISTER.

Record source categories:

Present and former employees.

CIA—20

System name:

Logistics Security Clearance Records.

System location:

Central Intelligence Agency, Washington, D.C. 20505.

Categories of individuals covered by the system:

Commercial contractors and vendors, persons in the private sector associated with the Agency, and individuals in other government agencies contacted for liaison purposes.

Categories of records in the system:

Biographic data including name, address, position, *Social Security Account Number,* and security clearance held.

Authority for maintenance of the system:

National Security Act of 1947, as Amended—Pub. L. 80-253.

Central Intelligence Agency Act of 1949, as Amended—Pub. L. 81-110.

Section 506(a), Federal Records Act of 1950 (44 U.S.C., Section 3101).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by staff employees in conducting Agency business with the commercial sector and liaison with other government agencies.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper, *magnetic disk.*

Retrievability:

By individual or company name, *and Social Security Account Number.*

Safeguards:

Paper product is stored in vaulted area or in combination lock sages. Access is on a need-to-know basis and coded password identifier.

Retention and disposal:

Records destroyed *by degaussing or pulping* upon expiration of clearance. Clearances may be revalidated three years after initial approval.

System manager(s) and address:

Director, Office of Logistics, Central Intelligence Agency, Washington, D.C. 20505.

Notification procedure:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to:

Information and Privacy Coordinator, Central Intelligence Agency, Washington, D.C. 20505.

Identification requirements are specified in the CIA rules published in the

FEDERAL REGISTER (32 CFR Sec. 1901.13). Individuals must comply with these rules.

Record access procedures:

Request from individuals should be addressed as indicated in the notification section above.

Contesting record procedures:

The Central Intelligence Agency's regulations for access to individual records, for disputing the contents thereof, and for appealing an initial determination by CIA concerning access to or correction of records, are promulgated in the CIA rules section of the FEDERAL REGISTER.

Record source categories:

Information obtained from individual concerned and certification of clearance from Office of Security.

CIA—39

System name:

Publicity.

System location:

Central Intelligence Agency, Washington, D.C. 20505.

Categories of individuals covered by the system:

Authors of *articles,* CIA employees, and other individuals mentioned in newspaper articles about CIA.

Categories of records in the system:

Newspaper articles:
By-lined articles mentioning CIA. Articles mentioning CIA. Correspondence *between media personalities and the Office of Public Affairs.*

Authority for maintenance of the system:

Section 506(a), Federal Records Act of 1950 (44 U.S.C., Section 3101).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Used by Agency officials researching articles on the CIA.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Paper.

Retrievability:

By name.

Safeguards:

Files are stored in a vaulted room; access upon request on a need-to-know basis.

Retention and disposal:

Permanent.

System manager(s) and address:

Office of Public Affairs, Central Intelligence Agency, Washington, D.C. 20505.

Notification procedure:

Individuals seeking to learn if this system of records contains information about them should direct their inquiries to:
Information and Privacy Coordinator, Central Intelligence Agency, Washington, D.C. 20505.

Identification requirements are specified in the CIA rules published in the FEDERAL REGISTER (32 CFR Sec. 1901.13). Individuals must comply with these rules.

Record access procedures:

Request from individuals should be addressed as indicated in the notification section above.

Contesting record procedures:

The Central Intelligence Agency's regulations for access to individual records, for disputing the contents thereof, and for appealing an initial determination by CIA concerning access to or corrections of records, are promulgated in the CIA rules section of the FEDERAL REGISTER.

Record source categories:

Newspaper articles and correspondence.

[FR Doc. 79-2076 Filed 1-19-79; 8:45 am]

[3510-24-M]

DEPARTMENT OF COMMERCE

Economic Development Administration

BELL HANDBAGS, INC.

Petition for Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing from seven firms: (1) Bell Handbags, Inc., 27 West 20th Street, New York, New York 10011, a producer of handbags (accepted January 9, 1979); (2) Tag-A-Long Handbags & Accessories, 650 Coe Avenue, East Haven Connecticut 06512, a producer of handbags (accepted January 9, 1979); (3) Peters Sportswear Company, Inc., 2243 West Allegheny Avenue, Philadelphia, Pennsylvania 19132, a producer of men's and boys' jackets, coats and suits (accepted January 9, 1979); (4) M & G Sportswear, Inc., 73 Martine Street, Fall River, Massachusetts 02723, a producer of boys' suits and jackets (accepted January 11, 1979); (5) Bedford Knitting Mills, 2961 Atlantic Avenue, Brooklyn, New York 11208, a producer of women's and girls' sweaters (accepted January 15, 1979); (6) Honey Bag Company, Inc., 270 Rider Avenue, Bronx, New York 10451, a producer of handbags (accepted January 16, 1979); and (7) H. Hertzberg & Son, Inc., 366 Highland Avenue, Middletown, New York 10940, a producer of brushes, brooms and mops (accepted January 16, 1979).

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (P.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 of the tenth calendar day following the publication of this notice.

JACK W. OSBURN, Jr.,
Chief, Trade Act Certification Division, Office of Planning and Program Support.

[FR Doc. 79-2170 Filed 1-19-79; 8:45 am]

[1505-01-M]

Industry and Trade Administration

UNIVERSITY OF ILLINOIS, URBANA-CHAMPAIGN CAMPUS, ET AL.

Applications for Duty Free Entry of Scientific Articles

Corrections

In FR Doc. 79-1076 appearing at page 2663 in the issue for Friday, January 12, 1979, make the following changes:

(1) On page 2664, first column, last paragraph, the first line should read "ARTICLE: JEM 100S Electron Mi-".

(2) On page 2664, third column, ninth line of the first full paragraph, "2127-0011" should read "2127-001"; and the file line should read:

"[FR Doc. 79-1076 Filed 1-11-79; 8:45 am]".

[3510-25-M]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing Import Restraint Levels

CERTAIN WOOL AND MAN-MADE FIBER TEXTILE PRODUCTS FOR THE SOCIALIST REPUBLIC OF ROMANIA

Correction

JANUARY 18, 1979.

On January 3, 1979, there was published in the FEDERAL REGISTER (44 F.R. 934) a letter dated December 28, 1978 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs establishing the import restraint levels for certain wool and man-made fiber textile products, produced or manufactured in the Socialist Republic of Romania, and exported to the United States during the twelve-month period beginning on January 1, 1979. The level of restraint set forth for Category 638/639 should have been 2,862,250 square yards equivalent. The units indicated for Category 433/434 should also read "square yards equivalent."

ARTHUR GAREL,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 79-2286 Filed 1-19-79; 8:45 am]

[3910-01-M]

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF SCIENTIFIC ADVISORY BOARD

Meeting

JANUARY 15, 1979.

The USAF Scientific Advisory Board Research and Geophysics Panel will meet on February 12 and 13, 1979 at Bolling Air Force Base, Washington, D.C. The purpose of the meeting is to review the basic research and plans for the Air Force. The Panel will meet from 9:00 a.m. to 4:30 p.m. each day.

This meeting will be open to the public. For further information contact the Scientific Advisory Board Secretariat at (202) 697-8845.

[FR Doc. 79-2171 Filed 1-19-79; 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:

Wednesday, 28 February 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 the intelligence data base required for intelligence assessments.

Dated: January 17, 1979.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

[FR Doc. 79-2214 Filed 1-19-79; 8:45 am]

[3810-70-M]

DEPARTMENT OF DEFENSE WAGE COMMITTEE

Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 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, March 6, 1979; Tuesday, March 13, 1979; Tuesday, March 20, 1979; and Tuesday, March 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 Pub. L. 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, 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 it 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 Chariman 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.

Dated: January 17, 1979.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

[FR Doc. 79-2213 Filed 1-19-79; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

NATIONAL PETROLEUM COUNCIL; REFINERY CAPABILITY TASK GROUP OF THE COMMITTEE ON REFINERY FLEXIBILITY

Meetings

Notice is hereby given that the Refinery Capability Task Group of the National Petroleum Council's Committee on Refinery Flexibility will meet at the National Petroleum Council (NPC) Headquarters, 1625 K Street, NW, Washington, DC, on February 6 and February 23, 1979.

The National Petroleum Council provides technical advice and information to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries. Accordingly, the Committee on Refinery Flexibility has been requested by the Secretary to undertake an analysis of the factors affecting crude oil quality and availability and the ability of the refining industry to process such crudes into marketable products. This analysis will be based on information and data

to be gathered by the Oil Supply, Demand, and Logistics Task Group and the Refinery Capability Task Group, whose efforts will be coordinated by the Coordinating Subcommittee.

The tentative agendas of both the Task Group sessions are indicated below. Meetings will begin at 9:00 a.m.

Agenda for the February 6, 1979 meeting of the Refinery Capability Task Group:

1. Review and approve summary/minutes of the January 10, 1979 meeting of the Task Group.
2. Review business conducted at the January 15, 1979 meeting of the Coordinating Subcommittee.
3. Discuss progress of the survey of U.S. refineries and the tabulation of output data.
4. Discuss second phase of the Task Group assignment.
5. Discuss other pertinent matters relating to the overall assignment of the Task Group.

Agenda for the February 23, 1979 meeting of the Task Group:

1. Review and approve summary/minutes of the February 6, 1979 meeting of the Task Group.
2. Review and discuss output of the survey of U.S. refineries and the preparation of a report to the Coordinating Subcommittee.
3. Discuss future work plans.
4. Discuss other matters pertinent to the overall assignment of the Task Group.

All meetings are open to the public. The Chairmen of the Task Group are empowered to conduct the meetings in a fashion that will, in their judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file written statement with either the Task Group or the Coordinating Subcommittee will be permitted to do so, either before or after the meetings. Members of the public who wish to make oral statements should inform Mr. Gene Peer, U.S. Department of Energy, (202) 633-9179, prior to the meetings, and reasonable provision will be made for their appearance on the agenda. Summary/minutes of the Task Group meetings will be available for public review at the Freedom of Information Public Reading Room, Room GA-152, Department of Energy, Forrestal Bldg., 1000 Independence Avenue, SW, Washington, DC, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on January 15, 1979.

ALVIN L. ALM,
Assistant Secretary, Policy and Evaluation.

[FR Doc. 79-2246 Filed 1-19-79; 8:45 am]

[6450-01-M]

Federal Energy Regulatory Commission

[Project No. 82]

ALABAMA POWER CO.

Land Withdrawal (Additional, Alabama)

JANUARY 12, 1979.

On February 7, 1977, the Alabama Power Company filed provisional map Exhibit K (FPC No. 82-96), in accordance with Article 41 of the license issued for the Mitchell Project, designated as Project No. 82, which, in part, required the Licensee to "include within the project boundary all islands in the project reservoir that are lands of the United States."

Therefore, in accordance with the provisions of Section 24 of the Act of June 10, 1920, as amended, notice is hereby given that the lands hereinafter described, insofar as title thereto remains in the United States, are from the date of February 7, 1977, reserved from entry, location or other disposal until otherwise directed by this Commission or by Congress:

ST. STEPHENS MERIDIAN, ALABAMA

T. 22 N., R., 16 E.,
Sec. 5, lots 1, 2, 3, 4, 5;
Sec. 8, lot 1.
T. 23 N., R. 16 E.,
Sec. 32, fractional C.

The area of United States lands reserved by this filing is approximately 23.75 acres. Portions of the above-described lands have been previously withdrawn by the filing of an application for license by the Licensee on November 3, 1920.

Copies of the aforementioned map exhibit have been transmitted to the U.S. Geological Survey and the Bureau of Land Management, Department of the Interior.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-2099 Filed 1-19-79; 8:45 am]

[6450-01-M]

[Docket No. RP72-89, et al.]

COLUMBIA GAS TRANSMISSION CORP., ET AL.

Order Construing Applications for Rehearing as Motions to Continue Curtailment Proceedings, Referring Such Motions to Presiding Administrative Law Judges, and Modifying Previous Order

JANUARY 12, 1979.

In the matter of Columbia Gas Transmission Corporation (Docket No. RP72-89), El Paso Natural Gas Company (Docket No. RP72-6 (Ignition and Flame Stabilization)), Mississippi River Transmission Company (Docket No. RP73-6), Montana Dakota Utilities Company (Docket No. RP76-91), Texas Eastern Transmission Corporation (Docket No. RP71-130, *et al.*), Cities Service Gas Company (Docket No. RP75-62), El Paso Natural Gas Company (Docket No. RP72-6), Kansas-Nebraska Pipeline Company (Docket No. RP76-90), Lehigh Portland Cement Company (Docket No. RP75-79) v. Florida Gas Transmission Company and Northern Natural Gas Company (Docket No. RP76-52, *et al.*)

Elizabethtown Gas Company (Elizabethtown), the Brooklyn Union Gas Company (BUG), and General Motors Corporation (GM) have applied for rehearing of the Commission's November 17, 1978, "Order Temporarily Suspending Curtailment Proceedings and Directing, the Convening of Conferences." [1] The applications of BUG and Elizabethtown concern the Texas Eastern Transmission Corporation (TETCO) curtailment proceeding, Docket No. RP71-130 *et al.* The GM application concerns the Cities Service Gas Company (Cities) curtailment proceeding, Docket No. RP75-62.

GM alleges that the Commission's order is arbitrary and capricious because it unnecessarily and injustifiably suspends the proceedings in the Cities case. The hearings in that case have been completed, briefs have been filed, and the proceeding is awaiting decision by the Administrative Law Judge. In our November 17th order we concluded that there might be issues in individual cases which were not affected by the Natural Gas Policy Act of 1978 (NGPA). In order to avoid unnecessary delay in the decision of those issues the Commission made provision for the Presiding Administrative Law Judge to determine whether or not the case should go forward on such issues. Essentially, GM is arguing that the Cities case should be permitted to go forward because it is not affected by NGPA. GM's filing of an application for rehearing is inappropriate. The November 17 order specifically provides a mechanism pursuant to which suspended cases may continue. GM's pleading before the Commission is, therefore, premature. As hereinafter provided, it shall be referred to the Presiding Judge for his consideration.

Both Elizabethtown and BUG urge the Commission to go forward with its decision in the TETCO curtailment proceeding. They point out that an initial decision in this proceeding was issued on August 10, 1978, and that briefs have now been filed with the Commission. BUG points out that while the Commission provided a

[1] This order was issued in numerous curtailment dockets with the lead docket being Columbia Gas Transmission Corporation, Docket No. RP72-89.

mechanism to permit cases before Administrative Law Judges to go forward on issues not relating to NGPA, it did not provide a similar mechanism for those cases pending before the Commission. Our November 17th order remanded cases pending before the Commission to the Presiding Administrative Law Judges solely for the purpose of preparing reports on the impact of the NGPA on the individual curtailment proceedings. The timing of those reports was made contingent upon the adoption of a rule under Section 401 of the Natural Gas Policy Act. BUG and Elizabethtown argue that this delay is unwarranted in the TETCO curtailment case due to the nature of the issues still pending.

In response to the applications of BUG and Elizabethtown we will modify the provisions of our previous order and provide a procedure for the continued adjudication of those cases pending before the Commission. Where the parties to those proceedings contend that NGPA will not have an effect on the issues remaining to be decided thay may petition the Presiding administrative Law Judge to prepare a report to that effect based on the parties and the Administrative Law Judge's evaluation of the case. Such report shall state whether or not the case should go forward and whether or not the parties' contentions that NGPA does not affect this case are correct. It may be filed with the Commission at any time.[2]

In order to avoid a duplication of filings in this instance, however, we will treat the applications for rehearing filed in this proceeding by Elizabethtown, Brooklyn Union, and General Motors as applications to have certain proceedings continue notwithstanding our November 17 order. accordingly, they will be referred to the Presiding Administrative Law Judge in each case for any action deemed appropriate in light of our orders.

In our November 17, 1978, order we neglected to formally remand *El Paso Natural Gas Company*, Docket No. RP72-6 (Ignition and Flame Stabilization) from the Commission to the Presiding Administrative Law Judge. This shall be done herein.

The Commission orders:

(A) The petitions for rehearing filed by BUG, Elizabethtown, and GM shall be treated as applications for the continuation of curtailment proceedings.

(B) Such applications are hereby referred to the Presiding Judges in each case for consideration.

(C) The November 17, 1978, order in *Columbia Gas Transmission Corporation, et al.*, Docket Nos. RP72-89, *et al.*, is hereby modified to provide for a mechanism for the continuation of cases pending before the Commission, as hereinbefore discussed.

(D) Ordering paragraph (B). of the November 17, 1978, order in *Columbia Gas Transmission Corporation, et al.*, Docket Nos. RP72-89, *et al.* is hereby modified to include the remand of *El Paso Natural Gas Company*, Docket No. RP72-6 (Ignition and Flame Stabilization), as hereinbefore discussed.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-2100 Filed 1-19-79; 8:45 am]

[2]In this regard, the Presiding Judge is free to determine the appropriate procedure to be followed in each instance. For example, it may not be necessary to convene an all parties conference to consider the arguments of one or more of the parties that a case before the Commission should go forward. Similarly, the Presiding Judge may determine whether an opportunity to file responsive pleadings is necessary or appropriate in the circumstances.

[6450-01-M]

[Docket No. RP79-16]

FLORIDA GAS TRANSMISSION CO.

Pipeline Rates: Suspension; Order Accepting for Filing and Suspending Certain Proposed Tariff Sheets, Subject to Conditions, Rejecting Other Proposed Tariff Sheet, Granting Waiver, and Establishing Procedures

JANUARY 10, 1979.

On December 11, 1978, Florida Gas Transmission Company (Florida Gas) tendered for filing proposed changes in its FERC Gas Tariff, Original Volumes Nos. 1, 2 and 3.[1] The proposed rate changes would be effective January 12, 1979, and reflect an increase in revenues of $18,479,200, or approximately 10.6%, from jurisdictional sales and service under Rate Schedules G, I, T-3 and X-6.

Public notice of Florida Gas' filing was issued on January 5, 1979, providing for protests or petitions to intervene to be filed on or before January 18, 1979.

Florida Gas proposes an overall rate of return of 11.89%, and states that the need for higher rates is attributable to two principal factors: the termination of its original transportation services under Rate Schedules T-1 and T-2, and a general increase in all its operating costs. Florida Gas' proposed rates[2] also include the cost impact of the Louisiana First Use Tax, which becomes effective April 1, 1979, prior to the end of the test period. Further, Florida Gas proposes to change the minimum annual bill provisions contained in Rate Schedule G,[3] to update the payment provision for make-up gas.

In addition, Florida Gas requests waiver of Section 154.63(e)(2)(ii), to permit the inclusion in its proposed rates of costs of gas purchased facilities which have not been certificated. It also seeks waiver of Sections 154.22, 154.51 and 154.64 of the Commission's Regulations to permit the filing of cancellation notices for Rate Schedules T-1 and T-2 more than 60 days prior to the effective date of such cancellations.

Florida Gas requests that, in the event the Commission suspends the proposed rates, such suspension be for a period of four months and twenty days, until June 2, 1979, rather than the statutory five month period. In support of this request, Florida Gas states that, with the termination of Rate Schedules T-1 and T-2 on June 1, 1979 and June 11, 1979, respectively, there would be no protection for the unit cost increase caused by the termination during the period of June 2, 1979 to June 12, 1979. Without the shorter suspension period, Florida Gas estimates it would lose approximately $165,000 in revenues over the ten day transitional period. We believe Florida Gas has shown good cuase for this request.

Based upon a review of Florida Gas' filing, the Commission finds that the proposed rate increase has not been shown to be just and reasonable, and may be unjust, unreasonable, and unduly discriminatory, or otherwise unlawful. Accordingly, the Commission will accept the tariff sheets noted below, suspend their use for four months and twenty days until June 2, 1979, subject to refund and the conditions set forth below, and will set the matter for hearing. This acceptance is conditioned upon Florida Gas' reflecting the effective GRI Funding Unit on the effective date of the increased rates, as well as any resulting reductions in R&D costs, as per FERC Opinion No. 30.

We will reject proposed Twenty-first Revised Sheet No. 3-A to Florida Gas' FERC Gas Tariff, Original Volume No. 1. This proposed tariff sheet includes costs associated with the Louisiana First Use Tax. Order No. 10-A, issued December 20, 1978, prohibits the inclusion of the cost impact of this tax in Section 4 rate cases until the

[1]Proposed revisions to FERC Gas Tariff, Original Volume No. 1 are as follows: Twenty-first Revised Sheet No. 3-A, Alternate Twenty-first Revised Sheet No. 3-A, Fourth Revised Sheet No. 5, and First Revised Sheet No. 17. Proposed revisions to FERC Gas Tariff, Original Volume No. 2 are contained in: Twelfth Revised Sheet No. 128, First Revised Sheet No. 2 and First Revised No. 43. Finally, revisions to Original Volume No. 3 are set forth in proposed First Revised Sheet No. 126.

[2]Twenty-first Revised Sheet No. 3-A to FERC Gas Tariff, Original Volume No. 1.

[3]Fourth Revised Sheet No. 5 to FERC Gas Tariff, Original Volume No. 1.

tax is determined to be valid and constitutional by a valid and non-appealable court order. Accordingly, we will reject this tariff sheet and accept for filing the proposed alternate tariff sheet which eliminates these costs, Alternate Twenty-first Revised Sheet No. 3-A. This rejection is without prejudice to Florida Gas' right to file tariff sheets in accordance with the provisions of Order No. 10-A.

Florida Gas' filing includes costs associated with facilities which are uncertificated and not in service, and accordingly, seeks waiver of § 154.63(e)(2)(ii) of the Commission's Regulations. The Commission will grant such waiver, on condition that on or before June 2, 1979, Florida Gas file revised tariff sheets to reflect the elimination of costs associated with facilities not in service on or before that date and upon the further condition that Florida Gas shall not be permitted to make offsetting adjustments to the suspended rates prior to hearing, except for those adjustments made pursuant to Commission approved tracking provisions, those adjustments required by this order, and those adjustments required by other Commission orders.

The Commission will also grant the requested waiver of §§ 154.22, 154.51, and 154.64 of the Commission's Regulations, to permit the filing of notices of cancellation [4] of Rate Schedules T-1 and T-2 more than 60 days prior to cancellation. Florida Gas currently renders transportation services to Florida Power Corporation and Florida Power & Light Company under these rate schedules. These rate schedules will terminate by their own terms on June 1, 1979 and June 11, 1979, respectively. This waiver does not, of course, relieve Florida Gas of its obligation to file an application for abandonment under Section 7(b) of the Natural Gas Act, and acceptance for filing of the notices of cancellation is subject to Florida Gas' filing an application for abandonment.

Florida Gas' filing contains certain miscellaneous tariff changes. The first [5] is a proposal to change the minimum billing provision in Rate Schedule G to update the payment provision for makeup gas. The proposal would change the provision to require payment for makeup gas at the price difference during the time the make-up right was incurred and the time the gas is delivered. The second proposed change in tariff [6] would change the billing and payment provision of the General Terms and Conditions to require payment by the twentieth rather than the fifteenth, and would increase the interest rate on overdue payments from six per cent to twelve per cent. We will accept these tariff sheets for filing, and suspend their use for a period of four months and twenty days, until June 2, 1979, after which time they will be in operation subject to refund.

(A) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 8, and 15 thereof, and the Commission's rules and regulations, a public hearing shall be held concerning the lawfulness of the increased rates proposed by Florida Gas.

(B) Pending hearing and decision, and subject to the conditions enumerated in the body of this order and Ordering Paragraph (C), below, Florida Gas' Alternate Twenty-first Revised Sheet No. 3-A to FERC Gas Tariff, Original Volume No. 1, Twelfth Revised Sheet No. 128 to FERC Gas Tariff, Original Volume No. 2, First Revised Sheet No. 126 to FERC Gas Tariff, Original Volume No. 3, Fourth Revised Sheet No. 5 to FERC Gas Tariff, Original Volume No. 1, and First Revised Sheet No. 17 to FERC Gas Tariff, Original Volume No. 1 are accepted for filing and suspended for four months and twenty days, until June 2, 1979, when they may become effective subject to refund, in the manner prescribed by the Natural Gas Act.

(C) Acceptance for filing of the tariff sheets enumerated in Ordering Paragraph (B) is conditioned upon Florida Gas' reflecting the effective GRI Funding Unit on the effective date of the increased rates and any resulting reduction in costs, as per Opinion No. 30.

(D) Waiver of § 154.63(2)(ii) is granted upon condition that Florida Gas file substitute revised tariff sheets reflecting the elimination of costs associated with facilities not in service on or before June 2, 1979, and upon the further condition that Florida Gas shall not be permitted to make offsetting adjustments to the suspended rates prior to hearing, except for those adjustments made pursuant to Commission approved tracking provisions, those adjustments required by this order, and those adjustments required by other Commission orders.

(E) Twenty-first Revised Sheet No. 3-A to FERC Gas Tariff, Original Volume No. 1, which includes the cost impact of the Louisiana First Use Tax, is rejected without prejudice to Florida Gas' right to file tariff sheets in accordance with the provisions of Order No. 10-A.

(F) Waiver of §§ 154.22, 154.51 and 154.64 is granted, and the notices of cancellation of Rate Schedules T-1 and T-2 contained in First Revised Sheet No. 2 to FERC Gas Tariff, Original Volume No. 2 and First Revised Sheet No. 43 to Original Volume No. 2 are accepted for filing, conditioned upon Florida Gas' filing an appropriate application for abandonment pursuant to Section 7(b) of the Natural Gas Act.

(G) The Commission Staff shall prepare and serve top sheets on all parties on or before May 13, 1979.

(H) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose (18 CFR 3.5(d)), shall convene a settlement conference in this proceeding to be held within 10 days after the service of top sheets by the Staff, in a hearing or conference room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The Presiding Administrative Law Judge is authorized to establish such further procedural dates as may be necessary, and to rule upon all motions (except motions to consolidate, sever, or dismiss), as provided for in the rules of practice and procedure.

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc. 79-2101 Filed 1-19-79; 8:45 am]

[4] First Revised Sheet No. 2 to FERC Gas Tariff, Original Volume No. 2; First Revised Sheet No. 43 to FERC Gas Tariff, Original Volume No. 2.

[5] Fourth Revised Sheet No. 5 to FERC Gas Tariff, Original Volume No. 1.

[6] First Revised Sheet No. 17 to FERC Gas Tariff, Original Volume No. 1. 110*The Commission orders:*

[6450-01-M]

[Docket Nos. ER78-166, ER79-22, EL78-40, and EL78-42]

GEORGIA POWER CO.

Filing of Proposed Settlement Agreements

JANUARY 12, 1979.

Take notice that on January 5, 1979, the Georgia Power Company filed a proposed Settlement Agreement concerning settlement of the issues raised in its proposed Partial Requirements—3 wholesale rate increase in Docket No. ER78-166; the respective complaints filed in Docket Nos. EL78-40 and EL78-42; as well as the Company's amendment to its filing in Docket No. ER79-22. The Company also filed on the same date an Offer Of Settlement concerning the proposed wholesale rate increase for its Full Requirements—1 rate in Docket No. ER78-166. These proposed settlements were filed with the Presiding Administrative Law Judge.

On January 9, 1979, the Presiding Administrative Law Judge certified these instruments to the Commission for its consideration and determination.

The proposed Settlement Agreement for the PR-3 rate would revise downward the tariff originally filed in this proceeding by changing therein the

"Schedule of Monthly Charges for Capacity" to the following:

Type of Service and Monthly Charge

Unreserved base capacity, $4.93 per kW.
Unreserved intermediate capacity, 2.79 per kW.
Unreserved peaking capacity, 2.70 per kW.
Reserve capacity, 3.37 per kW.

A 13.50% alllowance was utilized for the return on common equity in the Settlement proposal. The Settlement Agreement would also revise the Determination of the Unit Energy Charges as well as the Determination of the Monthly Energy Charges.

The Offer Of Settlement by the Company concerning the FR-1 rate would lower that proposed rate increase. Specifically, the Offer would charge the City of Hampton an annual demand charge of $170,705 and an annual energy charge of $117,130 totaling $287,835. The City of Acworth would be charged an annual demand charge of $369,074 and an annual energy charge of $350,961 totaling $720,035. The total increased revenues would be $1,007,870 compared to the filed rate increase revenues of approximately $1,065,000.

Any person wishing to do so may submit comments in writing concerning the proposed Settlement Agreement and the Offer Of Settlement to the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 on or before January 26, 1979. The proposed settlements are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-2102 Filed 1-19-79; 8:45 am]

[6450-0-M]

[Docket No. ER79-58]

METROPOLITAN EDISON CO.

Order Accepting For Filing and Suspending Proposed Rate Increase, Denying Motion, Granting Intervention, Providing for Hearing, and Establishing Price Squeeze Procedures

JANUARY 12, 1979.

On November 13, 1978, Metropolitan Edision Company (Met Ed) tendered for filing a proposed rate increase for five full requirements and one partial requirements customer.[1] The proposed rate would result in increased revenues of approximately $3,637,944 (39.59%) for the full requirements customers and $1,134,552 (37.0%) for the partial requirements customer. This total $4,772,496 increase (38.9%) is based on the twelve month test period ending December 31, 1979. Met Ed requests an effective date of January 12, 1979, 60 days after filing.

Notice of the instant filing was issued on November 24, 1978, with protests or petitions to intervene due on or before December 18, 1978. Four such petitions have been submitted.

Allegheny Electric Cooperative, Inc. (Allegheny) and the Borough of Goldsboro (Goldsboro) protest the proposed rate as excessive.[2] In addition, their petition sets forth a number of specific objections to Met Ed's cost of service and cost allocations, including the use of the superseded 48% federal income tax rate and the inclusion of a tax adjustment clause in the proposed rate schedule for Allegheny, which the petition states should be rejected.

The petition requests that the Commission suspend the proposed rates for the full five month statutory period; set the matter for hearing and grant the parties intervention in the proceeding.

The Borough of Kutztown (Kutztown) filed a protest and petition to intervene,[3] claiming that the proposed return on common equity is excessive and that the cost of service is substantially overstated. Furthermore, the petition alleges that the proposed increase will create an illegal price squeeze. Kutztown also asserts that the proposed increase exceeds the President's recently announced wage/price guidelines. The petition urges the Commission to suspend Met Ed's proposed rate schedules for five months and grant Kutztown leave to intervene in the proceeding.

On December 19, 1978, Hershey Electric Company (Hershey Electric) filed an untimely petition to intervene. The petition states that Hershey Electric is a customer of Met Ed whose interests would not be adequately represented by any other party. Hershey Electric also petitions the Commission to exercise its discretion to suspend the proposed rates for five months.

On December 18, 1978, Hershey Foods Corporation (Hershey) filed a protest and petition to intervene. In support of its petition, Hershey asserts that it is a retail customer of Hershey Electric and that any increase in the rates Met Ed charges Hershey Electric will be passed through to Hershey.

Our review indicates that the proposed rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful. In light of this review and our determination that the allegations presented in the submitted petitions present questions of law and fact more appropriately considered at hearing, the Commission shall accept the submittal for filing and suspend the rates for five months, to become effective June 13, 1979, subject to refund.

With respect to the tax adjustment clause included in the proposed rate schedule for Allegheny, we note that any adjustment the Company may wish to make in its rate schedule to implement this clause shall be treated as a proposed rate change under Section 35.13 of our Rules; it must be tendered for filing with appropriate cost support and is subject to Commission approval. However, the request for rejection of this clause shall be denied.

We also note the Company's use of a 48% federal income tax rate rather than the current 46% rate. The 46% figure is the appropriate one and Met Ed shall be required to file within 60 days revised rates and accompanying cost support incorporating the 46% tax rate. Although we are mindful that this refiling will place some burden on the Company, this burden is outweighed by the fact that the cost of refiling is far less than that amount of excess revenue which would be generated through the use of the 48% tax rate.

Pursuant to the policy set forth in Order No. 563, and in Section 2.17 of our Regulations, we find it is appropriate that price squeeze procedures be initiated in this case.

The Commission finds that participation in this proceeding by Allegheny, Goldsboro, Kutztown, Hershey Electric and Hershey may be in the public interest.[4]

The Commission orders:

(A) The rates proposed by Metropolitan Edison Company are hereby accepted for filing and suspended for five months, to become effective as of June 13, 1979, subject to refund.

(B) Pursuant to Section 2.17 of the Commission's Regulations, we hereby order initiation of price squeeze procedures.

(C) The petitioners, Allegheny Electric Cooperative, Inc., the Borough of Goldsboro, the Borough of Kutztown, Hershey Electric Company and Hershey Foods Corporation, are hereby permitted to intervene in this proceeding subject to the Rules and Regulations of the Commission; *Provided, However,* that participation by such intervenors shall be limited to the matters set forth in their petitions to

[1] See Attachment A.

[2] In support of their petition, filed December 18, 1978, the parties state that they are customers of Met Ed whose interests will be directly affected by Commission action and are not adequately represented by any other parties.

[3] Filed December 18, 1978. Kutztown states that, as a customer of Met Ed, it has a substantial interest in Commission action in this Docket.

[4] Despite Hershey Electric's untimely filing, the Commission finds that, since participation by Hershey Electric may be in the public interest, it is appropriate to grant it leave to intervene.

intervene; and *Provided, further,* that the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(D) The motion to reject the proposed tax adjustment clause is herby denied.

(E) Metropolitan Edison is hereby ordered to refile within 60 days of the issuance of this order new rates and cost support incorporating the 46% federal income tax rate.

(F) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the DOE Act and by the Federal Power Act and pursuant to the Commission's Rules of Practice and Procedure and the Regulations under the Federal Power Act (18 CFR, Chapter I), a public hearing shall be held concerning the justness and reasonableness of the rates proposed by the Metropolitan Edison Company.

(G) The Staff shall serve top sheets in this proceeding on or before June 17, 1979.

(H) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge shall convene a conference in this proceeding to be held within ten (10) days of the serving of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D. C. 20426. The designated Law Judge is authorized to establish procedural dates and to rule upon all motions (except motions to consolidate or sever and motions to dismiss), as provided for in the Commission's Rules of Practice and Procedure. The Presiding Administrative Law Judge shall convene a prehearing conference with fifteen (15) days of the issuance of this order for the purpose of hearing intervenors' requests for data required to present their case, including *prime facie* showing, on price squeeze issues.

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

By the Commission

KENNETH F. PLUMB,
Secretary.

ATTACHMENT A.—METROPOLITAN EDISON COMPANY TARIFF AND RATE SCHEDULE DESIGNATIONS

Designation and Description

Met Ed Electric Tariff; Original Volume No. 1.

Fourth Revised Sheet No. 13 (Supersedes Third Revised Sheet No. 13) Third Revised Sheet No. 14 (Supersedes Second Revised Sheet No. 14); Rate RP.

Fourth Revised Sheet No. 15 (Supersedes Third Revised Sheet No. 15) Fourth Revised Sheet No. 16 (Supersedes Third Revised Sheet No. 16); Rate RT.

Fifth Revised Sheet No. 17 (Supersedes Fourth Revised Sheet No. 17); Fuel Clause.

Supplements for Service to Allegheny Electric Cooperative:

Supplement No. 16 to Rate Schedule FPC No. 43; Supplemental Power and Energy.

Supplement No. 17 to Rate Schedule FPC No. 43; Fuel Clause.

Supplement No. 18 to Rate Schedule FPC No. 43; Wheeling of Authority Power.

Full Requirements and Partial Requirements

Boroughs of Goldsboro, Lewisberry, Royalton, and Kutztown and the Hershey Electric Company; Allegheny Electric Cooperative, Inc.

[FR Doc. 79-2103 Filed 1-19-79; 8:45 am]

[6450-01-M]

[Docket Nos. CP78-237 and CP66-110]

NORTHERN NATURAL GAS CO. AND GREAT LAKES GAS TRANSMISSION CO.

Order Consolidating Applications, Granting Certain Interventions, Denying Certain Late Interventions, and Providing for Formal Hearing Upon Approval of Import Authorization by the Economic Regulatory Administration

JANUARY 12, 1979.

On March 17, 1978, as supplemented on November 16, 1978, Northern Natural Gas Company (Northern) filed in Docket No. CP78-237 an application pursuant to Sections 3 and 7 of the Natural Gas Act for authorization to import synthetic natural gas (SNG) from Canada by displacement and for a certificate of public convenience and necessity authorizing Northern to receive and transport the imported volumes through its transmission system and for an order approving certain rate treatment. In conjunction with Northern's application, Great Lakes Gas Transmission Company (Great Lakes) on April 20, 1978, filed a petition to amend its authorizations in Docket Nos. CP66-110, *et al.*, to permit deliveries by means of displacement of the gas which Northern is proposing to import in Docket No. CP78-237. Northern's and Great Lakes' proposals are more fully set forth in their respective applications, as supplemented.

Northern and Great Lakes have also filed applications with the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) for import authorizations pursuant to Section 3 of the Natural Gas Act. These applications were consolidated by ERA by order of June 29, 1978, in ERA Docket No. 78-002 NG, *et al.* The Administrator of ERA has been authorized to determine whether the proposed import will not be inconsistent with the public interest by Sections 301 and 402(f) of the Department of Energy Organization Act, Pub. L. 95-91, and DOE Delegation Order Nos. 0204-4 (42 FR 60726, November 29, 1977) and 0204-25 (43 FR 47772). Pursuant to Sections 3, 4, and 7 of the Natural Gas Act, Subsections 402(e) and (f) and Section 642 of the DOE Act, and DOE Delegation Order No. 0204-26 (October 17, 1978, 43 FR 47772), the Commission has jurisdiction over certain aspects of Northern's and Great Lakes' applications. As of the date of this order, neither ERA nor the Commission has rendered a decision on the subject applications.

Northern seeks authorization to import from Canada and to receive and transport in its system up to 75,000 Mcf of gas per day for five winter seasons (November 1 through March 31) with annual volumes not to exceed 10 Bcf. Deliveries would commence after receipt of all necessary regulatory approvals. Northern proposes to purchase this gas from Union Gas Limited (Union) of Chatham, Ontario, pursuant to a contract dated December 21, 1977. The gas Northern would purchase from Union would be the equivalent on an aggregate Btu basis of synthetic natural gas (SNG) which Union has contracted for and would receive from Petrosar Limited (Petrosar) at Corunna, Ontario, pursuant to a contract between Union and Petrosar dated November 20, 1974. The SNG is produced in a plant located near Sarnia, Ontario, using western Canadian crude oil as feedstock. The plant's capacity is 33,000 Mcf per day.

It is proposed that from April 1 through November 1 of each contract year, Union would store for Northern's account the total output of the Petrosar plant. During the winter period, Northern would nominate deliveries from Union of up to 75,000 Mcf per day, which would come from Petrosar's daily output and from SNG placed in storage. Northern would use these supplies to meet peak day requirements.

Union's gas would be delivered to Northern through arrangements with TransCanada PipeLines Limited (TransCanada) and Great Lakes. Great Lakes has an existing arrangement with TransCanada whereby TransCanada delivers gas to Great Lakes at the Minnesota-Manitoba border near Emerson, Manitoba, and Great Lakes transports the gas and redelivers it to TransCanada at the Michigan-Ontario border near St. Clair, Michigan. TransCanada transports and sells a portion of these redelivered volumes to Union at Dawn, Ontario. Great Lakes also transports gas for the account of Northern from the Emerson import point to interconnecting points with Northern at Carlton

and Grand Rapids, Minnesota and Wakefield, Michigan. On days when Northern requests gas from Union, Great Lakes would reduce its deliveries to Union by an equivalent volume. Union would reduce the volumes of SNG held in storage for Northern's account, and would use this gas to serve its own market. Great Lakes would then deliver the additional volumes received from TransCanada (attributable to the SNG volumes) and deliver this gas to Northern at the three interconnection points with Northern, with Carlton as the primary delivery point.

Great Lakes has entered into an agreement with TransCanada whereby gas delivered to Northern under the Northern-Union agreement would for billing purposes be included as gas delivered by Great Lakes to TransCanada at St. Clair, Michigan under the transportation contract between Great Lakes and TransCanada dated September 12, 1967. Northern would not be charged by Great Lakes for the transportation service provided.

Pursuant to the contract between Northern and Union, Northern would pay Union a contract price which is based on a formula which does not have a cost of service derivation. The price for the SNG is related to the value of the various petrochemical products created by Petrosar at its plant and the plant's feedstock costs which, in turn, are related to the price of crude oil in Alberta. Northern would also pay a monthly demand charge and a commodity charge for the storage service.

Northern says that the total average incremental cost per Mcf of the subject gas (including storage) would be $3.86 in 1978–79, and would increase to $5.33 in 1982–83. On a rolled-in basis, the effect on Northern's annual system cost per Mcf of sales would be 4.26 cents in 1978–79, and would increase to 8.47 cents in 1982–83.

Northern contends that it needs the SNG to serve high-priority customers on its system. Northern asserts that without the SNG, it will need to curtail into priority categories 1, 2B, 2C, and 3 of its curtailment plan.[1]

Northern requests that it be permitted to recover the cost of the purchase of SNG on a rolled-in basis. In addition, Northern's proposed tariff provides that the costs of SNG may be included in its annual Purchased Gas Adjustment (PGA) filings. In its March 17, 1978, application, Northern also sought authority to include a surcharge in its 1978 PGA rate filing to be effective only during the year 1979 to recover the estimated cost of SNG to be incurred during November and December 1978. Northern asserted that the surcharge is required in order to avoid deferring until 1980 collection of an estimated $12.8 million in purchased gas costs.

In August 1978, the National Energy Board of Canada issued an export license to Union

Northern's application and Great Lakes' petition to amend are companion filings for one project. We find that the expeditious management of these applications would be best served by consolidating them, and we so order.

In Docket No. CP78-237, timely notices of intervention or petitions to intervene were filed by the following:

(1) Iowa Public Service Company
(2) Iowa Electric Light and Power Company
(3) Northwestern Public Service Company
(4) Northern Illinois Gas Company
(5) Terra Chemicals International, Inc.
(6) Northern Municipal Defense Group and Minnesota Municipal Utilities Association
(7) Iowa Power and Light Company
(8) Union Gas Limited
(9) Wisconsin Power and Light Company
(10) Wisconsin Gas Company
(11) Metropolitan Utilities District of Omaha
(12) Iowa-Illinois Gas and Electric Company
(13) Greeley Gas Company
(14) Nebraska Natural Gas Company

Untimely notices of intervention or petitions to intervene were filed by the following:

(1) Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)
(2) TransCanada PipeLines Limited
(3) Michigan Public Service Commission
(4) Minnesota Gas Company
(5) Public Service Commission of Wisconsin
(6) Kansas-Nebraska Natural Gas Company, Inc.
(7) Northern Central Public Service Company, Division of Donovan Companies, Inc.
(8) North Central Public Service Corporation
(9) Iowa Southern Utilities Company
(10) Columbia LNG Corporation

In Docket Nos. CP66-110, *et al.*, Union, TransCanada, and Wisconsin Gas Company filed timely petitions for leave to intervene.

Those interveners who filed timely petitions are granted leave to intervene. Of those interveners who filed petitions to intervene out-of-time, only Columbia LNG Corporation and TransCanada stated any justification for their late filings. Columbia LNG Corporation's and TransCanada's petitions to intervene, therefore, shall be granted; the others shall be denied. See *Trunkline Gas Co., et al.*, Docket No. CP78-386, order issued November 15, 1978. The notices of intervention of the Michigan Public Service Commission and the Public Service Commission of Wisconsin are also granted.

In Docket No. CP78-237, the Metropolitan Utilities District of Omaha (Omaha) filed a timely request for a formal hearing. On the basis of Northern's and Great Lakes' applications, Northern's responses to Staff deficiency letters, and Omaha's request for a formal hearing, we believe that the subject application should be set for formal hearing on the following general issues:

(1) Do Northern's winter market requirements necessitate the purchase of this SNG?
(2) Are there less expensive sources of supply available to Northern to meet Northern's winter requirements?
(3) Should Northern receive PGA rate treatment for the cost of the SNG?

These issues are one which the Commission normally addresses in determining whether to grant a certificate of public convenience and necessity under Section 7 of the Natural Gas Act. DOE Delegation Order No. 0204-26 specifies that all functions under Sections 4, 5, and 7 of the Natural Gas Act are to be exercised by the FERC, as well as certain other functions within the purview of Section 3 of the Natural Gas Act. Delegation Order No. 0204-25 delegates to the Administrator of the ERA the authority to determine whether the importation is not inconsistent with the public interest under Section 3 of the Natural Gas Act on the basis of the following considerations:

(1) The security of supply and effect on U.S. balance of payments;
(2) The price proposed to be charged at the point of importation;
(3) Consistency with duly promulgated and published regulations or statements of policy of the Department of Energy specifically applicable to imports of natural gas;
(4) National need for the natural gas to be imported;
(5) Such other matters within the scope of Section 3 of the Natural Gas Act as the Administrator shall find in the circumstances of a particular case to be appropriate for his determination, including:
(A) Regional needs for the natural gas to be imported;
(B) The eligibility of purchasers and participants and their respective shares.

In general, the delegation orders provide that ERA is to determine whether the proposed import is consistent with the national interest and the national and regional need for gas. The Commission is to determine

[1] Northern's curtailment plan consists of the following priority categories:
Priority 1: Residential, small commercial and industrial requirements.
Priority 2: (a) Customer storage injection requirements; (b) Firm industrial requirements for plant protection, feedstock and process needs; and (c) Commercial and industrial requirements 300 to 499 per day or less than 50,000 Mcf annually.
Priority 3: All commercial requirements 500 Mcf to 1499 Mcf per day and all industrial not specified in Priorities 1 through 10.
Priorities 4–11: Industrial requirements with alternate fuel capabilities.

whether the proposal serves the public convenience and necessity of the pipeline applicants, their customers, and the ultimate consumers of the proposed gas supply.

The delegation orders appear to contemplate that ERA would act on an import application prior to the commencement of any formal proceedings before the Commission. However, no specific procedures have been developed between the ERA staff and the FERC staff to process expeditiously matters within the scope of the delegation orders. In the matter before us, the Applicant filed simultaneously applications before ERA and the Commission almost nine months ago. As of the date of this order, neither ERA nor this Commission has taken formal action on the subject applications. The applications before us involve matters which, we now believe, will have to be set for formal hearing at this Commission if ERA approves the related applications presently before it. In order to put the parties to this proceeding, including the Commission staff, on notice that a formal hearing will, in all likelihood, be required on the subject applications if ERA approves the related import authorizations, the Commission hereby announces that it intends to issue an order specifying the issues to be set for hearing and the procedures to be followed, following any ERA approval in this matter. The Commission believes that this order will assist the parties in preparing for future Commission proceedings in the subject dockets and will expedite consideration of these matters by the Commission.

At this time, however, we can not set forth in a definitive fashion all the issues which may be the subject of a formal hearing. That can not be done until the Administrator of ERA issues his order, with any terms and conditions which he may attach. Under Delegation Order No. 0204-26, the Commission has the authority to issue orders granting import and certificate authorizations in a manner necessary or appropriate to implement the determinations made by the Administrator of ERA pursuant to Delegation Order No. 0204-25. The Commission may grant its import authorization only if it adopts the terms and conditions attached by the Administrator in his order granting import authorization. The Commission, however, may deny any application if the Commission determines that the application, as conditioned by the Administrator, is inconsistent with Sections 4, 5, or 7 of the Natural Gas Act or those portions of Section 3 which have delegated to the Commission by Delegation Order No. 0204-26.

The Commission finds:

(1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that notice be given of the Commission's present intent to hold a public hearing on the matters involved and the issues presented as hereinbefore described and limited, as well as any other matters and issues which the Commission determines shall be the subject of public hearing in any future order following any approval by the Economic Regulatory Administration of the related application of Northern and Great Lakes presently before it.

(2) Participation in these proceedings by the listed timely intervenors may be in the public interest and permitting the filing of TransCanada's and Columbia LNG Corporation's late petitions to intervene and accepting the late-filed notices of intervention will not delay the proceedings and may be in the public interest.

(3) The public convenience and necessity as well as the expeditious management of these proceedings require the consolidation of Northern's application and Great Lakes' petition to amend.

The Commission orders:

(A) The application filed in Docket No. CP78-237 by Northern and the petition to amend filed by Great Lakes in Docket Nos. CP66-110, *et al.*, are hereby consolidated and shall be set for public hearing if ERA approves the related import applications in ERA Docket No. 78-002 NG, *et al.*, and if the Commission at that time believes a hearing is required.

(B) TransCanada, Columbia LNG Corporation, and those persons filing notices of intervention or timely petitions to intervene are permitted to intervene subject to the rules and regulations of the Commission: *Provided, however,* that participation of such interveners shall be limited to matters affecting asserted rights and interests as specifically set forth in the petitions to intervene; and *Provided, further,* that the admission of such interveners shall not be considered as recognition by the Commission that they might be aggrieved because of any order of the Commission entered in this proceeding.

(C) Those persons filing untimely petitions to intervene who offered no justification for their late filing are hereby denied leave to intervene.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-2104 Filed 1-19-79; 8:45 am]

[6450-01-M]

[Project No. 108]

NORTHERN STATES POWER CO.

Application for Change in Land Rights

JANUARY 9, 1979.

Public notice is hereby given that on October 27, 1978, an application for approval of a change in land rights was filed by the Northern States Power Company for the Chippewa Reservoir Project No. 108. The project is located on the Chippewa River in Sawyer County, Wisconsin. Correspondence regarding the application should be sent to: Mr. John L. Carrol, President, Northern States Power Company, 100 North Barstow Street, Eau Claire, Wisconsin 54701.

The Applicant, Licensee for Project No. 108, requests Commission approval to authorize the issuance of an easement to the Sawyer County Highway Commission which would permit the improvement of an existing road identified as "Sawyer County Trunk Highway B." Highway B runs along the northern periphery of the boundary of Project No. 108 and does not affect the project reservoir.

The easment sought covers approximately 3.88 acres of project lands located in the following U.S. government survey lots: Township 40 North, Range 7 West, Sections 1 and 2; Township 41 North, Range 7 West, Section 36; and Township 41 North, Range 6 West, Section 31. The Ranges designated are west of the 4th Principal Meridian, Sawyer County, Wisconsin. The purpose of the easement is to permit widening and resurfacing and to improve horizontal and vertical alignment of the road.

Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1977). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any protest or petition to intervene must be filed on or before March 9, 1979. The Commission's address is: 825 N. Capitol Street, NE., Washington, D.C. 20426.

The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 79-2105 Filed 1-19-79; 8:45 am]

[6450-01-M]

[Docket No. CP-78-435]

NORTHWEST PIPELINE CORP.

Findings and Order After Statutory Hearing Issuing Certificate of Public Convenience and Necessity and Permitting and Approving Abandonment

JANUARY 15, 1979

On July 19, 1978, Northwest Pipeline Corporation (Applicant),[1] filed in Docket No. CP78-435 an application pursuant to Section 7 of the Natural Gas Act, as implemented by Section 157.7(g) of the Regulations thereunder (18 CFR 157.7(g)), for a certificate of public convenience and necessity authorizing the construction, removal and relocation and for permission for and approval of the abandonment, during the calendar year 1979, and operation of field gas compression and related metering and appurtenant facilities, all as more fully set forth in the application.

The purpose of this budget-type authorization is to enable Applicant to act with reasonable dispatch in the construction and abandonment of facilities which will not result in changing Applicant's system salable capacity, or service from that which was authorized prior to the filing of the instant application.

Applicant proposes a total cost not to exceed $3,000,000 for the construction, relocation, removal, or abandonment of field compression facilities proposed, with no single project cost to exceed $1,000,000; and such costs to be financed from working capital. Applicant requests a waiver of the single project cost limitation imposed by Section 157.7(g)(ii) of the Commission's Regulations to permit the single project cost to be increased from $500,000 to $1,000,000.

According to the *Handy-Whitman Index of Public Utility Construction Costs,* (Baltimore: Whitman, Reguardt and Associates, 1978) Bulletin No. 107, Table G-5 pp. 26-29, the direct cost of constructing and installing field gas compression facilities has increased 73.2 percent in the Plateau Region during the period from July 1, 1973 to January 1, 1978. Commission Order No. 474, issued May 9, 1973 in Docket No. R-442 established the present cost limitations contained in Section 157.7(g) of the Commission's Regulations. (18 CFR 157.7(g)) According to the Handy-Whitman Index, the single project cost limitation of $500,000 established in 1973 due to inflation is equivalent to approximately $866,000 in 1978. For that reason the waiver of the single project cost limitation will be granted. Since the work to be performed pursuant to this budget authorization will be performed during calendar year 1979, Applicant will be authorized to expend, up to an amount equal to the $500,000 limit established in 1973 adjusted for inflation according to the Handy-Whitman Index for 1979.

The facilities to be constructed or abandoned as hereinbefore described and as more fully descibed in the application in this proceeding, are proposed to be used or are used in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission, and the construction and abandonment thereof by Applicant are subject to the requirements of Subsections (c) and (e) and Subsection (b) of Section 7 of the Natural Gas Act, respectively.

After due notice by publication in the FEDERAL REGISTER on August 10, 1978 (43 FR 35531), no petitions to intervene, notices of intervention, or protest to the granting of the application have been filed.

At a hearing held on December 7, 1978, the Commission on its own motion received and made a part of the record in this proceeding all evidence, including the application and exhibits thereto, submitted in support of the authorization sought herein, and upon consideration of the record,

The Commission finds:

(1) Applicant is able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules, and regulations of the Commission thereunder.

(2) The construction and operation of the proposed facilities by Applicant are required by the public convenience and necessity and a certificate therefor should be issued as hereinafter ordered and conditioned.

(3) The abandonments proposed by Applicant are permitted by the public convenience and necessity and should be approved as hereinafter ordered.

(4) The total expenditure proposed herein is within the limit prescribed by Section 157.7(g) of the Regulations under the Natural Gas Act.

(5) Good cause has been shown to waive the single project cost limitation prescribed by Section 157.7(g) of the Regulations under the Natural Gas Act subject to the new limitation as hereinbefore described and as hereinafter ordered.

The Commission orders:

(A) Upon the terms and conditions of this order, a certificate of public convenience and necessity is issued authorizing Applicant, Northwest Pipeline Corporation, to construct under Section 157.7(g) of the Regulations, during the calendar year 1979, the proposed facilities as hereinbefore described, and as more fully described in the application, and to operate such facilities only to transport natural gas from existing sources of supply.

(B) The certificate issued by paragraph (A) above and the rights granted thereunder are conditioned upon Applicant's compliance with all applicable Commission Regulations under the Natural Gas Act and particularly the general terms and conditions set forth in paragraph (g) of Section 157.7 and in paragraphs (a), (e), and (f) of Section 157.20 of such Regulations.

(C) Applicant shall submit within 60 days after the expiration of the authorization granted by paragraph (A) above and (D) below statements in compliance with Section 157.7(g)(iv) of the Commission's Regulations under the Natural Gas Act, as applicable.

(D) Upon the terms and conditions of this order, permission for and approval of the abandonment by Applicant of the facilities hereinbefore described, all as more fully described in the application, are granted.

(E) The permission for and approval of the abandonment granted by paragraph (D) above are conditioned upon Applicant's compliance with Section 157.7(g) of the Regulations under the Natural Gas Act and are limited to the calendar year 1979.

(F) The total cost of constructing the new or additional field compression and related metering and appurtenant facilities and the total out-of-pocket cost of abandoning, removing, and relocating existing compression and related metering and appurtenant facilities shall not exceed $3,000,000.

(G) The total cost of any single project shall not exceed the $500,000 limitation established in 1973 adjusted for inflation according to the Handy-Whitman Index for 1979. (*Handy-Whitman Index of Public Utility Construction Costs,* Baltimore: Whiteman, Reguardt and Associates.)

(H) The grant of the certificate herein is conditioned upon Applicant's certifying to the Commission within 60 days after all construction is completed under the instant authorization that it has fully complied with the provisions of Section 2.69 of the Commission's General Policy and Interpretations.

[1] Applicant, a Delaware corporation having its principal place of business in Salt Lake City, Utah, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by order of September 21, 1973 in Docket No. CP 73-331 (50 FPC 825).

By the Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc. 79-2106 Filed 1-19-79; 8:45 am]

[6450-01-M]

[Docket Nos. RP79-3, *et al.*]

SOUTHERN NATURAL GAS CO.

Pipeline Refund Reports and Refund Plans

JANUARY 11, 1979.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports or refund plans. The date of filing, docket number, and type of filing are also shown on the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports and plans. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, on or before January 24, 1979. Copies of the respective filings are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

APPENDIX

Filing date	Company	Docket No.	Type filing
12/18/78	Southern Natural	RP79-3	Report
12/27/78	Transco	RP76-136 & RP77-108	Report

[FR Doc. 79-2107 Filed 1-19-79; 8:45 am]

[6450-01-M]

[Docket No. CP79-131]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Application

JANUARY 11, 1979.

Take notice that on December 19, 1978, Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77001, filed an application in Docket No. CP79-131 pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing Applicant to construct and operate certain facilities, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant states that it has the right to purchase natural gas produced in Blocks 56 and 57, East Cameron Area, offshore Louisiana (Blocks 56 and 57) and that in order to receive these volumes, it must construct and operate a 12-inch, 10.32-mile pipeline, costing $5,000,000, with a maximum capacity of approximately 70,000 Mcf a day, from Block 57 to Block 22, Vermilion Area, offshore Louisiana, where Applicant has arranged to have the gas transported ashore to its central Louisiana gathering system through a 24-inch pipeline owned jointly by itself, Florida Gas Transmission Company and Sea Robin Pipeline Company.

Applicant states that the cost of constructing the proposed facilities would be financed initially with funds on hand or from short-term loans, with permanent financing being arranged later as part of its long-term financing program.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 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.79-2108 Filed 1-19-79; 8:45 am]

[6450-01-M]

[Project No. 906]

VIRGINIA ELECTRIC & POWER CO.

Application for new Major License

JANUARY 12, 1979.

Public notice is hereby given that an application for new major license was filed on August 5, 1977, under the Federal Power Act (16 U.S.C. §§ 791a-825r) by Virginia Electric and Power Company (Applicant) for the Cushaw Project, FERC Project, FERC Project No. 906. The project is located on the James River in Amherst County, Virginia and affects U.S. Forest Service lands in the George Washington and Jefferson National Forests. Correspondence should be sent to: Mr. W. L. Proffitt, Senior Vice President, Virginia Electric and Power Company, P.O. Box 26666, Richmond, Virginia 23261; and copy to: Arnold H. Quint, Esquire, Hunton & Williams, 1730 Pennsylvania Avenue, N.W., Suite 1060, Washington, D.C. 20006.

The Cushaw Project consists of: (1) a 1,500 foot long and 27 feet high reinforced concrete dam extending diagonally across the river; (2) a 138 acre reservoir with a storage capacity of approximately 380 acre-feet at the normal full pond elevation of 656 feet m.s.l.; (3) a powerhouse containing five generators with an aggregate capacity of 7,500 kW; and (4) all other facilities and interests appurtenant to the operation of the project. The Cushaw Project is part of Virginia Electric and Power Company's generating system supplying electric utility service in Virginia.

According to the application filed, primary recreational use of project lands and waters is by local fishermen. Access to the project waters is provided by a gravel boat ramp. Applicant

proposes no future recreational development.

Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1977). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any protest or petition to intervene must be filed on or before March 26, 1979. The Commission's address is: 825 N. Capitol Street, N.E., Washington, D.C. 20426.

The application is on file with the Commission and is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 2109 Filed 1-19-79; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1042-8]

AVAILABILITY OF ENVIRONMENTAL IMPACT STATEMENTS

AGENCY: Office of Federal Activities, Environmental Protection Agency.

PURPOSE: This Notice lists the Environmental Impact Statements which have been officially filed with the EPA and distributed to Federal Agencies and interested groups, organizations and individuals for review pursuant to the Council on Environmental Quality's Regulations (40 CFR 1506.9).

PERIOD COVERED: This Notice includes EIS's filed during the week of January 8 to 12, 1979.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this Notice is calculated from January 19, 1979 and will end on March 5, 1979. The 30-day wait period for final EIS's will be computed from the date of receipt by EPA and commenting parties.

EIS AVAILABILITY: To obtain a copy of an EIS listed in this Notice you should contact the Federal agency which prepared the EIS. This Notice will give a contact person for each Federal agency which has filed an EIS during the period covered by the Notice. If a Federal agency does not have the EIS available upon request you may contact the Office of Federal Activities, EPA for further information.

BACK COPIES OF EIS'S: Copies of EIS's previously filed with EPA or CEQ which are no longer available from the originating agency are available at 10 cents per page from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT:

Kathi Weaver Wilson, Office of Federal Activities, A-104, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, (202) 755-0780

SUMMARY OF NOTICE: Appendix I sets forth a list of EIS's filed with EPA during the week of January 8 to 12, 1979, the Federal agency filing the EIS, the name, address, and telephone number of the Federal agency contact for copies of the EIS, the filing status of the EIS, the actual date the EIS was filed with EPA, the title of the EIS, the State(s) and County(ies) of the proposed action and a brief summary of the proposed Federal action and the Federal agency EIS number if available. Commenting entities on draft EIS's are listed for final EIS's.

Appendix II sets forth the EIS's which agencies have granted an extended review period or a waiver from the prescribed review period. The Appendix II includes the Federal agency responsible for the EIS, the name, address, and telephone number of the Federal agency contact, the title, State(s) and County(ies) of the EIS, the date EPA announced availability of the EIS in the Federal Register and the extended date for comments.

Appendix III sets forth a list of EIS's which have been withdrawn by a Federal agency.

Appendix IV sets forth a list of EIS retractions concerning previous Notices of Availability which have been made because of procedural noncompliance with NEPA or the CEQ regulations by the originating Federal agencies.

Appendix V sets forth a list of reports or additional supplemental information on previously filed EIS's which have been made available to EPA by Federal agencies.

Appendix VI sets forth official corrections which have been called to EPA's attention.

Dated: January 17, 1979.

WILLIAM N. HEDEMAN, Jr.,
Director,
Office of Federal Activities.

APPENDIX I—EIS'S FILED WITH EPA DURING THE WEEK OF JANUARY 8 TO 12, 1979

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Coordinator, Environmental Quality Activities, U.S. Department of Agriculture, room 359A, Washington, D.C. 20250, 202-447-3965.

FOREST SERVICE

Final

Medicine Lake planning unit, Modoc and Siskiyou Counties, Calif. January 8: This action involves proposals for a new general management plan for forest lands within the Medicine Lake planning unit. This unit is an area of 294,000 acres, including portions of the Modoc, Shasta-Trinity and Klamath National Forests located in Modoc and Siskiyou Counties, Calif. The purpose of this action is to provide long-range and coordinated management of forest lands, assure compliance with regulations and policies, and resolution of conflicts concerning land use and capability. The plan selected will also provide for a system of balanced management and use and utilization of renewable resources. (USDA-FS-R5-DES (ADM) 05-09-78-05.) Comments made by: AHP, DLAR, DOE, COE, USDA, DOI, State and local agencies, groups, individuals, and business (EIS Order No. 90034).

Draft supplement

1979 cooperative spruce budworm suppression, several counties in Maine. January 11: Proposed is the application of insecticides to 3.5 million acres of spruce-fir forest in 1979 in the State of Maine, to suppress an outbreak of the eastern spruce budworm. No action, salvage cutting, pre-salvage cutting, accelerated logging, silvicultural treatments, and a combination of these were considered as alternatives. The affected counties are Aroostook, Somerset, Penobscot, Piscataquis, Washington, Franklin, and Hancock. (DES-NA-19-01-A) (EIS Order No. 90047).

RURAL ELECTRIFICATION ADMINISTRATION

Final

Nebraska public power district transmission facility, several counties in Nebraska. January 11: This proposal concerns the approval of funding by REA for a portion of the proposed 329 miles of 345 KV transmission facilities. The facilities, as proposed, will be constructed in the counties of Cheyenne, Deurel, Keith, Lincoln, Custer, Sherman, Buffalo, Frontier and Red Willow. The new substations, Keystone, Sweetwater, and Red Willow will connect with several existing facilities, modified by construction. Four alternatives are under consideration. (USDA-REA-EIS (ADM) 78-10-F.) Comments made by: USDA, AHP, DOI, COE, EPA, HEW, State and local agencies (EIS Order No. 90050).

U.S. ARMY CORPS OF ENGINEERS

Contact: Dr. C. Grant Ash, Office of Environmental Policy, Attention: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue SW., Washington, D.C. 20314, 202-693-6795.

Draft

Clear Creek, local flood protection, Franklin, Warren County, Ohio. January 10: Proposed is the construction of a new channel between Beam Ditch and Main Street on Clear Creek in Franklin, Warren County, Ohio. The main features of the plan will include: (1) Channel realinement and widening of Clear Creek in the vicinity of Main Street to OH-123, (2) preservation of 1,200 feet of existing stream as a lowflow channel,

(3) pool and riffle system in a new lowflow channel, (4) levee setback and crest wall improvements, and (5) recreation facility consisting of a 1-mile bike trail. (Louisville district) (EIS Order No. 90039).

Strube Lake and Cougar additional unit, Blue River, Lane County, Oreg. January 8: Proposed is the modification of the existing powerhouse at Cougar Dam located in Lane County, Oreg., to accomodate a third generating unit of 35,000 kw capacity, making a combined total capacity of 60,000 kw. Cougar generating facilities would be operated for peaking, rather than current baseload power generation. To re-regulate flows from Cougar, Stube Dam would be constructed about 1.9 miles downstream. A 4,600 kw generating unit would be included in the Strube powerplant. (Portland district) (EIS Order No. 90032).

Bonneville lock and dam, navigation, Sramania and Washington Counties, Oreg. January 9: Proposed is the construction and subsequent operation of a new navigation lock at Bonneville Dam on the Oregon shore, south of the existing lock and powerhouse. The new lock chamber would have horizontal dimensions of 86 feet by 675 feet, matching the dimensions of the seven other locks on the Columbia-Snake River navigation system. Both an up-stream and downstream approach channel would be constructed having vertical concrete guidewalls. The COE filed a draft EIS No. 61098, dated June 27, 1976, which is replaced by this revised draft. (Portland district) (EIS Order No. 90038).

Final

Norfork Lake highway bridges, U.S. 62 and Arkansas 101, Baxter County, Ark. January 11: The purpose of this proposed project is to connect two segments of U.S. highway 101, which are presently separated by Norfork Lake, located in Township 19 north, range 12 west, Baxter County, Ark. The project consists of the construction of two highlevel, 2-land, fixed bridges referred to as U.S. 62 and Arkansas 101 and the necessary bridge approaches. The U.S. 62 bridge would span 3,460 feet long and Arkansas 101 would be 2,880 feet long. Eight alternatives are considered. (Little Rock district) Comments made by: EPA, USDA, AMP, HUD, DOI, DOT, State agencies, groups and individuals. (EIS Order No. 90046).

DEPARTMENT OF COMMERCE

Contact: Dr. Sidney R. Galler, Assistant Secretary for Environmental Affairs, Department of Commerce, Washington, D.C. 20230, 202-377-4335.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Draft

Alaska coastal zone management program, Alaska. January 12: Proposed is a coastal zone management plan for the State of Alaska. The program will develop new coastal policies, rules, responsibilities, obligations and relationships with an established approach of shared local and State coastal management responsibility. Some features of the program include: (1) Protection of coastal lands and water habitats; (2) a common basis for coastal decisions; (3) definition of division of responsibility; (4) specific management for areas of extraordinary coastal values; and (5) overall attention for energy, timber, mining, and commerce resources. (EIS Order No. 90056).

Draft supplement

Bowhead Whale, deletion of native exemption, Alaska. January 12: Proposed is the implementation of an amendment to the convention to regulate whaling, 1946 by amending regulations governing the taking of Bowhead whales by Indians, Aleuts or Eskimos for subsistence purposes which allocated the 1979 quota to 18 whales landed or 27 struck, whichever occurs first. The alternatives considered are: (1) Federal regulations establishing a fixed village by village quota allocation, (2) no quota allocation by village, allowing competition until the 1979 quota is reached, and (3) determination by quota by the Alaskan Eskimo Whaling Commission. (EIS Order No. 90057).

Final supplement

Squid fisheries, Northwest Atlantic, FMP. January 8: This statement supplements a February 1977 final EIS. Changes are proposed in the subject preliminary fishery management plan for the 1978 foreign fishing season. Some of these changes include: (1) modifications of the areas and seasons where foreign nationals can conduct directed squid fishery operations, (2) assessment and reconsideration by the United States of its projected capacity annually, (3) required permit or registration, (4) gear restrictions, and (5) periodic catch reports. Comments made by: STAT, EPA, USCG, groups, individuals, and businesses (EPA Order No. 90033).

ENVIROMENTAL PROTECTION AGENCY

Contact: Mr. Paul A. J. Wilson, Mobile Source Air Pollution Control Office, ANR-455, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, 202-755-0596.

Draft

Light-duty diesel particulate regulation, regulatory. January 10: Proposed are Federal light-duty diesel particulate emission standards for 1981 and later model year vehicles. The changes to the existing regulations include: (1) the addition of a dilution tunnel and other equipment to measure particulate emissions, and (2) the implementation of exhaust emissions standards for particulate matter from light-duty diesels of 0.37 G/KM (0.6 G/MI) in 1981 and 0.12 G/KM (0.2 G/MI) in 1983. (EIS Order No. 90045).

Contact: Mr. Wallace Stickney, Region I, Environmental Protection Agency, John F. Kennedy Federal Building, Room 2203, Boston, Mass. 02203, 617-223-4635.

Final

Duwamish 201 facility, metro Seattle, King County, Wash. January 10: Proposed is a wastewater configuration and metro CSO control program for nine areas in King County, Wash. The plan will reduce the service area and flow to the west point plant, abandon the Alki and Carkeek park plants and restore the sites for other uses. A new plant would be constructed in the Duwamish industrial area. This EIS finalizes three draft EIS's, Nos. 71143, 71160, and 71161, all filed September 16, 1977, which individually addressed the three existing plants noted above. (EPA-910/9-77-043) Comments made by: AHP, USDA, DOC, CDE, HUD, DOI, State and local agencies, groups (EIS Order No. 90040).

Contact: Mr. Alexandria Smith, Region X, Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Wash. 98101, 206-442-1285.

Final

Upper Housatonic River, water quality management, Berkshire County, Mass. January 8: proposed is the water quality management plan for the Upper Housatonic River located in Berkshire County, Mass. The proposed plan recommends a six-point water quality management program for a 20-year planning period. The study area involves 262 square miles and 9 municipalities. The area is the western-must part of the State and is characterized by a narrow river valley and such hilly terrain. Comments made by: EPA, HUD, DOT, USDA, DOI, State and local agencies, individuals (EIS Order No. 90037).

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broon, Director, Office of Environmental Quality, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410, 202-755-6308.

Final

Westlake forest subdivision, Harris County, Tex., January 12: The proposed action is for the Department of HUD to accept for home mortgage insurance the proposed Westlake forest subdivision located in Harris County, Tex. It is proposed that this 470 acre tract of land redeveloped into a subdivision consisting of approximately 2,125 single-family dwelling units with some commercial reserves. Construction of the project will begin around January of 1979, and when completed, will house approximately 7,500 people. (HUD-R06-EIS-78-40F) Comments made by: EPA, CUE, AHP, DOT, DOI, USDA, State agencies (EIS Order No. 90053).

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, room 4256, Interior Building, Department of the Interior, Washington, D.C. 20240, 202-343-3891.

BUREAU OF LAND MANAGEMENT

Draft

Crude oil transport system, Washington/Minnesota, January 11: Proposed is the construction and operation of a common-carrier crude oil transportation system. Port Angeles, Wash. will be the location of two tanker unloading facilities with two submarine pipelines connecting the unloading berths to an onshore storage facility, and the beginning of the pipeline. The pipeline will extend for approximately 1,557 miles across the States of Washington, Idaho, Montana, North Dakota, and end at Clearbook, Minn. at which delivery facilities would be located. There would be intermediate delivery facilities at three locations in Montana and North Dakota where the proposed pipeline will cross the existing pipeline. (EIS Order No. 90049).

U.S. NUCLEAR REGULATORY COMMISSION

Contact: Mr. Richard E. Cunningham, Director, Division of Fuel Cycle and Material Safety, U.S. Nuclear Regulatory Commis-

sion, Washington, D.C. 20555, Mail 396-SS, 301-427-4142.

Draft

Gas Hills uranium project, Natrona and Fremont Counties, Wyo., January 12: Proposed is the issuance of a source material license to be issued to Union Carbide Corp. for the operation of the Gas Hills uranium project in Natrona and Fremont Counties, Wyo. The project will involve: (1) the operation of an acid leach, ion-exchange and solvent-extraction uranium ore processing mill, and (2) the construction and operation of two heap leach facilities, one in Natrona County. Five alternatives are considered. (NUREG-0441) (EPA Order No. 90054).

NUCLEAR REGULATORY COMMISSION

Contact: Mr. Voss A. Moore, Assistant Director for Environmental Projects, P-518, Washington, D.C. 20555, 301-492-8446.

Final supplement

Floating nuclear power plants, part III, (S-1), Florida, January 10: This EIS supplements a draft filed with CEQ in October 1976. Proposed is the issuance of a manufacturing license to offshore power systems for the startup and operation of a manufacturing facility located at Blout Island, Jacksonville, Fla., for the construction of no more than eight floating nuclear plants of standardized design. This document examines the effects of postulated nuclear accidents and the overall risks and consequences between floating and land-based nuclear power plants regarding the accidental releases of radioactive materials to the environment. (NUREG-0502) Comments made by: USDA, COE, DOC, DOE, DOI, EPA, DRBC, State agencies, businesses (EPA Order No. 90041).

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590, (202) 426-4357.

FEDERAL AVIATION ADMINISTRATION

Final

Kosrae Island Airport and Harbor Project, U.S. Territory, January 12: The proposed action involves the development of a new airport consisting of an ultimately paved 150' x 7,000' runway, runway safety areas on each end, a paved aircraft parking apron, lighting, fencing, access road, auto parking area, radio navaids, and a harbor complex with a paved 300' x 600' loading ramp with associated warehouse and dock loading area. Five alternatives are considered. Since the preparation of the draft EIS, the name of Kosrae has been adopted for the district formerly known as Kusaie. Comments made by: DOI, USN, USCG, DOT, COE, HEW, DOC, EPA, HUD, AHP, USDA. (EIS Order No. 90055.)

FEDERAL HIGHWAY ADMINISTRATION

Draft

Loop 340, From U.S. 77 to TX-6, Waco and Robinson, McLennan County, Tex. January 8: Proposed is the construction of a four land divided highway consisting of two 24-foot roadways with paved shoulders and interchange structures to be known as loop 340 in the cities of Waco and Robinson, McLennan County, Texas. The project will begin at U.S. 77 south of Waco and extend northwest for approximately 5 miles ending at TX-6. The alternatives include three alternate routes and no-build. (FHWA-TEX-EIS-78-01-D.) (EIS Order No. 90035.)

East Loop 363, From U.S. 190 to I-35, Temple City, Bell County, Tex., January 8: Proposed is construction of a two-lane highway with a 24-foot roadway with paved shoulders and interchange structures known as east loop 363 located near Temple City, Bell County, Texas. The project will begin at U.S. 190 south of Temple and extend approximately 6.7 miles to I-35 north of Temple. The alternatives include alternate routes and no build. (FHWA-TEX-EIS-76-03-D.) (EIS Order No. 90036.)

Final

U.S. 119, Pikeville-Williamson Road, Pike County, Ky. January 10: The proposed highway project consists of improvement of 16.55 miles of U.S. 119 in Pike County to a 4-lane distance highway with a raised, mountable median normally 20 feet in width. The right-of-way width will vary considerably being dictated by the terrain constraints with a minimum of 150 feet. Access to the facility will be partial control. (FHWA-KY-EIS-74-09-P.) Comments made by: USDA, DOI, EPA, DOC, HEW, DOT, State agencies (EIS Order No. 90042).

Relocated Maryland Route 24, U.S. 1 to I-95, Hartford County, Md. January 12: Proposed is the relocation of Maryland 24 from U.S. 1 (Bel Air bypass), southwest of Bel Air to I-95, a distance of approximately 6.7 miles, in Hartford County, Md. The selected alternative would begin at U.S. 1 to a point north of Plumtree Road and then take a new alinement south to I-95. (FHWA-MD-EIS-02-P.) Comments made by: USDA, DOI, DOT, EPA, DOE, State and local agencies (EIS Order No. 90052).

Final

Reconstruction of Michigan 153, Ford Road, Wayne County, Mich. January 10: Proposed is the reconstruction of a 6.1 kilometer, 3.8 mile segment of M-153 (Ford Road) between I-275 on the west and Vency Road on the east. This segment of M-153 is located in Canton Township, Westland, and Garden City, Wayne County, Mich. This segment M-153 is now a free-access two-lane roadway, with turning lanes at some major intersections. The proposed project involves the widening of this segment of M-153 to either five lanes with turning lanes at major intersections. (FHWA-MICH-EIS-78-01-F.) (EPA Order No. 90044).

Draft supplement

U.S. 23-119, Jenkins to Dorion Road, Pike County, Ky. January 10: This statement supplements a final EIS filed in July 1972. Proposed is the construction of a section of highway to connect the communities of Brusky Fork and Denton located in Pike County, Ky. The project would extend for 3.1 miles if the Myra alternate is utilized or 2.6 miles if the Orward branch alternate is constructed. The highway will be four-lanes with partial controlled access. The no-build alternative is also considered. (FHWA-KY-EIS-72-08-DS.) (EIS Order No. 90043).

VETERANS ADMINISTRATION

Contact: Mr. Willard Sitler, Environmental Affairs Office (66), Veterans Administration, 810 Vermont Avenue, Washington D.C. 20420, 202-389-2526.

Final

Quantico National Cemetery, Prince Williams County, Va. January 12: Proposed is the development of a national cemetery in Quantico, Prince Williams County, Va. The 726.58-acre site is located on land accessed by the Department of Navy, Quantico Marine Corps Base. The cemetery will accommodate 300,000 veterans and their dependents with a variety of interment types. Alternatives considered included sites and alternate land usages. The draft statement was entitled the District of Columbia area National Cemetery. Comments made by: AHP, DOT, USN, DOC, DOI, USDA, State and local agencies (FIS Order No. 80051).

APPENDIX II—EIS'S WHICH AGENCIES HAVE GRANTED REVIEW PERIODS OTHER THAN THOSE PRESCRIBED BY EPA

Section A. Waivers of Review Period: None.

Section B. Extension of review period:

Federal agency: U.S. Department of Interior, Fish and Wildlife Service.

Federal agency contact: Mr. Bruce Blanchard, Director, Environmental Project Review, room 4256, Interior Building, Department of the Interior, Washington, D.C. 20240, 202-343-3891.

Title of EIS: Draft—Mammalian predator damage management, livestock (EIS Order No. 81248).

Date availability noticed in FEDERAL REGISTER: December 4, 1978.

Extended date for review: February 12, 1979.

* * * * *

Federal agency: Department of Energy.

Federal agency contact: Mr. Robert Stern, Division of NEPA Affairs, Department of Energy, Federal Building, room 7119, 1200 Pennsylvania Avenue NW., Washington, D.C. 20461, 202-376-5998.

Title of EIS: Draft—Fuel Use Act (EIS Order No. 81219).

Date availability noticed in FEDERAL REGISTER: November 27, 1978.

Extended date for review: February 9, 1979.

APPENDIX III—EIS'S WHICH HAVE BEEN WITHDRAWN BY FEDERAL AGENCIES

None.

APPENDIX IV—OFFICIAL RETRACTIONS

None.

APPENDIX V—LIST OF REPORTS/ADDITIONAL INFORMATION RELATING TO PREVIOUSLY FILED EIS'S

Agency: U.S. Department of Agriculture, Rural Electrification Administration.

Contact: Barry Flamm.

Title of report: Missouri Basin power project wheatland generating station units 1, 2, and 3 and associated transmission and Grayrocks reservoir—summary and conclusions concerning additional information on the MBPP transmission facilities.

Date EPA received: January 11, 1979 (EIS Order No. 90048).

APPENDIX VI—OFFICIAL CORRECTIONS

None.

[FR Doc. 79-2238 Filed 1-19-79; 8:45 am]

[6560-01-M]

[OPP-42055; FRL 1042-6]

MASSACHUSETTS

Submission of State Plan for Certification of Pesticide Applicators

In accordance with the provisions of Section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended in 1972, 1975 and 1978 (92 Stat. 819; 7 U.S.C. 136 et. seq.) and 40 CFR Part 171, the Honorable Michael S. Dukakis, former Governor of the Commonwealth of Massachusetts, submitted a State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides to the Environmental Protection Agency (EPA) for approval on a contingency basis. Contingency approval is requested pending promulgation of regulations for the recently enacted Massachusetts Pesticide Control Act, Chapter 132B, General Laws of Massachusetts, inserted as Chapter 3 of Acts of 1978.

Notice is hereby given of the intention of the Regional Administrator, EPA, Region I to grant approval of this plan on one of the following bases. Final approval will be granted if regulations, now proposed (Appendix E of the Plan), are fully promulgated before March 15, 1979 whereas contingent approval will be granted in the event promulgation of regulations is likely to be delayed beyond March 14, 1979. A summary of this plan follows. The entire plan, together with all attached appendices (except for sample examinations) may be examined during normal business hours at the following locations:

Commonwealth of Massachusetts, Department of Food & Agriculture, 100 Cambridge Street, Boston, Massachusetts 02202.

U.S. EPA, Region I, Room 1907, JFK Federal Building, Government Center, Boston, Massachusetts 02203.

Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, EPA, Room 401, East Tower, Waterside Mall, 401 M Street, SW, Washington, D.C. 20460.

Summary of Massachusetts State Plan

The Massachusetts Department of Food and Agriculture (MDFA) has been designated the State Lead Agency responsible for the regulation of pesticides, including certification of those who use or apply restricted use pesticides. Within the MDFA the Massachusetts Pesticide Board (MPB) is responsible for advising the Commissioner, MDFA, on implementation and administration of the Pesticide Control Act, approving prepared regulations, and hearing appeals on actions. Other responsibilities of MDFA include coordination of training and certification activities, licensing of pesticide dealers, issuance of special permits for use of pesticides futher restricted by the State and the coordination of field, laboratory and office activities relating to pesticide regulation.

The Massachusetts Cooperative Extension Service (MCES) of the University of Massachusetts is designated as a cooperating Agency and is responsible for the organization and operation of the pesticide applicator training program. Training will be offered to applicators seeking either certification or recertification to assist in implementing or maintaining the State Plan.

Legal authority for the regulation of pesticides and their use in Massachusetts is contained in the following legislation: Massachusetts Pesticide Control Act (MPCA), Chapter 132B, General Laws of the Commonwealth of Massachusetts.

The plan indicates that the State Lead Agency will have qualified personnel and funds necessary to carry out the proposed certification programs with $50,000 appropriated by the State for the fiscal year 1979. Massachusetts estimates 4830 commercial applicators and 3500 private applicators will need to be certified to use restricted use pesticides. A certificate, issued to each certified applicator, will indicate the class and category(s) and/or subcategory(s) of certification as may be appropriate and any additional restrictions placed on the applicator. The Commonwealth plans to issue pocket-sized credentials at a later date to identify a certified applicator to pesticide dealers and to authorize purchase of restricted use pesticides.

The Massachusetts Plan contains new rules and regulations, as Appendix E, that the State will promulgate as required to implement the MPCA and to meet requirements of 40 CFR 171.

The Massachusetts Department of Food and Agriculture agrees to furnish the Administrator a detailed annual report by October 1 of each year and will provide other reports as requested in conformity to 40 CFR 171.7(d).

Massachusetts intends to adopt all ten categories of commercial applicators as listed in 40 CFR 171.3. Further, Massachusetts intends to utilize subcategories within three categories as designated below:

3. Ornamental and Turf Pest Control:
   a. Shade Trees and Ornamentals.
   b. Turf.
7. Industrial, Institutional, Structural and Health-Related Pest Control:
   a. General.
   b. Fumigation.
   c. Site Sanitation.
   d. Termite and Structural Pest Control.
   e. Food Processing Pest Control.
   f. Vertebrate Pest Control.
   g. Wide Area Nuisance Arthropod Control.
9. Public Health Pest and Nuisance Control:
   a. General.
   b. Mosquito and Biting Flies.

Any applicant for certification as either a private or a commercial applicator, including any person currently holding a pesticide applicator license, who desires certification to use or supervise the use of a restricted use pesticide must be determined to be competent by passing the appropriate written examinations. Aerial applicators will be required to pass an additional examination covering aerial techniques and related knowledge prior to certification in the appropriate class and/or category. Performance testing by applicator demonstration may be further required where it is determined that the potential for unusual hazard to persons or the environment could occur.

Private applicators will be required to pass a written two-part examination covering the standards required of a private applicator and practical knowledge of at least one principal commodity area. An applicant must correctly answer 70 percent of the questions on the examination to be determined competent. Applicators unable to read will not be certified.

Core level training conducted by MCES will be offered applicants preparing to qualify as private or commercial class applicators. In addition to general pesticide use information, training will also be offered in commodity areas for private applicators and category and subcategory specific areas for commercial applicators.

A copy or a representative sample of the private applicator and commercial applicator-general standards examination has been submitted with the plan for review. The specific standards examinations for commercial applicators that were not submitted with the plan are in final stages of development and will be submitted to the Agency for review before the plan is fully approved.

To preserve the confidentiality of the examinations the Commonwealth of Massachusetts has requested the examinations not be made available for public inspection. The Agency agrees with this request and has removed the examinations from copies of the plan held for public inspection.

Authority to require payment of fees for examination and for issuance of applicator certification is provided by

MPCA and the rate is established by regulation.

The Massachusetts plan does not contain specific provisions for the Government Agency Plan. However, Federal employees who have been certified by a Federal agency whose standards for certification are determined to be no less stringent than those of the Commonwealth may be issued appropriate certificates as commercial applicators. Familiarity with Massachusetts rules and regulations governing pesticide use will, however, be required of all Federal employees certified.

Massachusetts has no Indian Governing Body subject to the jurisdiction of the United States. Therefore, provisions of 40 CFR 171.10 are not applicable.

At present, no recognized formal agreements on reciprocity with other States involving pesticide applicator certification are indicated in the plan. However, Massachusetts will consider reciprocity with other States and copies of such agreements will be furnished EPA.

Other regulatory authorities contained in the newly enacted legislation useful to implementation of the plan include further restrictions or limitations on pesticide uses; a requirement for licensing of dealers distributing restricted use pesticides; licensing of commercial applicators using only general use pesticides; monitoring and inspection of pesticide use activities; and the regulation of pesticide storage and disposal. A subcommittee of the MPB is responsible for pesticide registration and classification and for issuance of experimental use permits.

Maintenance of the State Plan will be carried out in two manners. MDFA inspectors will conduct spot checks of applicators and field operations to determine compliance with certification and pesticide use requirements. To assure maintenance of a high level of competency among certified commercial and private applicators additional training, approved by MDFA, will be offered on a timely basis. An applicator's certification will be renewed annually for up to five (5) years after which recertification will be required. The requirements for recertification may be met by choosing one of two options: attending and actively participating in an MDFA approved training program applicable to the applicant's class and categories of certification within the five-year period; or successfully passing appropriate examinations required for recertification.

PUBLIC COMMENTS

Interested persons are invited to submit written comments on the proposed State Plan for the Commonwealth of Massachusetts to the Chief, Pesticides Branch, Region I, Environmental Protection Agency, Room 1907, JFK Federal Building, Boston, Massachusetts 02203. The comments must be received on or before Feb. 21, 1979, and should bear the identifying notation (OPP-42055). All written comments filed pursuant to this notice will be available for public inspection at the above location from 9:00 a.m. to 4:00 p.m., Monday through Friday.

Dated: January 10, 1979.

WILLIAM R. ADAMS, Jr.,
Regional Administrator,
Region I.

[FR Doc. 79-2237 Filed 1-19-79; 8:45 am]

[6560-01-M]

[OPP-30159; FRL 1042-4]

PESTICIDE PROGRAMS

Receipt of Application To Register Product Containing New Active Ingredient

Abbott Laboratories, Abbott Park, D-495, North Chicago, IL 60064, has submitted to the Environmental Protection Agency (EPA) and application to register the pesticide product N-MALEIMIDE (EPA File Symbol 275-GU), containing 97% of the active ingredient *N*-(2-methyl-1-naphthyl)maleimide which has not been included in any previously registered pesticide product. The application proposes that the pesticide be classified for general use as a technical chemical to be used as a preservative for polymeric systems. This application is 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 therunder (40 CFR 162).

Notice of receipt of this application does not indicate a decision by the Agency on the application. Interested persons are invited to submit written comments on this application to the Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, EPA, Rm. 401, East Tower, 401 M St., SW, Washington DC 20460. The comments must be received by February 21, 1979, and should bear a notation indicating the EPA File Symbol "275-GU". 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 questions concerning this application and the data submitted should be directed to Product Manager (PM) 21, Registration Division (TS-767), Office of Pesticide Programs, at the above address or by telephone at 202/755-2563. The label funished by Abbott Laboratories, 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 this application to register N-MALEIMIDE 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: January 12, 1979.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc. 79-2236 Filed 1-19-79; 8:45 am]

[6560-01-M]

[PP 8G2078/T179; FRL 1042-4]

PESTICIDE PROGRAMS; THIABENDAZOLE

Establishment of Temporary Tolerances

Merck & Co., Inc., PO Box 2000, Rahway, NJ 07065, has submitted a pesticide petition (PP 8G2078) to the Environmental Protection Agency (EPA). This petition requests that temporary tolerances be established for residues of the fungicide thiabendazole (2-(4-thiazolyl)benzimidazole) in or on the raw agricultural commodities rice grain at 1 part per million (ppm) and rice straw at 20 ppm. (A related document establishing a feed additive regulation for residues of thiabendazole appears elsewhere in today's FEDERAL REGISTER.)

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 is being issued concurrently 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 has shown that the requested tolerances are adequate to cover residues resulting from the proposed experimental use (618-EUP-9), and it has been determined that the temporary tolerances will protect the public health. The temporary tolerances are being 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. Merck & Co. 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 records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

These temporary tolerances expire April 1, 1980. Residues not in excess of 1 ppm remaining in or on rice grain and 20 ppm remaining in or on rice straw after this 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 indicates such revocation is necessary to protect the public health. Inquiries concerning this notice may directed to Mr. Henry Jacoby, Product Manager (PM) 21, Registration Division (TS-767), Office of Pesticide Programs, East Tower, 401 M St., SW, Washington, DC 20460 (202/426-2454).

(Section 408(j) of the Food, Drug and Cosmetic Act [21 U.S.C. 346a(j)]).

Dated: January 11, 1979.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc. 79-2230 Filed 1-19-79; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

[SS Docket Nos. 78-389 and 78-390; File Nos. 116-A-RL-78 and 117-A-L-78]

AERONAUTICS, INC. AND AIR WILMINGTON, INC.

Application for an Aeronautical Advisory Station To Serve New Hanover County Airport, Wilmington, N.C. Designation Order

Adopted: December 19, 1978.

Released: December 27, 1978.

1. Aeronautics, Inc. (hereinafter called Aeronautics), Wilmington, N.C., and Air Wilmington, Inc. (hereinafter called Wilmington), Wilmington N.C., have filed an application for authority to operate an aeronautical advisory station at the same airport. Aeronautics seeks renewal of its current station license (WRO7) while Wilmington filed for a new station authorization. In that § 87.251(a) of the Commission's rules provides that only one areonautical advisory station may be authorized at a landing area, the above-captioned applications are mutually exclusive. Accordingly, it is necessary to designate these applications for comparative hearing in order to determine which, if any, should be granted.

2. Wilmington alleged that the present licensee (Aeronautics) may have violated § 87.257(b) of the rules by not providing impartial information to aircraft concerning available ground service.

3. Aeronautics alleged that Wilmington has operated an unlincensed aeronautical advisory station on 122.95 MHz in violation of section 301 of the Communications Act of 1934, as amended.

4. In view of the foregoing, *it is ordered,* That pursuant to the provisions of Section 309(e) of the Communications Act of 1934, as amended, and § 0.331 of the Commission's rules, the above-captioned applications are hereby designated for hearing in a consolidated proceeding at a time and place to be specified in a subsequent Order on the following comparative issues:

(a) To determine which applicant would provide the public with better aeronautical advisory service based on the following considerations;

(1) Location of the fixed-base operation and proposed radio station in relation to the landing area and traffic patterns;

(2) Hours of operation;

(3) Personnel available to provide advisory service;

(4) Experience of applicant and employees in aviation and aviation communications, including but not limited to operation of stations in the Aviation Services (Part 87) that may be or have been authorized to the applicant;

(5) Ability to provide information pertaining to primary and secondary communications as specified in § 87.257 of the Commission's rules;

(6) Proposed radio system including control and dispatch points;

(b) To determine the manner in which Aeronautics has operated aeronautical advisory station WRO7 and whether such operation was in violation of § 87.257(b) of the rules by not providing impartial information concerning available ground services;

(c) To determine whether Wilmington has operated an unlicensed aeronautical advisory station at New Hanover County Airport in violation of Section 301 of the Communications Act of 1934, as amended;

(d) To determine the manner in which Wilmington has operated Aviation Instructional station WLJ 2 and whether such operation was consistent with the rules governing this class of station; and

(e) To determine in light of the evidence adduced on the foregoing issues which, if any, application should be granted.

It is further ordered:

(a) That the burden of proceeding with the introduction of evidence on issue 4(b) is on Wilmington and the burden of proof on issue 4(b) is on Aeronautics;

(b) That the burden of proceeding with the introduction of evidence and the burden of proof on issue 4(c) is on Aeronautics and on issue 4(d) the burdens are on Wilmington; and

(c) On all other issues the burdens are on each applicant except for issue 4(e) which is conclusory.

6. *It is further ordered,* That to avail themselves of an opportunity to be heard, Aeronautics and Wilmington, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, shall within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date set for hearing and present evidence on the issues specified in this Order. Failure to file a written appearance within the time specified may result in dismissal of the application with prejudice.

CARLOS V. ROBERTS,
Chief, Safety and Special
Radio Services Bureau.

[FR Doc. 79-2090 Filed 1-19-79; 8:45 am]

[6712-10-M]

[SS Docket No. 79-2]

EUGENE H. CRONE

Application for Novice Class Amateur Radio Service License; Designation Order

Adopted: January 3, 1979.

Released: January 10, 1979.

The Chief, Safety and Special Radio Services Bureau, pursuant to delegated authority, has under consideration the application of Eugene H. Crone of 124 Hillside Avenue, Teaneck, New Jersey 07666, for a Novice Class license in the Amateur Radio Service.

1. By Order of Revocation (SS-321-78) issued September 1, 1978, Eugene H. Crone's license for Citizens Band radio station KDL-6254 was revoked, effective October 6, 1978. The Order of Revocation concluded that on September 10, 1977, Citizens Band radio station KDL-6254 was operated on a frequency not assigned to the CB Radio Service, in violation of § 95.455(a) of the Commission's Rules.[1] It was also concluded that Crone's station was not identified by call sign, in

[1] Effective August 1, 1978, the CB Rules were revised and renumbered. The sections cited are those in effect at the time of the violations.

violation of § 95.471(c) of the Commission's Rules.

2. The Order of Revocation found that Crone's station was identified by the term "3W575" and that he was a member of a "Whiskey" club. The Order found that those clubs were composed of radio operators who transmit on unauthorized frequencies and, in addition to interference to-legitimate users of those frequencies, such radio operation caused interference to ambulance, police and other emergency radio services and to neighborhood television reception. The Order found that the participants in these clubs used club identification numbers instead of Commission call signs to enable the operators to identify each other over the air while concealing their identity from the Commission.

3.The Order of Revocation also concluded that on September 10, 1977, Crone's station was operated in violation of §§ 95.469(c) (communications in excess of five minutes), 95.613 (excessive power) and 95.641(c)(4) (use of transmitting equipment capable of operation on non-CB frequencies). The Order concluded that Crone's conduct reflected a disregard for the Commission's authority and the rights of other licensees, and concluded that his license should be revoked.

4. In view of the above, the Commission is unable to find that Crone possesses the requisite qualifications to again become a license of the the Commission. In light of his operating violations while licensed as KDL-6254 and his scheme to operate transmitting equipment without detection by the Commission, it appears that Crone may not be relied upon to abide by the Commission's Rules. His conduct may reflect adversely upon his qualifications to be a Commission licensee by revealing a disregard for the Commission's statutory authority to license and regulate radio stations and operators. It is therefore necessary to designate Crone's application for hearing. The factual matter adjudicated in the Revocation proceeding shall not be relitigated in this proceeding, pursuant to the doctrine of collateral estoppel.

5. Accordingly, *it is ordered*, That pursuant to Section 309(e) of the Communications Act and 1.973(b) and 0.331 of the Rules, Crone's application for a Novice Class Amateur Radio license is designated for hearing, at a time and place to be specified by a subsequent Order, upon the following issues:

(a) To determine the effect of the Order of Revocation (SS-321-78) upon Crone's qualifications to be a licensee of the Commission.

(b) Whether, in light of the evidence adduced pursuant to Issue (a), Eugene H. Crone possesses the requisite qualifications to become a Commission licensee.

(c) Whether, in light of the evidence adduced under the above issues, the public interest, convenience and necessity would be served by the grant of a Novice Class Amateur Radio Service license to Eugene H. Crone.

6. *It is further ordered*, That in order to obtain a hearing on the application, Crone, in person or by attorney, shall within 20 days of the mailing of this Order, file with the Commission a written appearance stating an intent to appear on a date fixed for hearing to present evidence on the Issues specified in the foregoing paragraph. Failure to file a written apperance within the time specified will result in the dismissal of the application with prejudice.

7. *It is further ordered*, That a copy of this order shall be sent by regular United States Mail to Eugene H. Crone at his address as shown in the caption.

Chief, Safety and Special Radio Services Bureau.

GERALD M. ZUCKERMAN,
Chief, Legal, Advisory and Enforcement Division.

REPLY TO ORDER DESIGNATING AMATEUR RADIO SERVICE APPLICATION FOR HEARING

In this matter, Respondent takes the action indicated below:

- 1. Respondent will appear at a hearing and present evidence on the issues specified in the order of designation.
- 2. Respondent will not present evidence on the issues specified in the order of designation and understands that as a result his application will be dismissed with prejudice.

Date:————1978.

Eugene H. Crone, Respondent.

[FR Doc. 79-2091 Filed 1-19-79; 8:45 am]

[6712-01-M]

RADIO TECHNICAL COMMISSION FOR MARINE SERVICES

Meetings

In accordance with Pub. L. 92-463, "Federal Advisory Committee Act," the schedule of future Radio Technical Commission for Marine Services (RTCM) meetings is as follows:

Special Committee No. 70 "Minimum Performance Standards (MPS)—Marine Loran-C Receiving Equipment": Notice of 14th Meeting, Tuesday, February 6, 1979, Conference Room 7200, Nassif (DOT) Building, 400 Seventh Street SW., (at D Street), Washington, D.C.

AGENDA

1. Call to Order.
2. Old Business.
3. New Business.
4. Administrative Matters.

Captain Alfred E. Fiore, Chairman, SC-70, U.S. Merchant Marine Academy, Kings Point, N.Y. 11024, Phone: (516) 482-8200.

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. All RTCM meetings are open to the public. Written statements are preferred, but by previous arrangement, oral presentations will be permitted within time and space limitations.

Those desiring additional information concerning the above meeting(s) may contact either the designated chairman or the RTCM Secretariat (phone: (202) 632-6490).

FEDERAL COMMUNICATIONS COMMISSION.
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 79-2088 Filed 1-19-79; 8:45 am]

[6712-01-M]

TELEVISION TRANSLATOR APPLICATIONS READY AND AVAILABLE FOR PROCESSING

Adopted: January 9, 1979.

Released: January 15, 1979.

By the Acting Chief, Broadcast Facilities Division:

Notice is hereby given pursuant to § 1.572(c) of the Commission's Rules, that on March 2, 1979, the television translator application listed below will considered ready and available for processing. Pursuant to §§ 1.227(b)(1) and 1.59(b) of the Rules, an application, in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on March 1, 1979, which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and submitted for filing at the offices of the Commission in Washington, D.C., by the close of business on March 1, 1979.

Any party in interest desiring to file pleadings concerning any pending television translator application, pursuant to Section 309(d)(1) of the Communications Act of 1934, as amended, is directed to § 1.580(i) of the Rules, which specifies the time for filing and other requriements relating to such pleadings.

FEDERAL COMMUNICATIONS COMMISSION.
WILLIAM J. TRICARICO,
Secretary.

VHF TV TRANSLATOR APPLICATIONS

BPTTV-780725IA (K10AT). Circle, Sheep Mountain, Brockway & Mountain School, Montana, Circle TV Booster Club, Inc. Req: Change principal community to Circle & Brockway, Montana.

BPTTV-780821IN (K10FP). Brownlee Power Plant & Brownlee Creek, Farming Area, Idaho & Halfway, Oregon, Eugene Television, Inc. Req: Change frequency to Channel 11, 198-204 MHz, increase output power to 5 watts.

BPTTV-780821IO (K12FW). Brownlee Power Plant, Idaho & Halfway, Oregon, KTVB, Inc. Req: Change frequency to Channel 13, 210-216 MHz, increase output power to 5 watts.

BPTTV-780821IP (new). Oxbow, Oregon, Idaho Power Company. Req: Channel 2, 54-60 MHz, 1 watt Primary: KIVI-TV, Nampa, Idaho.

BPTTV-780821IQ (new). Brownlee & Halfway, Oregon, Idaho Power Company. Req: Channel 9, 186-192 MHz, 5 watts Primary: KIVI-TV, Nampa, Idaho.

BPTTV-780825IT (new). Plains & Paradise, Montana, Plains-Paradise TV District. Req: Channel 5, 76-82 MHz, 1 watt. Primary: KPAX-TV, Missoula, Montana.

BPTTV-780901IB (new). Tecopa Hot Springs & Shoshone, California, County of Inyo. Req: Channel 9, 186-192 MHz, 10 watts. Primary: KORK-TV, Las Vegas, Nevada.

BPTTV-780901IC (new). Tecopa Hot Springs & Shoshone, California, County of Inyo. Req: Channel 11, 198-204 MHz, 10 watts. Primary: KLAS-TV, Las Vegas, Nevada.

BPTTV-780901ID (new). Tecopa Hot Springs & Shoshone, California, County of Inyo. Req: Channel 13, 204-210 MHz, 10 watts. Primary: KSHO-TV, Las Vegas, Nevada.

VHF TV TRANSLATOR APPLICATIONS

BPTTV-780828IS (K04AY). Silver Lake, Oregon, Silver Lake Community Television Association. Req: Change Primary TV station to KOIN-TV, Channel 6, Portland, Oregon.

BPTTV-780831IJ (new). Litchfield, California, Honey Lake Community TV Corporation. Req: Channel 10, 192-198 MHz, 10 watts. Primary: KHSL-TV, Chico, California.

UHG TV TRANSLATOR APPLICATIONS

BMPTT-780725IO (K67BE). Silt & Rural Areas & Four Mile Creek, Colorado, Garfield County. Req: Change frequency to Channel 52, 698-704 MHz.

BPTT-780821IR (new). Port Orford, Oregon, State Of Oregon Acting By And Through The State Board Of Higher Education. Req: Channel 55, 716-722 MHz, 100 watts. Primary: KOAP-TV, Portland, Oregon.

BPTT-780821IS (new). Gold Beach, Oregon, State Of Oregon Acting By And Through The State Board Of Higher Education. Req: Channel 61, 752-758 MHz, 100 watts. Primary: KOAP-TV, Portland Oregon.

BPTT-780906IC (new). Brainerd, Minnesota, Hubbard Broadcasting, Inc. Req: Channel 22, 518-524 MHz, 1000 watts. Primary: KSTP-TV, Minneapolis/St. Paul, Minnesota.

BPTT-781016IB (new). Willmar, Minnesota, Hubbard Broadcasting, Inc. Req: Channel 14, 470-476 MHz, 1000 watts. Primary: KSTP-TV, St. Paul, Minnesota.

UHF TV TRANSLATOR APPLICATIONS

BMPTT-780807IC (K61BB). Kilauea Military Camp Area, Hawaii, Hawaii Public Broadcasting Authority. Req: Change frequency to Channel 56, 722-728 MHz.

BMPTT-780807ID (K63BB). Naalehu, Hawaii, Hawaii Public Broadcasting Authority. Req: Add Pahala, Hawaii to present principal community.

BPTT-780710IG (new). Frederick, Maryland, Maryland Public Broadcasting Commission. Req: Channel 62, 758-764 MHz, 1000 watts. Primary: WAPB-TV, Annapolis, Maryland.

BPTT-7808031IB (K81BR). Ellensburg & Kittitas Valley, Washington, Kittitas County Television Reception, Improvement District No. 1. Req: Change frequency to Channel 65, 776-782 MHz.

BPTT-780816IB (new). Valmy & Redhouse Area, Nevada, Humboldt County, Req: Channel 63, 764-770 MHz, 100 watts. Primary: KTVB-TV, Boise, Idaho.

BPTT-780816IC (new). Valmy & Redhouse Area, Nevada, Humboldt County, Req: Channel 65, 776-782 MHz, 100 watts. Primary: KOLO-TV, Reno, Nevada.

BPTT-780816ID (new). Valmy & Redhouse Area, Nevada, Humboldt County, Req: Channel 69, 800-806 MHz, 100 watts. Primary: KTVN-TV, Reno, Nevada.

BPTT-781002IP (new). Seaford, Delaware, Delaware Citizens' Committee, Inc. Req: Channel 64, 770-776 MHz, 100 watts. Primary: WHYY-TV, Wilmington, Delaware.

BPTT-781120IA (new). Twentynine Palms & Twentynine Palms Marine Base, California, Morongo Basin TV Club, Incorporated. Req: Channel 54, 710-716 MHz, 20 watts. Primary: KTIA-TV, Los Angeles, California.

[FR Doc. 79-2089 Filed 1-19-79; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION

AGREEMENTS FILED

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (19 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10423; or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, by February 12, 1979. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreements Nos.: 50-36, 10205-2 and 10252-1.

Filing Party: Eliot J. Halperin, Esq., Graham & James, 1050 17th Street, N.W., Washington, D.C. 20036.

Summary: Agreements Nos. 50-36, 10205-2 and 10252-1 would amend the self-policing provisions of, respectively, the Pacific Coast/Australasian Tariff Bureau, the South Sea Islands Rate Agreement, and the New Zealand-Pacific Coast Rate Agreement to conform them to the requirements of the Commission's new self-policing rules as embodied in revised General Order 7 (46 CFR, Part 528, effective January 1, 1979). At the same time, the subject rate agreements are withdrawing their pending petitions for exemption to allow officers or employees thereof to serve as the policing authority.

Agreement No.: 2846-41.

Filing Party: Marc J. Fink, Esquire, Billig, Sher & Jones, P.C., Suite 300, 2033 K Street, N.W., Washington, D.C. 20006.

Summary: Agreement No. 2846-41 modifies the basic agreement of the WINAC Conference to conform to the requirements of General Order 7, revised.

Agreements Nos.: 4610-27, 6080-26, 6190-32, 6870-20, 7540-31 and 8120-21.

Filing Party: Seymour H. Kligler, Esq., Brauner Baron Rosenzweig Kligler & Sparber, Attorneys at Law, 120 Broadway, New York New York 10005.

Summary: Agreements Nos. 4610-27, 6080-26, 6190-32, 687020, 7540-31 and 8120-21 would amend the self-policing provisions of the United States Atlantic & Gulf/Jamaica Conference, the United States Atlantic & Gulf/Santo Domingo Conference, the United States Atlantic & Gulf/Venezuela and Netherlands Antilles Conference, the United States Atlantic & Gulf/Venezuela and Netherlands Antilles Conference (Oil Agreement), the Leeward and Windward Islands and Guianas Conference and the United States Atlantic & Gulf/Haiti Conference, respectively, to conform them to the requirements of the Commission's new self-policing rules as embodied in revised General Order 7 (46 CFR, Part 528, effective January 1, 1979).

Agreement No.: 5660-27.

Filing Party: Marc J. Fink, Esquire, Billig, Sher & Jones, P.C., Suite 300, 2033 K Street, N.W., Washington, D.C. 20006.

Summary: Agreement No. 5600-27 modifies the basic agreement of the Marseilles/North Atlantic U.S.A. Freight Conference to conform to the requirements of General Order 7, revised.

Agreement No.: 8090-17.

Filing Party: Marc J. Fink, Esquire, Billig, Sher & Jones, P.C., Suite 300, 2033 K Street, N.W., Washington, D.C. 20006.

Summary: Agreement No. 8090-17 modifies the basic agreement of the Mediterranean/North Pacific Coast Freight Conference to conform to the requirements of General Order 7, revised.

Agreement No.: 9522-38.

Filing Party: Marc J. Fink, Esquire, Billig, Sher & Jones, P.C., Suite 300, 2033 K Street, N.W., Washington, D.C. 20006.

Summary: Agreement No. 9522-38 modifies the basic agreement of the Med-Gulf Conference to conform to the requirements of General Order 7, revised.

Agreement No.: 9925-2.

Filing Party: John R. Mahoney, Esq., Burlingham Underwood & Lord, One Battery Park Plaza, New York, New York 10004.

Summary: Agreement No. 9925-2 between Associated Container Transportation (Australia) Limited and the Australian Shipping Commission (trading as The Australian National Line) would amend the preamble of the service agreement known as Pacific America Container Express Line (PACE) by the addition of the following language thereto:

"Vessels operated under this agreement may transport intermodal shipments (whether or not under through documentation) moving through any port which such vessels are authorized to serve, and in addition shall have the full intermodal priviliges of any conference under whose jurisdiction they operate."

The PACE agreement is presently port-to-port in scope and encompasses the trade between Australia, New Zealand and various South Pacific islands and U.S. Atlantic and Gulf Coast ports, Puerto Rico, the Virgin Islands and the Panama Canal.

Agreement No.: 10116-3.

Filing Party: Charles F. Warren, Esquire, Warren & Associates, P.C., 1100 Connecticut Avenue, N.W., Washington, D.C. 20036.

Summary: Agreement No. 10116-3 modifies the basic agreement of the U.S. Pacific Coast/Japan Revenue Pooling Agreement to extend the duration of the agreement through Mrach 31, 1982.

Agreement No.: T-3761.

Filing Party: Milton A. Mowat, Manager, Traffic and Regulatory Affairs, Port of Portland, Box 3529, Portland, Oregon 97208.

Summary: Agreement No. T-3761, between Matson Terminals, Inc. (Matson) and Port of Portland (Port), provides for the 22-month lease (with a one-year renewal option) of certain terminal facilities at Pier 2, Terminal 4, Portland, Oregon. All cargo moving over the premises will be subject to the Port's then current tariff. Matson guarantees payment of a basic minimum sum of $208,333 for the first 10 months and $250,000 for the next 12 months. Revenue from the collection of charges above the minimum guarantee will be divided between the parties as set forth in the agreement. Agreement No. T-3761 will supersede Agreement No. T-1806 between the same parties.

Agreements Nos.: T-3762, T-3763, T-3764, T-3765, T-3766, T-3767 and T-3768.

Filing Party: Mr. Richard A. Earle, Patton, Boggs and Blow, 2550 M Street NW., Washington, D.C. 20037.

Summary: Agreement No. T-3762, between the Indiana Port Commission (Port) and Lakes and Rivers Transfer Corporation (LRTC), is a Settlement Agreement whereby in consideration for LRTC's withdrawal of the complaint filed in Docket No. 76-22, and LRTC's withdrawal of protests of Agreements Nos. T-3310 and T-3311, in Docket No. 76-59, LRTC shall be granted certain privileges concerning the use of land and dock facilities at Burns Waterway Harbor, Portage, Indiana. LRTC is granted preferential use of Berth No. 6 at the East Harbor Arm of Burns Waterway Harbor, for vessels in excess of 360 feet in length to be stevedored by LRTC. In addition, the Port shall lease to LRTC four acres more or less, and described as Outside Storage Area No. 2, at the rate of $2,000 per month. The Port shall grant Ceres Marine Terminals, Inc., (Ceres) exclusive use of that area styled as the New Dock on the East Harbor Arm, 644 feet of dock space to the north of Berth No. 6 and described as Outside Storage Area No. 3, with the provisions that Ceres shall be subject to the stevedoring needs of the Levy Corporation and the Mortex Corporation, or whichever firm is handling the liquid fertilizer operation at Burns Waterway Harbor. The Port shall permit LRTC to rent 10 acres of land across the road and immediately west of the present storage and distribution area leased to LRTC by Port at an annual rental of $35,890 per annum, for five years. In addition, LRTC is granted the right of first refusal to rent for a period of five years, another 10 acres adjacent to the above-mentioned area, at the same rental offered by another prospective tenant. LRTC shall collect and pay to the Port dockage, wharfage and service charges assessed according to the Port's tariff.

Agreement No. T-3763, between the Port and LRTC, provides for the Port's approximately three-year lease (with a five-year renewal option) to LRTC of Outside Storage Area No. 2, consisting of 4.36 acres at the East Harbor Arm of Burns Waterway Harbor, together with the preferential use of the berth, wharfage and trucking concourse adjacent to the leased area; the preferential use being restricted to vessels in excess of 360 feet in length to be stevedored by LRTC. The facility is to be operated as a ship, barge, railroad, and truck terminal and storage facility. As compensation, LRTC shall pay Port $20,000 annually. LRTC is also required to collect and pay to Port all dockage and wharfage charges and harbor dues as set forth in the Port's tariff. This agreement is subject to a right of the Levy Company, Inc., (Levy) to use a portion of the leased premises when Levy cannot use the premises leased to Ceres on the East Harbor Arm of Burns Waterway Harbor.

Agreement No. T-3764, between the Port and LRTC, provides for the Port's approximately three-year lease (with a five-year renewal option) to LRTC of 6.36 acres of land at Burns Waterway Harbor, to be occupied for the purpose of installing and operating a storage, processing and distribution facility for bulk cargoes. As compensation, LRTC shall pay Port $22,635.60 per annum. In addition, LRTC shall pay Port all Port tariff charges, subject to a minimum of $6,306.00 pr annum.

Agreement No. T-3765, between the Port and Ceres Marine Terminals, Inc., (Ceres), provides for the Port's approximately four-year lease (with renewal options) of Outside Storage Area No. 3, consisting of 4.36 acres at the East Harbor Arm of Burns Waterway Harbor, together with the exclusive use of the wharfage and trucking concourse area and Berth No. 7 adjacent to the leased area. The facility is to be operated as a ship, barge, railroad, and truck terminal and storage facility. As compensation, Ceres shall pay Port $20,000 annually. Ceres is also required to collect and pay to Port all dockage and wharfage charges and harbor dues as set forth in the Port's tariff.

Agreement No. T-3766, between the Port and Ceres, provides for the Port's approximately four-year lease (with renewal options) to Ceres to Transit Shed No. 2 at the West Harbor Arm of Burns Waterway Harbor, together with the exclusive use of the wharfage and trucking concourse area and Berth No. 2 adjacent to the leased area. The facility is to be operated as ship, barge, railroad, and truck terminal and warehouse facility. As compensation, Ceres shall pay Port $100,000 annually. Ceres is also required to collect any pay the Port all dockage and wharfage charges and harbor dues as set forth in the Port's tariff.

Agreement No. T-3767, between the Port and Ceres, provides for the Port's approximately four-year lease (with renewal options) to Ceres of Tansit Shed No. 1 and Outside Storage Area No. 1 at the West Harbor Arm of Burns Waterway Harbor, together with the exclusive use of the wharfage and trucking concourse area and Berths Nos. 3 and 4 adjacent to Transit Shed No. 1 The facility is to be operated as a ship, barge, railroad and truck terminal and warehouse facility. As compensation, Ceres shall pay Port $124,168.80 annually. Ceres is also required to collect and pay to Port all dockage and wharfage charges and harbor dues as set forth in the Port's tariff.

Agreement No. T-3768, between the Port and Ceres, provides for the Port's lease to Ceres of a freezer facility attached to Transit Shed No. 1 at the West Harbor Arm of Burns Waterway Harbor, to be used as a facility for the storing and handling of frozen or refrigerated foods merchandise. As compensation, Ceres shall pay Port a basic monthly rental of 1/240 of the certified cost of constructing the facility, not to exceed a total of $300,000. In addition, Ceres shall pay additional rent as specified in the agreement. Ceres is also required to collect and pay to Port all dockage and wharfage charges and harbor dues as set forth in the Port's tariff.

By Order of the Federal Maritime Commission.

Dated: January 17, 1979.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 79-2172 Filed 1-19-79; 8:45 am]

[4110-92-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

MODEL ADOPTION LEGISLATION AND PROCEDURES ADVISORY PANEL

Meeting

The Model Adoption Legislation and Procedures Advisory Panel was established by the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 (Public Law 95-266, Title

II, Section 202) to advise and assist the Secretary of HEW in the review of current conditions, practices, and laws relating to adoption, with special reference to their effort on facilitating or impeding the location of suitable adoptive homes for children who would benefit by adoption and the completion of suitable adoptions for such children. The Panel will propose to the Secretary model adoption legislation and procedures not later than twelve months after its appointment.

Notice is hereby given pursuant to the Federal Advisory Committee Act (Public Law 95-463, 5 U.S.C. app. 1, sec. 10, 1976) that the Panel will hold a meeting on February 5, 6 and 7, 1979 from 9:00 a.m. to 5:00 p.m., Room 5549, Donohoe Building, 400 6th Street, S.W., Washington, D.C.

At this meeting, the Panel will consider and approve an agenda for the three day meeting. The Panel will discuss the first draft of the model adoption legislation and recommend items to be included in the first draft of model adoption procedures. The Panel will meet in plenary session throughout the three day meeting.

Further information on the Panel may be obtained from Mrs. Diane D. Broadhurst, Executive Secretary, Model Adoption Legislation and Procedures Advisory Panel, Children's Bureau, P.O. Box 1182, Washington, D.C. 20013, telephone (202) 755-7730. Model Adoption Legislation and Procedures Advisory Panel meetings are open for public observation.

ARNOLD SAMPSON,
HDS Committee Management Officer.

JANUARY 11, 1979.

[FR Doc. 79-2240 Filed 1-19-79; 8:45 am]

[4310-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

RELOCATION OF ALASKA STATE OFFICE

Anchorage, Alaska

The anchorage, Alaska, Bureau of Land Management State Office will relocate all of its present office personnel, equipment and functions from its present location 555 Cordova Street to the Federal Building U.S. Courthouse located at 701 C Street, Anchorage, Alaska.

This move will commence 7:30 a.m., February 3, 1979, and be completed by 7:30 a.m., February 12, 1979. the relocation involves the move of the Land Office which will close for business at 4:00 p.m. on February 2, 1979, and open for business at 10:00 a.m. on February 5, 1979. The mailing address and telephone number for the new location will be: Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska, 99513, telephone 907-271-5960.

A Public Information Office, including land office information, will be maintained at the Anchorage Federal Office Building, 701 C Street, Room D-137.

CLAIR M. WHITLOCK
Acting State Director.

[FR Doc. 79-2173 Filed 1-19-79; 8:45 am]

[7070-02-M]

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-63]

CERTAIN PRECISION RESISTOR CHIPS

Order

Pursuant to my authority as Chief Administrative Law Judge of this Commission, I hereby designate Administrative Law Judge Janet D. Saxon as Presiding Officer in this investigation.

The Secretary shall serve a copy of this Order upon all parties of record and shall publish it in the FEDERAL REGISTER.

Issued: January 16, 1979.

DONALD K. DUVALL,
Chief Administrative Law Judge.

[FR Doc. 79-2245 Filed 1-19-79; 8:45 am]

[4410-09-M]

DEPARTMENT OF JUSTICE

Office of the Attorney General

[AAG/A Order No. 22-79]

PRIVACY ACT OF 1974

New System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. § 552a), notice is hereby given that the Department of Justice proposes to establish a new system of records to be maintained by the Drug Enforcement Administration (DEA).

The Essential Chemical Reporting System (JUSTICE/DEA-020) is a new system of records for which no public notice consistent with the provisions of 5 U.S.C. § 552a(e)(4) has been published in the FEDERAL REGISTER.

5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to review the system before it is implemented. Therefore, the public, OMB, and the Congress are invited to submit written comments on this system. Comments should be addressed to the Administrative Counsel, Office of management and Finance, Room 1118, Department of Justice, 10th and Constitution Avenue, N.W., Washington, D.C. 20530. If no comments are received from either the public, OMB, or the Congress on or before March 23, 1979, the system will be implemented without further notice in the FEDERAL REGISTER. No oral hearings are contemplated.

A report of the proposed system has been provided to the Director, OMB; to the President of the Senate; and to the Speaker ot the House of Representatives.

KEVEIN D. ROONEY,
Assistant Attorney General for Administration.

JANUARY 10, 1979.

JUSTICE/DEA-020

System name:

Essential Chemical Reporting System.

System location:

Drug Enforcement Administration (DEA), 1405 I Street, N.W., Washington, D.C. 20537. Also, DEA Field Offices. See Appendix 1 for list of addresses.[1]

Categories of individuals covered by the system:

A. Individuals who submit reports concerning the sale, loss, or theft of piperidine or other chemical essential to the manufacture of controlled substances.

B. Individuals who are reported as the purchaser, importer, or individual suffering the loss or theft of piperidine or other chemical essential to the manufacture of controlled substances.

C. Individuals who are reported as the person placing an order for piperidine or other chemical essential to the manufacture of controlled substances.

D. Individuals who are reported as being involved in or having knowledge of the details relative to the loss or theft of piperidine or other chemical essential to the manufacture of controlled substances.

Categories of records in the system:

The system contains: (1) Piperidine reports submitted to DEA pursuant to Pub. L. No. 95-633. (2) Information extracted from piperidine reports and maintained on magnetic tape. (3) reports submitted voluntarily to DEA concerning chemicals essential to the manufacture of controlled substances.

Authority for maintenance of the system:

This system of records is maintained pursuant to the reporting requirements contained in Pub. L. No. 95-633.

[1] Most recently published at 43 FR 44718 on September 28, 1978.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Information contained in this system is provided to the following categories of users for the purposes stated:

(A) Other Federal law enforcement and regulatory agencies for law enforcement or regulatory purposes.

(B) State and local law enforcement and regulatory agencies for law enforcement and regulatory purposes.

(C) Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(D) Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(E) Release of information to the National Archives and Records Service: A record from a system of records may be disclosed as a routine use to the National Archives and Records Service (NARS) in management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system.

Storage:

Essential chemical report documents will be maintained in manual file folders. Information extracted from these documents will be maintained on magnetic tape.

Retrievability:

The information maintained on magnetic tape will be retrievable by the name of any individual mentioned in the report.

Safeguards:

The proposed system of records will be maintained in DEA Headquarters which is protected by twenty-four hour guard service and electronic surveillance. Access to the building is restricted to DEA employees and those persons transacting business within the building who are escorted by DEA employees. Manual files will be maintained in the DEA central files and access to these documents will be restricted to DEA employees on a need-to-know basis. Access to information maintained on magnetic tape will require a specific computer program to extract information. Access to information through ADP terminals will require a user identification code which will be issued to authorized DEA employees on a strict need-to-know basis.

Retention and disposal:

Until DEA gains experience to establish the useful life of the records in this system, the records will be maintained indefinitely.

System manager(s) and address:

Assistant administrator for Enforcement, Drug Enforcement Administration, 1405 I Street, N.W., Washington, D.C. 20537.

Notification procedure:

Inquiries should be addressed to Freedom of Information Division, Drug Enforcement Administration, 1405 I Street, N.W., Washington, D.C. 20537.

Access and contest:

Same as above.

Record source categories:

Individuals required to submit piperidine reports pursuant to Pub. L. No. 95-633, and individuals who voluntarily submit reports concerning the sale, distribution or importation of chemicals essential to the manufacture of controlled substances.

Systems exempted from certain provisions of the act:

None.

[FR Doc. 79-2075 Filed 1-19-79; 8:45 am]

[4410-01-M]

UNITED STATES CIRCUIT JUDGE NOMINATING COMMISSION, EIGHTH CIRCUIT PANEL

Meeting

The Eighth Circuit Panel (Chairman: Lawrence J. Hayes) of the United States Circuit Judge Nominating Commission will hold its next meeting at the Marquette Inn, 710 Marquette Avenue South, Minneapolis, Minnesota 55402, on Saturday, February 17, 1979, and March 9, 10, and 11, 1979, at 8:30 a.m.

The purpose of these meetings is to review applicants for the vacancy and conduct interviews. The meetings will be closed to the public pursuant to P.L. 92-463, Section 10(D) as amended. (CF 5 U.S.C. 552b (c)(6).)

Dated: January 15, 1979.

JOSEPH A. SANCHES,
Advisory Committee Management Officer.

[FR Doc. 79-2216 Filed 1-19-79; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-313]

ARKANSAS POWER & LIGHT CO.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 39 to Facility Operating License No. DPR-51, issued to Arkansas Power & Light Company (AP&L) or the licensee), which revised the Technical Specifications for operation of Arkansas Nuclear One, Unit No. 1 (ANO-1 or the facility) located in Pope County, Arkansas. The amendment is effective as of the date of issuance.

This amendment authorizes deletion of sodium thiosulfate from the Reactor Building Spray System, allows the installation of an orifice in the line between the Sodium Hydroxide Tank (SHT) and the Borated Water Storage Tank (BWST) and changes to the Technical Specifications on the operating limits for the SHT and BWST water levels and chemical concentrations.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the licensee's applications for amendment dated July 5, 1977, and December 6, 1977, as supplemented December 13, 1978, (2) Amendment No. 39 to License No. DPR-51, 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 Arkansas Polytechnic College, Russellville, Arkansas. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 12th day of January 1979.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc. 79-2095 Filed 1-19-79; 8:45 am]

[7590-01-M]

[Docket No. 50-313]

ARKANSAS POWER & LIGHT CO.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 38 to Facility Operating License No. DPR-51, issued to Arkansas Power and light Company (the licensee), which revised the license and its appended Technical Specifications for operation of the Arkansas Nuclear One, Unit No. 1 (the facility) located in Pope County, Arkansas. The amendment is effective as of its date of issuance.

The amendment changes the license and Technical Specifications relating to the receipt, possession, and use of byproduct, source and special nuclear material.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) 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 application for amendment dated August 16, 1978, as supplemented December 6, 1978, (2) Amendment No. 38 to License No. DPR-51, 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 Arkansas Polytechnic College, Russellville, Arkansas. A copy of items (2) and (3) may be obtained upon request addressed to the U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 11th day of January 1979.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch #4, Division of Operating Reactors.

[FR Doc. 79-2094 Filed 1-19-79; 8:45 am]

[7590-01-M]

[DOCKET NO. 50-305]

WISCONSIN PUBLIC SERVICE CORP.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 24 to Facility Operating License No. DPR-43 issued to Wisconsin Public Service Corporation, Wisconsin Power and Light Company, and Madison Gas and Electric Company which revises Technical Specifications for operation of the Kewaunee Nuclear Power Plant located in Kewaunee, Wisconsin. The amendment will become effective as of the date of issuance.

The amendment revised the Technical Specifications to include a change in inlet temperature to take into account the fuel rod bow penalty.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with the issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated July 12, 1977, (2) Amendment No. 24 to Facility Operating License No. DPR-43, 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. 20555, and at the Kewaunee Public Library, 314 Milwaukee Street, Kewaunee, Wisconsin 54216. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention, Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 15th day of January 1979.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactor Branch #1, Division of Operating Reactors.

[FR Doc. 79-2096 Filed 1-19-79; 8:45 am]

[7715-01-M]

[Docket No. MC78-1]

PARCEL POST PROPOSAL, 1978

Suspension of hearing

JANUARY 17, 1979.

Notice is hereby given that pursuant to the "Presiding Officer's Order Suspending Procedural Schedule And Notice Of Prehearing Conference", dated January 17, 1979, the "Hearing Schedule For Remainder Of Proceedings—Docket No. MC78-1" (attached as an Appendix to the Presiding Officer's Order, dated January 9, 1979), is hereby suspended.

In order to discuss a new schedule due to recent developments, a Prehearing Conference is hereby scheduled to be held on January 30, 1979, at 9:30 a.m., Hearing Room, Postal Rate Commission, 2000 L Street, N.W., Suite 500, Washington, D.C.

A copy of the Presiding Officer's "Order Suspending Procedural Schedule And Notice Of Prehearing Conference" is available to all interested parties in the Commission's Docket Room at the above-listed address or by calling the Docket Room, at Area Code 202-254-3800.

DAVID F. HARRIS,
Secretary.

[FR Doc. 79-2215 Filed 1-19-79; 8:45 am]

[4910-06-M]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

REAR END MARKING DEVICES

Petitions for Waiver of Rules

As required by 45 U.S.C. 431(c) and in accordance with 49 CFR 211.41 and 211.9, notice is hereby given that five railroads have submitted waiver petitions to the Federal Railroad Administration (FRA) requesting temporary or permanent waivers of compliance with 49 CFR Part 221 (Rear End Marking Devices—Passenger, Commuter, and Freight Trains). That part requires that certain passenger, commuter and freight trains be equipped with highly visible marking devices located on the trailing end of the rear car of the train.

Part 221 was published in the FEDERAL REGISTER on January 11, 1977 (42 FR 2321), and became effective on February 15, 1977. Compliance with the provisions of that part became mandatory on July 1, 1978 (42 FR 62002).

Each of the railroads seeking a waiver is identified below. A brief discussion of each request for waiver is provided.

Interested persons are invited to participate in these proceedings by submitting written data, views or comments. The FRA does not anticipate scheduling a public hearing in connection with the aforemetioned petitions since the facts do not appear to warrant a hearing. However, a public hearing will be scheduled if requested by an interested person before January 31, 1979.

All communications concerning these petitions must identify the appropriate docket number (e.g. FRA Waiver Petition No. RSRM-78-20) and should be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, 2100 Second Street, S.W., Washington, D.C. 20590. Communications received before February 23, 1979 will be considered by the FRA before final action is taken. Comments received after that date will be considered to the extent practicable.

Detailed information concerning each petition is on file with the docket clerk. Any comments received will also be on file. This material is available for examination by the public during regular business hours in Room 4406, Trans Point Building, 2100 Second Street, S.W., Washington, D.C. 20590.

FRA WAIVER PETITION DOCKET NO. RSRM-78-19

CHICAGO, ROCK ISLAND AND PACIFIC RAILROAD

The Chicago, Rock Island and Pacific Railroad (CRI&P) seeks a temporary waiver of compliance with the provisions of 49 CFR Part 221 which require that trains be equipped with highly visible marking devices.

The CRI&P notes that although the regulation requires that the marking devices be in service beginning in July of 1978, it has not been possible to equip all of its trains by that date. The CRI&P notes that it is in the process of obtaining and installing approved devices. However, production delays have prevented CRI&P from meeting the July 1, 1978 deadline for installation provided for in the regulation.

The CRI&P notes that the process of equipping all of its passenger and commuter trains was completed during October of 1978 when new passenger cars were received. However, the process of installing approved devices for freight trains will require additional time in CRI&P's judgement. CRI&P states that it expects to complete the installation of approved devices for its cabooses during June of 1979. The CRI&P seeks a temporary waiver of compliance until June 30, 1979 in order to complete the installation effort.

FRA WAIVER PETITION DOCKET NO. RSRM-78-20

CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD

The Chicago, Milwaukee, St. Paul and Pacific Railroad (Milwaukee) seeks a temporary waiver of compliance with the provisions of 49 CFR Part 221 which require that trains be equipped with highly visible marking devices.

The Milwaukee notes that it has brought all of its passenger and commuter trains into compliance with the regulation. This has been accomplished in part by using the locomotive headlight as provided by the regulation. As of March 30, 1979 the Milwaukee will complete the installation of marker devices and will eliminate the use of headlights, as passenger trains marker devices, on that date.

The Milwaukee states that it is also in the process of equipping its cabooses with approved marking devices. This effort involves approximately 400 cabooses and includes 358 cabooses used primarily in road service. The effort to equip the cabooses has been hampered by the fact that only 126 cabooses are known to be equipped with electrical capability and that a large number of these electrical systems do not have the capacity to support the currently available marking devices.

The need to equip cabooses with axle generators and the limited deliveries of approved devices when combined with the fact that the Milwaukee has filed for bankruptcy has prompted the Milwaukee to seek a waiver of compliance until December 31, 1980 for the completion of its installation effort.

FRA WAIVER PETITION DOCKET NO. RSRM-78-21

MAINE CENTRAL RAILROAD

The Maine Central Railroad (MEC) seeks a temporary waiver of compliance with the provisions of 49 CFR Part 221 which require that trains be equipped with highly visible marking devices.

The MEC states that it operates approximately 46 cabooses and that none of these cabooses are equipped with electrical capability. Therefore, the MEC had originally intended to use non-electrical marking devices. MEC now intends to use lighted devices and has obtained FRA approval of the devices but delays have occurred which prevented the manufacturer from making rapid delivery of the devices.

The devices selected by the MEC will require that each caboose be brought to the shop facility at Waterville, Maine for the installation work. The MEC states that the scheduling of cabooses to reach this facility is restricted by the railroad's labor agreements which provide for the assigning of specific cabooses to specific train crews. Consequently, the MEC states that it will need until July 1, 1979 in order to complete the installation of the marker devices without severely disrupting train service. The MEC seeks a waiver of compliance until July 1, 1979 so that it can complete this installation effort.

FRA WAIVER PETITION DOCKET NO. RSRM-78-23

ST. LOUIS-SAN FRANCISCO RAILWAY

The St. Louis-San Francisco Railway (Frisco) seeks a temporary waiver of compliance with the provisions of 49 CFR 221 which require that trains be equipped with highly visible marking devices.

The Frisco notes that it operates approximately 195 cabooses. This caboose fleet includes 118 cabooses used in "pool" service, 70 cabooses used in local service and 7 cabooses used for terminal operations. The Frisco intends to equip these cabooses with approved marking devices in a two stage process.

The first step in this process will be to equip the 118 "pool" cabooses since these units are already equipped with electrical capability. The effort to

equip these cabooses should be completed during April of 1979. The second step in this process will be to equip the non-electrified cabooses. The Frisco indicates that it has been unable to find an acceptable device for these units. Several potential solutions are being considered at the present time including the use of solar powered devices. However, the Frisco does not anticipate being able to select a device, field test that device and complete installation on the 77 local and terminal cabooses before December 31, 1980. Consequently, the Frisco seeks a waiver of compliance until December 31, 1980 for completion of the installation of these devices.

FRA WAIVER PETITION DOCKET NO. RSRM-78-24

BANGOR AND AROOSTOOK RAILROAD

The Bangor and Aroostook Railroad (BAR) seeks a permanent waiver of compliance with the provisions of 49 CFR Part 221 which require that trains be equipped with highly visible marking devices.

The BAR notes that it operates over approximately 500 miles of track and that approximately 300 miles of that trackage is main line track. The BAR operations are limited to freight trains and normally involve only 16 road freight trains on an average day.

The method of operation used by the BAR provides that each train is given sole and exclusive right to occupy a portion of main track by train order. This method of operation is commonly called an absolute block system. In view of this absolute block system the BAR indicates that the marking devices required by the regulation will not improve the safety of train operations. Consequently, the BAR seeks a permanent waiver of compliance with the regulation provided that this absolute block system is utilized.

(Sec. 202, Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 431); Sec. 1.49(n), Regulations of the Office of the Secretary of Transportation (49 CFR 1.49(n)).

Issued in Washington, D.C. on January 15, 1979.

ROBERT H. WRIGHT,
Acting Chairman,
Railroad Safety Board.

[FR Doc. 79-2243 Filed 1-19-79; 8:45 am]

[4910-59-M]

National Highway Traffic Safety Administration

FIAT 850 AND 124 MODELS FOR MODEL YEARS 1970-1974 IMPORTED BY FIAT MOTORS OF NORTH AMERICA, INC.

Public Proceeding

Pursuant to section 152 of the National Traffic and Motor Vehicle Safety Act of 1966 as amended (Pub. L. 93-492, 88 Stat. 1470; October 27, 1974, 15 U.S.C. 1412), I have made an initial determination that a defect relating to motor vehicle safety exists in the frame and underbody of the 124 and 850 models of the Fiat automobile for model years 1970 through 1974 because these critical vehicle components are susceptible to weakening and failure due to excessive rust or corrosion which can result in accidents, injuries, deaths and property damage.

A public meeting will be held at 10 a.m. on February 21, 1979, in room 6332, Department of Transportation Headquarters, 400 Seventh Street, S.W., Washington, D.C. 20590, at which Fiat Motors of North America, Inc. will be afforded an opportunity to present data, views and arguments to establish that the alleged defect does not exist or does not affect motor vehicle safety.

Interested persons are invited to participate through written or oral presentations. Persons wishing to make oral presentations are requested to notify Mrs. Joan Murianka, Office of Defects Investigation, National Highway Traffic Safety Administration, Washington, D.C. 20590, telephone 202-426-2850, before the close of business on February 16, 1979. A transcript will be kept and exhibits may be accepted. There will be no cross-examination of witnesses.

The agency's investigative file in this matter is available for public inspection during regular working hours (7:45 a.m. to 4:15 p.m.) in the Technical Reference Division, Room 5108, 400 Seventh Street, S.W., Washington, D.C. 20590.

(Sec. 152, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1412); delegations of authority at 49 CFR 1.51 and 49 CFR 501.8.)

Issued on January 16, 1979.

FRANK BERNDT,
Associate Administrator
for Enforcement.

[FR Doc. 79-2037 Filed 1-19-79; 8:45 am]

[4910-59-M]

[Docket No. IP77-9; Notice 2]

VESPA OF AMERICA CORP.

Grant of Petition for Determination of Inconsequential Noncompliance

This notice grants the petition by Vespa of America Corp. of San Franciso, California, to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 et seq.) for an apparent noncompliance with 49 CFR 571.123 Motor Vehicle Safety Standard No. 123, *Motorcycle Controls and Displays*. The basis of the petition was that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of the petition was published on July 21, 1977, and an opportunity afforded for comment (42 FR 37467).

Petition is an importer of motor scooters which are defined as "motorcycles" under the Federal motor vehicle safety standards. Pursuant to Table 3 of Standard No. 123 a motorcycle speedometer is required to be identified as follows: "Major graduations and numerals appears at 10 m.p.h. intervals. Minor graduations at the 5 m.p.h. intervals." Vespa has imported approximately 2,800 vehicles between April 1975 and May 1977 with speedometer face calibrations beginning at 10 m.p.h. instead of zero, and which omit a minor graduation at the 5 m.p.h. increment. Petitioners argues that the nonconformance is inconsequential because "as the products involved are intended for street and highway use at speeds up to legal limits, the probability that vehicles will be operated in situations requiring speed less than 10 MPH is remote."

No comments were received on the petition.

The National Highway Traffic Safety Administration concurs in Vespa's assessment of the failure to comply with Standard No. 123. Its failure to provide the minor graduation to indicate the 5 mph speed ought to have no discernible effect upon safety. There are few if any jurisdictions that impose a 5 mph speed limit that would require the operator of a motor driven cycle to refer to the speedometer. Accordingly the NHTSA hereby grants the petition by Vespa of America Corp. that the noncompliance of Standard No. 123 herein described be deemed inconsequential as it relates to motor vehicle safety.

(Sec. 3, Pub. L. 92-548, 86 Stat. 1159 (15 U.S.C. 1410); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on January 15, 1979.

MICHAEL M. FINKELSTEIN,
Associate Administrator for Rulemaking.

[FR Doc. 79-2036 Filed 1-19-79; 8:45 am]

[4910-59-M]

National Highway Traffic Safety Administration

[Docket No. FE 78-02, Notice 2]

AUTOMOTIVE FUEL ECONOMY PROGRAM REPORT TO CONGRESS

Extension of Comment Deadline; Invitation of Financial Assistance Applications; Cancellation of Public Meeting

AGENCY: National Highway Traffic Safety Administration, Department of Transportation.

ACTION: Extension of deadline for submission of written comments, invitation of financial assistance applications, and cancellation of public meeting.

SUMMARY: This notice extends the deadline (originally established as February 16, 1979, in 43 FR 59577) for submission of written comments on the agency's annual report to Congress on the automotive fuel economy program. This notice also invites applications for financial assistance from individuals or organizations which desire to participate in the review of the report and the recommendation of future rulemaking activities resulting from the report, but which are financially unable to do so (see eligibility criteria and application procedures in 42 FR 2864, January 13, 1977). These actions are taken to facilitate increased public comment on the report. Because of this opportunity for increased written comment and because submission of views in written form is considered by the agency to be more appropriate than oral comment, given the technical nature of the issues involved, the public meeting originally scheduled for February 15 and 16 in Washington, D.C., is cancelled.

DATES: Written comments on the report to Congress must be submitted by March 23, 1979. Applications for financial assistance must be submitted by February 6, 1979.

ADDRESSES: Comments should refer to Docket No. FE 78-02 and be submitted in writing (preferably in 10 copies) to: Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street, S.W., Washington, D.C. 20590. Applications for financial assistance must be submitted to Ms. Jeannette Feldman, Special Assistant to the Evaluation Board, National Highway Traffic Safety Administration, Room 5232, 400 Seventh Street, S.W., Washington, D.C. 20590. Copies of the annual report may be obtained from Mr. William Devereaux, Office of Automotive Fuel Economy Standards, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 (202-755-9384).

FOR FURTHER INFORMATION CONTACT:

Mr. William Devereaux, at the above address.

Issued on January 19, 1979.

JOAN CLAYBROOK,
Administrator.

[FR Doc. 79-2403 Filed 1-19-79; 11:47 am]

[4910-59-M]

ADVANCED AUTOMOTIVE TECHNOLOGY

Public Meeting

On December 5, 1978, the Secretary of Transportation delivered a challenge to the U.S. motor vehicle industry to create new, superior vehicles. He noted that further incremental increases in fuel economy beyond 1985 may be insufficient to offset increases in consumption in the 1990's, and that to hold the use of motor fuels to tolerable levels may require a virtual redoubling of the fleet fuel economy average before the turn of the century. The conference will focus on basic research to support further improvement in motor vehicles.

The Secretary has asked the Transportation Systems Center, in cooperation with the National Highway Traffic Safety Administration, to hold a conference on basic research directions for advanced automotive technology on February 13 and 14, 1979, at the Sheraton-Boston Hotel, 39 Prudential Center, Boston, Massachusetts. The conference will convene at 9 a.m. on the first day. The objective of this conference is to obtain views from a variety of knowledgeable and interested people from many fields and institutions on the basic research objectives and priorities that would address automotive transportation needs for the 1990's and beyond.

The conference agenda will include three panel discussion areas: engines; fuel and powertrain systems; and vehicle structures and materials. It is planned to stimulate discussion by the panelists on the basic research requirements for establishing and expanding the limits of automotive technology for the long term future. All discussions and meetings of the panel will be open to the public. Questions and comments from the audience will be entertained at certain points in the panel discussions.

Questions about the meeting may be directed to Ms. Susan Swain, of the Transportation Systems Center, Kendall Square, Cambridge, Massachusetts, at 617-494-2392.

Issued on January 19, 1979.

JOAN CLAYBROOK,
Administrator.

[FR Doc. 79-2404 Filed 1-19-79; 11:47 am]

[4810-40-M]

DEPARTMENT OF THE TREASURY

Office of the Secretary

[Department Circular Public Debt Series—No. 1-79]

TREASURY NOTES FOR JANUARY 31, 1981

Series P-1981

JANUARY 18, 1979.

1. INVITATION FOR TENDERS

1.1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $2,700,000,000 of United States Securities, designated Treasury Notes of January 31, 1981, Series P-1981 (CUSIP No. 912827 JJ 2). The securities will be sold at auction with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts may also be issued for cash to Federal Reserve Banks as agents of foreign and international monetary authorities.

2. DESCRIPTION OF SECURITIES

2.1. The securities will be dated January 31, 1979, and will bear interest from that date, payable on a semiannual basis on July 31, 1979, and each subsequent 6 months on January 31 and July 31, until the principal becomes payable. They will mature January 31, 1981, and will not be subject to call for redemption prior to maturity.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered and book-entry securities, and the transfer of registered securities will be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be included at a later date.

3. SALE PROCEDURES

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Standard time, Tuesday, January 23, 1979. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, January 22, 1979.

3.2. Each tender must state the face amount of securities bid for. The minimum bid is $5,000 and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.11%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender and the amount may not exceed $1,000,000.

3.3. All bidders must certify that they have not made and will not make any agreements for the sale or purchase of any securities of this issue prior to the deadline established in Section 3.1. for receipt of tenders. Those authorized to submit tenders for the account of customers will be required to certify that such tenders are submitted under the same conditions, agreements, and certifications as tenders submitted directly by bidders for their own account.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for accounts of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3.5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; federally insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by a deposit of 5% of the face amount of securities applied for (in the form of cash, maturing Treasury securities or readily collectible checks), or by a guarantee of such deposit by a commercial bank or a primary dealer.

3.6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yield, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. RESERVATIONS

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. PAYMENT AND DELIVERY

5.1. Settlement for allotted securities must be made or completed on or before Wednesday, January 31, 1979, at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received at such institution no later than:

(a) Monday, January 29, 1979, if the check is drawn on a bank in the Federal Reserve District of the institution to which the check is submitted (the Fifth Federal Reserve District in case of the Bureau of the Public Debt), or

(b) Friday, January 26, 1979, if the check is drawn on bank in another Federal Reserve District.

Checks received after the dates set forth in the preceding sentence will not be accepted unless they are payable at the applicable Federal Reserve Bank. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment is not completed on time, the deposit submitted with the tender, up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered as deposits and in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. GENERAL PROVISIONS

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

SUPPLEMENTARY STATEMENT

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

PAUL H. TAYLOR,
Fiscal Assistant Secretary.

[FR Doc. 79-2293 Filed 1-18-79; 2:42 pm]

[1505-01-M]

INTERSTATE COMMERCE COMMISSION

[Decisions Volume No. 47]

DECISION-NOTICE

Correction

In FR Doc. 78-33285, appearing at page 55513, in the issue for Tuesday, November 28, 1978, make the following corrections:

1. On page 55516, in the third column, in the paragraph beginning "MC 109397 (Sub-427F)", in the thirteenth line, "NM" should be corrected to read "MN".

2. On page 55520, in the second column, the paragraph beginnig "MC 127042 (Sub-22F)" should be corrected to begin "MC 127042 (Sub-225F)".

[1505-01-M]

[Decisions Volume No. 49]

DECISION-NOTICE

Correction

In FR Doc. 78-33286, appearing at page 55526, in the issue for Tuesday, November 28, 1978, on page 55538, in the second column, in the paragraph beginning "MC 144692 (Sub-1F)", in the second line "MAN" should be corrected to read "MANN".

[1505-01-M]

[Notice No. 222]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

Correction

In FR Doc. 78-33171, appearing at page 55550, in the issue for Tuesday, November 28, 1978, on page 55552, in the first column, the paragraph beignning "MC 12885 (Sub-1TA)" should be corrected to read "MC 128850 (Sub-1TA)".

[7035-01-M]

FOURTH SECTION APPLICATIONS FOR RELIEF

JANUARY 17, 1979.

These applications for long-and-short-haul relief have been filed with the I.C.C.

Protests are due at the I.C.C. on or before February 6, 1979.

FSA NO. 43652, Southwestern Freight Bureau, Agent's No. B-793, rates on carbolic acid (phenol), from stations in Southwestern Territory to stations in New Jersey, in Supplements 36 and 25 to its Tariffs 38-E and 355-D, ICC 5338 and 5336, respectively, to become effective February 12, 1979. Grounds for relief-market competition.

FSA NO. 43653, Burlington Northern Inc., No. 5, unit train rates on potash, from Northgate, N.D. to specified points in the Midwest, in supp. 10 to its Tariff 13-F, ICC 452, to become effective March 5, 1979. Grounds for relief—Market competition and rate relationship.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-2227 Filed 1-19-79; 8:45 am]

[7035-01-M]

[Notice No. 11]

ASSIGNMENT OF HEARINGS

JANUARY 17, 1979.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 126822 (Sub-48F), Westport Trucking Company, a Corporation, now assigned January 8, 1979, Washington, D.C. is cancelled transfered to Modified Procedure.

MC 113908 (Sub-443F), Erickson Transport Corporation, now assigned January 31, 1979, at Washington, D.C. is cancelled transfered to Modified Procedure.

MC 135237 (Sub-3F), East Penn Trucking Company, a Corporation, now assigned January 24, 179, at Washington, D.C. is cancelled transfered to Modified Procedure.

MC 120257 (Sub-42), K. L. Breeden & Sons, Inc., now assigned January 9, 1979, at Birmingham, Alabama is cancelled transfered to Modified Procedure.

MC 119777 (Sub-350F), Ligon Specialized Hauler, Inc., now assigned January 15, 1979, at Birmingham, Alabama is cancelled transfered to Modified Procedure.

MC 136828 (Sub-26F), Cook Transports, Inc., now assigned January 29, 1979, at Birmingham, Ala., is postponed to March 13, 1979, (4 days), at Birmingham, Ala., in a hearing room to be later designated.

MC-1745 (Sub-8F), Interstate Van Lines, Inc., now assigned for continued hearing on January 16, 1979, at the Interstate Commerce Commission, Washington, D.C.

MC 4405 (Sub-585F), Dealers Transit, Inc, & MC 4810 (Sub-5F), Rocky Mountain Trucking Company & MC 23618 (Sub-39F), McAlister Trucking Co., DBA Matco, & MC 25518 (Sub-20), John Bunning Transfer Co. Inc., & MC 43867 A. L. McAlister Trucking Company, & MC 95350 (Sub-8F), R. W. Jones Trucking Co., & MC 105006 (Sub-7F), L. L. Smith Trucking & MC 105006 (Sub-9F), L. L. Smith Trucking & MC 105984 (Sub-21F), John B. Barbour Trucking Company, & MC 110817 (Sub-25F), E. L. Farmer & Company & MC 113531 (Sub-2F), B & M Service, Inc., & MC 113822 (Sub-6F), Dalgarno Transportation, Inc., & MC 113822 (Sub-8f), Dalgarno Transportation, Inc., & MC 114761 (Sub-13), Getter Trucking Incorporated, & MC 119774 (Sub-96F), Eagel Trucking Company & MC 125433 (Sub-170F), F-B Truck Line Company & MC 135705 (Sub-11F), Melrose Trucking Co., Inc., & MC 143446 (Sub-1F), Gary L. McCallister & Monte A. McCallister DBA McCallister Brothers & MC 143446 (Sub-3F), Gary L. McCallister & Monte A. McCallister DBA McCallister Brothers, & MC 144961 (Sub-1F), Reed Transportation, & MC 145568F, Pollard Transportation now assigned for continued hearing on March 27, 1979 (4 days), at Casper, Wyoming and will be held at Ramada Inn 123 West E St., and will be continued April 2, 1979 (2 weeks), at Denver, Colorado and will be held at Executive Plaza Inn 1405 Curtis St.

MC 51146 (Sub-611F), Schneider Transport, Inc., now assigned January 25, 1979, at Chicago, Illinois is cancelled transfered to Modified Procedures.

MC 124920 (Sub-14), LaBar's Inc., and MC 124821 Sub 26, William Gilchrist, now assigned February 5, 1979, at Philadelphia, Pa., is postponed to March 15, 1979, (2 days), at Philadelphia, Pa., in a hearing room to be later designated.

MC 141912 (Sub-9F), Tollie Freightways, Inc., now assigned January 23, 1979, at Kansas City, Missouri is cancelled transfered to Modified Procedure.

MC 52861 (Sub-42F), Wills Trucking, Inc., now assigned March 1, 1979, at Columbus, Ohio is cancelled transfered to Modified Procedure.

MC 119493 (Sub-2220F), Monkem Company, Inc., is transfered to Modified Procedure.

MC 144374F, Mason Travel Service, Inc., now assigned for hearing on February 21, 1979, at Indianapolis, Indiana and will be held in Room 288, Federal Building & Courthouse.

MC-F 13622, Paris Motor Freight, Inc.—Purchase (Portion)—Rock Island Transit Company, MC-F 13663 Murphy Motor, Freight Lines, Inc.—Purchase (Portion)—The Rock Island, Motor Transit Company, MC-F 13668, Garrison Motor Freight, Inc.—Purchase (Portion)—The Rock Island Motor Transit Company, MC-F 13670, Winters Truck Lines, Inc.—Purchase (Portion)—Rock Island Motor Transit Company, now assigned for hearing on March 6, 1979, at the Offices of Interstate Commerce Commission, Washington, DC.

MC-F 13606, Crouse Cartage Company—Purchase—(Portion)—The Rock Island Motor Transit Company, MC-F 13631, Witte Transportation Company—Purchase (Portion)—The Rock Island Motor Transit Company, MC-F 13649, Ideal Truck Lines, Inc.—Purchase (Portion)—The Rock Island Motor Freight Co., MC-F 13657, Century-Mercury Motor Freight, Inc.—Purchase (Portion)—The Rock Island Motor Transit Company, MC-F 13691F, Jerry Simpson DBA Thornton Transfer—Purchase (Portibn)—The Rock Island Motor Transit Company, are transfered to Modified, Procedure.

MC 128273 (Sub-301F), Midwestern Distribution, Inc., now assigned for hearing on February 26, 1979, at Cincinnatti, Ohio and will be held in Room 8017, Federal Office Building.

MC 144537F, Marvin Y. Neely and Nancy B. Neely, A Partnership, DBA Shun Pike Tours, now assigned for hearing on February 7, 1979, at Philadelphia, Pennsylvania and will be held in U.S. Customs Courtroom, Third Floor, U.S. Customs House Building.

MC 114457 (Sub-401F), Dart Transit Company, a Corp., now assigned for hearing on February 5, 1979, at New York City, New York and will be held in Room R-2222, Federal Building. No. MC 89369 (Sub-20F), Joart Trucking Company, now assigned for hearing on February 8, 1979, at New York City, New York and will be held in Room E-2222, Federal Building. No. MC 95540 (Sub-1038F), Watkins Motor Lines, Inc., now assigned for hearing on February 6, 1979, at New York City, New York and will be held in Room E-2222, Federal Building.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-2227 Filed 1-19-79; 8:45 am]

[7035-01-M]

[Notice No. 10]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

Important Notice: The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it applies. Also,

the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

W-377 (Sub-16 TA). By decision entered the Motor Carrier Board granted Dixie Carriers, Inc., 1717 St. James Place, Houston, TX 77027, 180 days temporary authority to engage in the business of transportation by water vessel, in interstate commerce, by self propelled vessels iron and steel articles (H-beam pilings), from Baton Rouge, LA and Natchez, MS on the Mississippi River to its confluence with the Red River, then along Red River to Red River lock and Dam #1 job site located at or near mile 51 on the Red River in Louisiana, restricted to shipments having a prior movement from Conway, PA to Baton Rouge, LA.

Alan F. Wohlstetter, 1700 K Street, NW, Washington, D.C. 20006 representative for applicant. Any interested person may file a petition for reconsideration on or before February 12, 1979. Within 20 days after the filing of such petition with the Commission, any interested person may file and serve a reply thereto.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-2226 Filed 1-19-79; 8:45 am]

[7035-02-M]

[Notice No. 149]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under Section 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application.

Protests against approval of the application, which may include request for oral hearing, must be filed with the Commission on or before February 21, 1979. Failure seasonably to file a protest will be construed as a waiver of opposition and participation of the proceeding. A protest must be served upon applicants' representative(s), or applicants (if no such representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopses form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

MC-FC-77832, filed August 28, 1978. Transferee: JOHN F. MOWRY, JR. and DEAN E. STILES doing business as ESCORT MOVING & STORAGE, 525 Harvester Drive, Windber, PA 15963. Transferor: Robert E. Weaver, doing business as Morrellville Transit Company, P.O. Box 215, Windber, PA 15963. Representative: John M. Musselman, Rhoads, Sinon & Hendershot, P.O. Box 1146, 410 North Third Street, Harrisburg, PA 17108. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC-61316 and Subs 2, and 3, issued August 3, 1965, August 2, 1967, and July 16, 1968, respectively, as follows: Household goods, between Johnstown, PA, and points within 15 miles thereof, on the one hand, and, on the other, points in NY, NJ, MD, VA, WV, and DC; between Ebensburg, PA, and points within 10 miles, on the one hand, and, on the other, points in NY, WV, MD and DC; and between points in Allegheny County, PA, on the one hand, and, on the other, points in NY, MD, WV, NJ, OH, IN, IL, MI, KY, TN and DC. Transferee presently holds no authority from this Commission. Applicant has filed for temporary authority under Section 210a(b).

MC-FC-77842, filed August 31, 1978. Transferee: HAZEL F. KERSTING, Martinsburg, MO 65264. Transferor: Keith Botkins Trucking, Inc., 112 West Rollins Street, Moberly, MO 65270. Representative: Thomas P. Rose, P.O. Box 205, Jefferson City, MO 65101. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Permit No. MC 142358 Sub 3, issued March 23, 1978, as follows: Coal, in bulk, in dump vehicles, from points in MO to points in IL and IA, under contract with Universal Coal and Energy Company, Inc., Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

MC-FC-77855, filed September 15, 1978. Transferee: KEN ROSE TRANSPORT LTD., St. Lawrence Street E., Madoc, Ontario, Canada KOK 2KO. Transferor: Ross Clark Freightways Limited, St. Lawrence Street E., Madoc, Ontario, Canada KOK 2KO. Representative: Robert D. Gunderman, Suite 710 Statler Hilton, Buffalo, NY 14202. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC 136925 Sub 2, issued August 27, 1975, as follows: Terrazzo chips, marble dust, talc and dolomite, from port of entry in NY and MI to points in CT, DE, IL, IN, KY, MA, ME, MD, MI, NH, NJ, NY, OH, PA, RI, VT, VA, WV, WI and DC. Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under Section 210a(b).

MC-FC-77908, filed October 23, 1978. Transferee: ELMO C. POTTS, DBA JOHN LAWRENCE TRAILER TOWING, 2826 Parsons, Merced, CA 95340. Transferor: John Lawrence, DBA John Lawrence Trailer Towing, Route 1, Box 17B, Aspermont, TX 79502. Representative: Michael P. Groom, Miller, Morton, Caillat & Nevis, 777 North First St., Suite 500, San Jose, CA 95112. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC 10731 Sub 2, issued July 13, 1978, as follows: Travel trailers, from points in Merced Cty., CA, to points in AZ, ID, NV, OR, UT, and WA. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

MC-FC-77942, filed November 26, 1978. Transferee: Edward Schmidt, DBA SCHMIDT MOVING CO., Second and Redbank Avenues, Thorofare, NJ. Transferor: Park Storage Warehouse Co., Inc., 1021 Pine Street, Camden, NJ. Representative: Thomas F.X. Foley, State Highway 34, Colts Neck, NJ 07722. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in certificate No. MC 8741, issued August 30, 1940, as follows: Household goods, between Camden, NJ and points in NJ and PA within 35 miles thereof, on the

one hand, and, on the other, points in CT, DE, MD, MA, NJ, NY, PA, VA and DC. Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under Section 210a(b).

MC-FC-77951, filed December 7, 1978. Transferee: L. B. SHAKE TRUCKING, INC., 3490 Industrial, P.O. Box 719, Springfield, OR 97477. Transferor: Goshen Transport, Inc., P.O. Box 76, Goshen, OR 97401. Representative: Lonnie R. Bagwell, Jr., P.O. Box 719, Springfield, OR 97477. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in permit No. MC 138372 Sub 2, issued May 3, 1974, as follows: Roofing granules, from Corona, CA, to Portland, OR and asphalt, in containers, from Southgate, CA, to Portland, OR, under contract with Herbert Malarkey Roofing Company of Portland; Wooden shakes and shingles and shake felt, from points in OR and WA on and west of U.S. Hwy. 97 to points in CA and AZ, under contract with Wesco Cedar, Inc. of Eugene. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-2223 Filed 1-19-79; 8:45 am]

[7035-01-M]

[Finance Docket No. 28929F]

CHICAGO, SOUTH SHORE AND SOUTH BEND RAILROAD

Trackage Rights Over the Baltimore and Ohio Chicago Terminal Railroad and the Baltimore and Ohio Railroad Co. in Lake County, IN

CHICAGO SOUTH SHORE AND SOUTH BEND RAILROAD (South Shore), North Carroll Avenue, Michigan City, IN 46360, represented by Alan A. Rudnick, Attorney, Terminal Tower, P.O. Box 6419, Cleveland, OH 44101, hereby give notice that on the 29th day of December, 1978, it filed with the Interstate Commerce Commission at Washington, DC, an application under Section 11343 of the Interstate Commerce Act (formerly Section 5(2)) for a decision approving and authorizing the acquisition of trackage rights over tracks of THE BALTIMORE AND OHIO CHICAGO TERMINAL RAILROAD (B&OCT) and THE BALTIMORE AND OHIO RAILROAD COMPANY (B&O) for a total distance of 13.67 miles. The trackage rights sought over the B&OCT extend from Valuation Station 1554+20 at its East Chicago, IN, yard to Valuation Station 1783+14, to point of intersection with the tracks of the B&O at Pine Junction, IN, a distance of approximately 4.34 miles. The trackage rights sought over the B&O extend from Valuation Station 13147+84 at Pine Junction to Valuation Station 12655+22, a point east of Miller, IN, a distance of 9.33 miles, for a total distance of 13.67 miles, located within Lake County, IN.

The proposed transaction will improve rail and other transportation services to the public. South Shore operates a commuter passenger service between points in Indiana and downtown Chicago. The greatest number of commuter stations are located west of Miller Station. The proposed transaction will permit the Applicant to move freight trains along tracks other than those used by it for its passenger operations, thus resulting in fewer delays to passenger trains. Also, the proposed transaction will permit the Applicant to move freight trains over fewer grade crossings at public roads. It will be possible for Applicant to move its trains with less delay, thus helping to assure that public grade crossings will not be blocked for unreasonable lengths of time.

In the opinion of the Applicant, South Shore, the granting of the authority sought will not constitute a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969. In accordance with the Commission's regulations (49 CFR 1108.8) in Ex Parte No. 55 (Sub-No. 4), *Implementation—National Environmental Policy Act, 1969,* 352 I.C.C. 451 (1976), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. See *Implementation—National Environmental Policy Act, 1969, supra,* at p. 487.

Interested persons may participate formally in a proceeding by submitting written comments regarding the application. Such submissions shall indicate the proceeding designation Finance Docket No. 28929F and the original and two copies thereof shall be filed with the Secretary, Interstate Commerce Commission, Washington, DC 20423, not later than 45 days after the date notice of the filing of the application is published in the FEDERAL REGISTER. Such written comments shall include the following: the person's position, e.g., party protestant or party in support, regarding the proposed transaction; specific reasons why approval would or would not be in the public interest; and a request for oral hearing if one is desired. Additionally, interested persons who do not intend to formally participate in a proceeding but who desire to comment thereon, may file such statements and information as they may desire, subject to the filing and service requirements specified herein. Persons submitting written comments to the Commission shall, at the same time, serve copies of such written comments upon the applicant, the Secretary of Transportation and the Attorney General".

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-2225 Filed 1-19-79; 8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3)

CONTENTS

	Items
Consumer Product Safety Commission	1,2
Equal Employment Opportunity Commission	3
Federal Deposit Insurance Corporation	4;5
Federal Election Commission	6,7
Federal Home Loan Bank Board	8
Federal Trade Commission	9
Legal Services Corporation	10
Nuclear Regulatory Commission	11, 12
Railroad Retirement Board	13
Social Security National Commission	14

[6355-01-M]

1

CONSUMER PRODUCT SAFETY COMMISSION.

TIME AND DATE: 9:30 a.m., Commission briefing, Wednesday, January 24, 1979.

LOCATION: Third floor hearing room, 1111 18th Street NW., Washington, D.C.

STATUS: Part open, part closed.

A. OPEN TO THE PUBLIC

1. *Briefing on Children's Sleepwear Enforcement Policy*—The staff will brief the Commission on issues related to a possible CPSC policy on what children's garments are considered sleepwear subject to the Standards for the Flammability of Children's Sleepwear.

2. *Briefing on Section 15 Procedures and Delegation*—The staff will brief the Commission on procedures it follows for handling possible substantial product hazards under section 15 of the Consumer Product Safety Act. The staff has recommended that it be allowed more authority to close routine cases, and has suggested changes in the procedures so that it can present industry-proposed corrective action plans to the Commission in a more timely manner.

B. CLOSED TO THE PUBLIC

3. *TRIS Enforcement*—The staff will brief the Commission in issues related to the flame-retardant chemical TRIS. (Closed under exemption 9: Possible significant frustration of agency action.)

FOR ADDITIONAL INFORMATION:

Sheldon Butts, Assistant Secretary, suite 300, 1111 18th Street NW., Washington, D.C. 20207, telephone 202-634-7700.

[S-134-79 Filed 1-18-79; 10:51 am]

[6355-01-M]

2

CONSUMER PROJECT SAFETY COMMISSION.

DATE AND TIME: 9:30 a.m. Commission meeting, Thursday, January 25, 1979.

LOCATION: Third floor hearing room, 1111 18th Street, NW., Washington, D.C.

STATUS: Part open, part closed.

A. OPEN TO THE PUBLIC

1. *Possible Substantial Product Hazard: Chance Manufacturing Co., Yo-Yo Amusement Ride, ID 78-4*—The staff has recommended that the Commission accept the corrective action plan which Chance has implemented, and close this matter.

2. *Petition on Coal- and Wood Burning Stoves, AP 77-2*—The Commission will consider a petition in which Adam Paul Banner, of Midland, Michigan, asks the Commission to issue a labeling rule for coal- and wood-burning appliances, stoves, and free-standing fireplaces. The labels would show the minimum clearances from "combustibles," and the type of chimney required for installation. The Commission previously considered, and deferred action on this petition in February 1978.

3. *Power Lawn Mowers*—The Commission will consider possible actions on a safety standard for power lawn mowers. The staff briefed the Commission on power mowers at the January 17 Briefing. The Commission proposed a standard for power mowers in May, 1977.

B. CLOSED TO THE PUBLIC

4. *Architectural Glazing Case* (OS 634)—The Commission will consider staff recommendations on a possible enforcement case under the Consumer Product Safety Act involving architectural glazing (Closed under exemption 10: possible adjudication.)

FOR ADDITIONAL INFORMATION:

Sheldon Butts, Assistant Secretary, suite 300, 1111 18th Street, N.W., Washington, D.C. 20207, telephone 202-634-7700.

[S-135-79 Filed 1-18-79; 10:51 am]

[6570-06-M]

3

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m. (eastern time), Tuesday, January 23, 1979.

PLACE: Commission conference room No. 5240, on the fifth floor of the Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Part will be open to the public and part will be closed to the public.

MATTERS TO BE CONSIDERED:

OPEN TO THE PUBLIC

1. Freedom of Information Act Appeal No. 78-7-FOIA-171, concerning a request for information included in a national charge investigative file.

2. Freedom of Information Act Appeal No. 78-11-FOIA-274, concerning a request for the number of race discrimination charges filed against a specific employer.

3. Final designation of two State agencies as 706 Agencies.

4. Allocation of fiscal year 1979 funds to the Puerto Rico anti-discrimination unit.

5. Report on Commission operations by the Executive Director.

CLOSED TO THE PUBLIC

Litigation authorization; General Counsel recommendations: Matters closed to the public under the Commission's regulations at 29 CFR 1612.13.

NOTE.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION:

Marie D. Wilson, Executive Officer, Executive Secretariat, at 202-634-6748.

This Notice Issued January 16, 1979.

[S-131-79 Filed 1-18-79; 9:05 am]

[6714-01-M]

4

FEDERAL DEPOSIT INSURANCE CORPORATION.

TIME AND DATE: 4 p.m., Wednesday, January 24, 1979.

PLACE: Board Room six floor, FDIC Building, 550 17th Street, NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Disposition of minutes of previous meetings.

Request by the Comptroller of the Currency for a report on the competitive factors involved in the proposed merger of

First National State Bank of Central Jersey, Trenton, N.J., with First National Bank of South Jersey, Egg Harbor Township (P.O. Pleasantville), N.J.

Recommendations with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities:

Bronson, Bronson & McKinnon, San Francisco, California, in connection with the receivership of United States National Bank, San Diego, Calif.

Kaye, Scholer, Fierman, Hays & Handler, New York, N.Y., in connection with the liquidation of Franklin National Bank, New York, N.Y.

Taback & Hyans, Jericho, N.Y., in connection with the liquidation of Franklin Nation Bank, New York, N.Y.

Recommendations with respect to the amendment of corporation rules and regulations:

Memorandum and resolution proposing adoption of an amendment to Part 336 of the Corporation's rule and regulations, entitled "Employee Responsibilities and Conduct."

Memorandum and resolution proposing the publication for comment of a new Part 347 of the Corporation's rules and regulations, to be entitled, "Foreign Activities of Insured State Nonmember Banks."

Memorandum and resolution proposing the publication for comment of a new Part 384 of the Corporation's rules and regulations, to be entitled "Management Official Interlocks."

Memorandum and resolution proposing the adoption of a policy statement, and the publication for comment of proposed regulations, implementing title VI (the "Change in Bank Control Act of 1978") of the "Financial Institutions Regulatory and Interest Rate Control Act of 1978."

Memorandum and resolution proposing the adoption of a Joint Statement, revised, regarding the classification of assets, the appraisal of bonds and the treatment of securities profits in bank examinations.

Memorandum proposing that the Corporation subscribe to the Macroeconomic Forecasting Service and the Banking Service of Data Resources, Inc.

Memorandum proposing the approval of an amendment to the Corporation's lease for space occupied by the Philadelphia, Pa., Regional Office.

Memorandum proposing a revision of corporation policy regarding the retention and distribution of publications.

Reports of committees and officers:

Minutes of the actions approved by the Committee on Liquidations; Loans and Purchases of Assets pursuant to authority delegated by the Board of Directors.

Reports of the Director of the Division of Bank Supervision with respect to applications or request approved by him and the various Regional Directors pursuant authority delegated by the board of Directors.

Report of the controller on the termination of the liquidation of Bank of Whitesville, Whitesville, Ky.

Report of the Controller on the termination of the liquidation of the State National Bank of Lovelady, Lovelady, Texas.

CONTACT PERSON FOR MORE INFORMATION:

Alan R. Miller, Executive Secretary, 202-389-4446.

[S-137-79 Filed 1-18-79; 2:06 pm]

[6714-01-M]

5

FEDERAL DEPOSIT INSURANCE CORPORATION.

TIME AND DATE: 4:30 p.m., Wednesday, January 24, 1979.

PLACE: Board room sixth floor, FDIC Building, 550 17th Street N.W., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Applications for Federal deposit insurance:

Commerce Bank, a proposed new bank to be located at 4525 MacArthur Boulevard, Newport Beach, Calif., for Federal deposit insurance.

Torrey Pines Bank, a proposed new bank to be located on Lomas Santa Fe Drive between Santa Helena Drive and the northeast on-ramp of Interstate Highway 5, Solana Beach (unincorporated), Calif., for Federal deposit insurance.

Platteville State Bank, a proposed new bank to be located at 309 Justin Avenue, Platteville, Colo., for Federal deposit insurance.

Southwest Missouri Bank, a proposed new bank to be located at 306 West Third Street, Carthage, Mo., for Federal deposit insurance.

American State Bank, a proposed new bank to be located at 608 West B Street, McCook, Nebr., for Federal deposit insurance.

Heritage Bank, a proposed new bank to be located at 250 Pioneer Street, Ashland, Oreg., for Federal deposit insurance.

Wasatch Bank of Lehi a proposed new bank to be located at 620 East Main Street, Lehi, Utah, for Federal deposit insurance.

Application for Federal deposit insurance and for consent to establish a facility (branch):

The Bank of San Diego, a proposed new bank to be located at 225 Broadway, for Federal deposit insurance and for consent to establish a facility on G Street between 10th and 11th Avenues; both locations within San Diego, Calif.

Application for consent to establish a branch:

Tri-City Bank & Trust Co., Blountville, Tenn, for consent to establish a branch at Highway 126, Indian Springs, Tenn.

Applications for consent to merge and establish branches:

The Equitable Trust Co., Baltimore, Md., an insured State nonmember bank for consent to merge under the charter and title of "The Equitable Trust Company" with the University National Bank, Rockville, Md., and for consent to establish the 16 existing offices of University National Bank as branches of the resultant bank.

Bank of Vicksburg, Vicksburg, Miss., an insured State nonmember bank, for consent to merge, under the charter of Bank of Vicksburg and with the title of "The American Bank," with the American Bank, Clinton, Miss., and for consent to establish the three offices of the American Bank as branches of the resulting bank.

Applications for consent to merge, establish branches, and redesignate the main office location:

The Hongkong Bank of California, San Francisco, Calif., an insured State nonmember bank, for consent to merge, under its charter, and with the title of "Central Bank," with Central Bank, Oakland, Calif., also an insured State nonmember bank; for consent to establish the 41 offices of Central Bank as branches of the resultant bank; and for consent to redesignate the main office of the resultant bank to the present main office location of Central Bank.

Barnett Bank of Daytona Beach, Daytona Beach, Fla., an insured State nonmember bank, for consent to merge, under its charter, and with the title of "Barnett Bank of Volusia County," with Barnett Bank of Deland, National Association, Deland, Fla. for consent to establish the sole office of Barnett Bank of Deland, National Association, as a branch of the resultant bank; and for consent to redesignate the main office location of the resultant bank to the present main office location of Barnett Bank of Deland, National Association.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 43,771-L—The Hamilton National Bank of Chattanooga, Chattanooga, Tenn.
Case No. 43,775-L—The Hamilton National Bank of Chattanooga, Chattanooga, Tenn.
Case No. 43,779-L—The Hamilton National Bank of Chattanooga, Chattanooga, Tenn.
Case No. 43,761-L—International City Bank & Trust Co., New Orleans, La.
Case No. 43,784-L—Reserves for losses and allotments for insurance expenses.
Case No. 43,787-L—Franklin National Bank, New York, N.Y.
Memorandum re the Drovers National Bank of Chicago, Chicago, Ill.
Memorandum re Republic National Bank of Louisiana, New Orleans, La.
Memorandum re American City Bank & Trust Co., National Association, Milwaukee, Wis.

Recommendations with respect to the initiation or termination of cease-and-desist proceedings, termination-of-insurance proceedings, or suspension or removal proceedings against certain insured banks or officers or directors thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii)) of the "Government in the Sunshine Act" (5 U.S.C. 552(b) (c)(6), (c)(8), and (c)(9)(A)(ii))

Appeal, pursuant to the Freedom of Information Act, from the Corporation's earlier denial of a request for records.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2) and (c)(6)).

CONTACT PERSON FOR MORE INFORMATION:

Alan R. Miller, Executive Secretary, 202-389-4446.

S-138-79 Filed 1-18-79; 2:06 pm]

[6715-01-M]

6

FEDERAL ELECTION COMMISSION.

DATE AND TIME: 10 a.m., Thursday, January 25, 1979.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: Portions of this meeting will be open to the public and portions will be closed.

MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO THE PUBLIC

Setting of dates for future meetings. Correction and approval of minutes.
Approval to add two minority language representatives to the clearinghouse advisory panel.
Appropriations and budget.
Pending legislation.
Pending litigation.
Liaison with other Federal agencies.
Classification actions.
Routine administrative matters.

PORTIONS CLOSED TO THE PUBLIC—FOLLOWING OPEN SESSION

Audits and audit policy, compliance, and personnel.

PERSONS TO CONTACT FOR INFORMATION:

Mr. Fred S. Eiland, Public Information Officer, telephone 202-523-4065.

MARJORIE W. EMMONS,
Secretary to the Commission.

[S-143-79 Filed 1-18-79; 3:57 pm]

[6715-01-M]

7

FEDERAL ELECTION COMMISSION.

"FEDERAL REGISTER" NO. FR-S-73.

PREVIOUSLY ANNOUNCED DATE AND TIME: 10 a.m., Thursday, January 18, 1979.

CHANGE IN MEETING: The following subject was added to the executive session (closed portion of the meeting): Litigation.

PERSONS TO CONTACT FOR INFORMATION:

Mr. Fred S. Eiland, Public Information Officer, telephone: 202-523-4065.

MARJORIE W. EMMONS
Secretary to the Commission.

[S-142-79 Filed 1-18-79; 3:47 pm]

[6720-01-M]

8

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: At the conclusion of the open meeting to be held at 9:30 a.m., January 24, 1979.

PLACE: 1700 G Street NW., sixth floor, Washington, D.C.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION:

Franklin O. Bolling, 202-377-6677.

MATTERS TO BE CONSIDERED: Consideration of Audit Report.

No. 212, January 17, 1979.

[S-130-79 Filed 1-18-79; 9:05 am]

[6750-01-M]

9

FEDERAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Wednesday, January 24, 1979.

PLACE: Room 432, Federal Trade Commission Building, Sixth Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

STATUS: Open,

MATTERS TO BE CONSIDERED: Consideration of revisions to R-value rule.

CONTACT PERSON FOR MORE INFORMATION:

Ira J. Furman, Office of Public Information, 202-523-3830; recorded message: 202-523-3806.

[S-136-79 Filed 1-18-79; 11:36 am]

[6820-35-M]

10

LEGAL SERVICES CORPORATION.

Meeting of the Board of Directors.

TIME AND DATE: 9:30 a.m., Friday, January 26 and Saturday, January 27, 1979.

PLACE: East Room, Airlie House, Airlie, Va.

STATUS: Open meeting.

MATTERS TO BE CONSIDERED: General discussion of a broad range of issues concerning the Legal Services Corporation and its activities.

CONTACT PERSON FOR MORE INFORMATION:

Dellanor Young, Office of the President, telephone 202-376-5100.

Issued: January 18, 1979.

THOMAS EHRLICH,
President.

[S-141-79 Filed 1-18-79; 3:21 pm]

[7590-01-M]

11

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: January 3, 1979.

PLACE: Chairman's conference room, 1717 H Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 5:30 p.m., *Wednesday, January 3*—1. Briefing by Executive Branch on export-related matter (approximately 1 hour), (closed—Exemption 1).

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

ROGER M. TWEED,
Office of the Secretary.

JANUARY 3, 1979.

[S-132-79 Filed 1-18-79; 10:51 am]

[7590-01-M]

12

NUCLEAR REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 3361.

TIME AND DATE: Thursday, January 18, 1979.

PLACE: Commissioners conference room 1717 H Street NW., Washington, D.C.

STATUS: Cancellations.

CHANGES IN THE MEETING: Thursday, January 18:

9:30 a.m.—1. The meeting titled "Discussion of Revision of NRC Regulations Governing the Ownership of Stocks, Bonds and Other Security Interests by NRC Employees" (approximately 1 hour, public meeting) is *Cancelled.*
1:30 p.m.—3. Affirmation session (approximately 10 minutes, public meeting).
Item c.—Time periods for issuance of initial decisions is *Cancelled.*

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

ROGER M. TWEED,
Office of the Secretary.

JANUARY 17, 1979.

[S-133-79 Filed 1-18-79; 10:51 am]

[7905-01-M]

13

UNITED STATES RAILROAD RETIREMENT BOARD.

TIME AND DATE: 9:30 a.m., January 30, 1979.

PLACE: Board's meeting room, eighth floor of its headquarters building at 844 Rush Street, Chicago, Ill. 60611.

STATUS: The entire meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

1. Appeal from referee's denial of annuity application, Mildred G. Bledsoe.
2. Appeal from referee's denial of disability annuity application, Joseph P Szymkowiak.
3. Appeal from referee's denial of disability annuity aplication, Bennie A. Carter.
4. Appeal from referee's denial of disability annuity application, William J. Hutchinson.
5. Appeal from referee's denial of disabled child's insurance annuity, Mary Ann Kelly.
6. Appeal from referee's denial of disabled widow's insurance annuity, Ruby Hoskins.

CONTACT PERSON FOR MORE INFORMATION:

R. F. Butler, Secretary of the Board, COM No. 312-751-4920, FTS No. 387-4920.

[S-139-79 Filed 1-18-79; 2:11 pm]

[6820-AC-M]

14

NATIONAL COMMISSION ON SOCIAL SECURITY.

NOTICE OF MEETING

The National Commission on Social Security will meet at 1:30 p.m. on January 19, 1979, and again on January 20, 1979, at 9:30 a.m. Each meeting will be held in room 424 Russell Senate Office Building and shall continue until committee business is completed.

The meeting on January 19, will not be open to the public because the discussions will be limited to internal personnel rules and practices, matters covered by section 552b(c)(1) of title 5, United States Code.

The meeting on January 20, will be open to the public and will consist of a briefing on social security issues by officials of the Social Security Administration.

An earlier notice of this meeting was not possible because the Commission was not constituted until January 11, 1979, when the President appointed the Chairman and three other members.

Inquiries regarding the meetings may be addressed to the Commission c/o Room G-340, GSA Building, 18th and F Streets NW.; Washington D.C. 20405.

MILTON GWIRTZMAN,
Chairman, National Commission on Social Security.

JANUARY 16, 1979.

[S-140-79 Filed 1-18-79; 2:29 pm]

Federal Register

MONDAY, JANUARY 22, 1979
PART II

DEPARTMENT OF ENERGY

State Energy Conservation Plans

NOTICE OF PROPOSED RULEMAKING AND PUBLIC HEARING

[6450-01-M]

DEPARTMENT OF ENERGY

[10 CFR Part 420]

STATE ENERGY CONSERVATION PLANS

Notice of Proposed Rulemaking and Public Hearing

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy proposes to amend its guidelines for its program for State energy conservation plans, 10 CFR Part 420, in order to consolidate and simplify the guidelines. The Department also proposes to change the requirements relating to a right turn at a red traffic light and to make certain other substantive changes. The proposed changes to the program are based upon experience gained during the first 2 years of program implementation and are intended to reduce the administrative burden upon States and facilitate the conservation of energy.

DATES: A public hearing will be held on February 14, 1979, 9 a.m., e.s.t., in Washington, D.C.

Written comments must be received by February 21, 1979, 4:30 p.m., e.s.t.; requests to speak at the national hearing February 7, 1979, 4:30 p.m., e.s.t.; written statements of speakers by February 13, 1979.

ADDRESSES: A public hearing will be held in Room 3000A, 12th and Pennsylvania Avenue NW., Washington, D.C.

Send comments and requests to speak to Margaret Sibley, Office of Conservation and Solar Applications, Department of Energy, Docket Number CAS-RM-79-501, 20 Massachusetts Avenue NW., Washington, D.C. 20545.

FOR FURTHER INFORMATION CONTACT:

William J. Raup, State Grant Programs, Department of Energy, Room 4113, 20 Massachusetts Avenue NW., Washington, D.C. 20545, 202-376-9052

Richard F. Kessler, Office of General Counsel, Department of Energy, Room 5117, 1200 Pennsylvania Avenue NW., Washington, D.C. 20461, 202-633-9380

SUPPLEMENTARY INFORMATION:

I. Background.
II. Traffic law or regulation permitting right-turn-on-red (RTOR).
III. Extensions.
IV. Consolidation and simplification of existing procedures.
V. Nondiscrimination.
VI. Opportunity for public comment.
VII. Consultation with other Federal agencies, environmental and urban reviews and regulatory analysis.

I. Background

When first enacted, Part C of Title III of the Energy Policy and Conservation Act (EPCA), 42 U.S.C. 6321 *et seq.*, provided financial assistance to develop, modify or implement State energy conservation plans ("plans"). Part C was subsequently amended by Part B of Title IV of the Energy Conservation and Production Act (ECPA) which provided financial assistance to develop, modify or implement supplemental State energy conservation plans ("supplemental plans"). Together, the EPCA provisions regarding plans and the ECPA provisions regarding supplemental plans constitute the program for State energy conservation plans ("program"). The program currently is authorized through fiscal year 1979.

Regulations for the program, 10 CFR Part 420, were promulgated by the Federal Energy Administration ("FEA") on February 20, 1976 (41 FR 8335, February 26, 1976); October 28, 1976 (41 FR 48325, November 3, 1976); and May 13, 1977 (42 FR 26413, May 24, 1977).

The proposal would reorganize Part 420, Subparts A through E and simplify program requirements such as those relating to the contents of applications, plans and supplemental plans. It would also modify the program requirements for a traffic law or regulation which permits the operator of a motor vehicle to make a right turn at a red light after stopping, frequently referred to as "right-turn-on-red" ("RTOR") law or regulation, and make certain other substantive changes, as discussed below.

II. Traffic Law or Regulation Permitting Right-Turn-On-Red.

Proposed § 420.7(e) amends the minimum criteria for RTOR to require that all States participating in the program adopt a traffic law or regulation which would permit the operator of a motor vehicle to make a right turn (left turn with respect to the Virgin Islands) at a red traffic light after stopping, except where specifically prohibited by a traffic sign (Such law or regulation is hereinafter referred to as the "Western Rule."). The proposed revision would no longer accept as a measure of full program compliance a State law or regulation which would permit a right turn only where specifically authorized by a traffic sign (Such law or regulation is hereinafter referred to as the "Eastern Rule.").

The current provision allowing for the Eastern Rule was a result of FEA's consideration of comments received in response to publication of the proposed guidelines in the Federal Register (41 FR 24410, June 16, 1976).

At that time, the Federal Highway Administration ("FHWA") was in the process of adopting—but had not yet adopted—an interim national policy regarding RTOR, (23 CFR 655.801-805, 41 FR 28477, July 12, 1976). This policy, published during the comment period on FEA's regulation, while recommending uniform adoption of the Western rule in all jurisdictions, noted without comment that 12 States had an Eastern Rule in place at that time. The FHWA interim national policy contained recommended criteria for determining those intersections at which RTOR should not be permitted.

Several States, at that time, indicated that they were opposed to the Western Rule for safety reasons and were prepared to provide the FEA with safety information which would demonstrate that the Eastern Rule in their jurisdictions was more appropriate than the Western Rule. Because there was no program experience against which to judge these objections and because FHWA had not yet published final provisions on RTOR, FEA modified its original proposal, the Western Rule, by permitting a plan to incorporate the Eastern Rule. Under the final guidelines governing RTOR, 10 CFR 420.35(e), 41 FR 48325, November 3, 1976, a State could use the Eastern Rule as an alternative to the Western Rule provided the State demonstrated that, with respect to its jurisdiction, the Eastern Rule permitted RTOR to the maximum extent practicable consistent with safety. At that time, FEA pointed out that its guidelines did not preclude adoption of FHWA's interim national policy by all the states. Further FEA encouraged all States to bring practices within their jurisdictions into full compliance with the interim national policy or to work with FHWA to modify the policy in the manner the State deemed advisable.

Subsequently, and in response to public comment on its interim national policy, FHWA published final provisions on RTOR which were incorporated into the Manual on Uniform Traffic Control Devices ("MUTCD") by FHWA Bulletin HTO 21, October 20, 1977. Notice of this action was published in the Federal Register, 42 FR 41633, August 18, 1977. In comparison to the interim national policy, these provisions reemphasize the recommendation of uniform adoption of the Western Rule and reduce the number of conditions under which a no turn on red sign should be considered.

In the period since the enactment of EPCA, 21 States and Territories have adopted the Western Rule. The total number of jurisdictions having adopted the Western Rule is now 49 States

and 3 Territories. The Commonwealth of Massachusetts and the District of Columbia have enacted the Eastern Rule. New York City has also adopted the Eastern Rule, having been exempted by State law from New York's Western Rule. Each has provided the Department of Energy ("DOE") with documentation of the reasons why it has not chosen the Western rule. These documents are available for public review in Room 6434, Federal Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20461. American Samoa has been granted a waiver, under § 420.36(a) of the current guidelines, because that jurisdiction has no signalized intersections.

DOE has enlisted the assistance of FHWA to review studies prepared by these jurisdictions to justify their Eastern Rules and to provide an opinion of each study. The FHWA view, in each case, was that the jurisdiction had not demonstrated that its implementation of the Eastern Rule would provide for RTOR to the maximum extent practicable consistent with safety. DOE agrees with these findings. The FHWA documents also are available for public review in Room 6434, Federal Building, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20461.

Moreover because of the large number of States which have successfully adopted the Western Rule, it is unlikely that a jurisdiction would be able to demonstrate unique circumstances which justify adoption of the Eastern Rule. Finally, the continuance of the Eastern Rule in only two States and one large city might prove confusing to interstate motorists.

With respect to the applicability of the Western Rule in urban "enclaves", or central-city districts, the current FHWA policy has no special provisions for RTOR in such enclaves. FHWA policy advocates the uniform adoption of the Western rule. Consistent both with the experience of the program to date with the operation of the Western Rule in many major cities and with FHWA's current policy, the proposed rule does not provide for special consideration of urban enclaves. The proposal would require the uniform adoption of the Western rule.

Since today's proposal on RTOR, if made final, will alter provisions in the existing rules with which Massachusetts, the District of Columbia and New York with respect to New York City have been attempting to comply, these three jurisdictions would be given until December 31, 1979, to have the Western Rule in place and ready for implementation. State applications which cover these three jurisdictions will have to demonstrate how this deadline will be met. At this time, DOE does not plan to provide any extension of time for compliance after December 31, 1979. Proposed § 420.7(e)(1) would require that the States which have already adopted the Western Rule will continue to implement it.

III. Extensions

The current regulations, § 420.41(b), provide opportunity, in appropriate circumstances, for an extension of time by which a required program measure in a State's plan must be in place and ready for implementation. The current regulations provide no extensions for a supplemental plan. Experience with program operation indicates no need for a change, and none is proposed.

On July 20, 1978, further guidance was provided to the States regarding the conditions under which an extension could be granted. In substance, this guidance prescribed procedures for the granting of further extensions for compliance with minimum criteria for required program measures.

DOE intends to continue these procedures, and proposed § 420.9 incorporates this guidance into the regulations with respect to plans. Any extensions previously granted in accordance with this guidance will remain in effect.

This proposal introduces the concept of an annual application for financial assistance for a plan or supplemental plan or both, in accordance with proposed § 420.4. Proposed § 420.4(b) (2) (ii) (E) requires an explanation of how the minimum criteria for required program measures shall be satisfied. Upon annual application, DOE expects States to demonstrate satisfactory compliance with the minimum criteria to be eligible to receive financial assistance.

The guidance concerning extensions specified that the appropriateness of granting another extension for the 1979 calendar year for a plan would be assessed at the time a State makes its annual application for 1979 funding. Moreover, a further extension for a required program measure would be given only if warranted by satisfactory achievement of program milestones under the action plan. In addition no extension would be granted if satisfactory achievement of program milestones for all other measures included in the State plan have not been met. DOE intends to continue to apply this guidance.

A new deadline is provided in proposed § 420.7(e) (3) to enable the three jurisdictions not already in compliance to adopt the Western Rule so that no further extension of time for compliance with the Western Rule is required in proposed § 420.9.

Except as noted above, DOE expects that few circumstances will justify a further extension for compliance with the minimum criteria for required program measures specified in proposed § 420.7.

IV. Consolidation and Simplification of Existing Procedures

The proposed rule consolidates and simplifies existing procedures applicable to plans and supplemental plans. The proposal generally follows the procedures for the comprehensive energy extension service ("EES"), 10 CFR Part 465, a related grant program, varying only where the needs of the two programs or statutory authorities differ.

Several revisions from the current guidelines should be noted. Because all participating jurisdictions have submitted plans or supplemental plans which have been approved, provisions pertaining to the development and submission of a plan or supplemental plan have been eliminated from the proposed rule. To continue to participate, a State would submit an annual application in accordance with the requirements of proposed § 420.4.

DOE proposes to consolidate into one document, DOE Form CS-1, the application for financial assistance for plans and supplemental plans. A State may still elect to participate in the program for a plan, supplemental plan or both. To date, no State has chosen to participate in one part of the program but not the other. Similar to present requirements, the application includes a description of proposed modifications, including new and amended program measures, a budget listed by program measure and by object class category, estimates of energy savings related to program measures, and a description of milestones by calendar quarter. The application would also require an explanation of how the minimum criteria for all required program measures will be satisfied.

To be eligible for financial assistance, the State must submit an application on or before the last day of the calendar year. The Governor may request an extension of the annual submission date by making a request in writing as provided in proposed § 420.4(d).

Proposed § 420.3 prescribes the formulas for the allocation of financial assistance among the States for the program. The formulas for plans and supplemental plans, respectively, are identical to the FY 1978 formulas.

Proposed § 420.5 sets forth the procedure for the review and approval of annual applications and State plans. This process does not differ significantly from the review and approval process employed under current pro-

gram regulations. In addition, the proposed program measures must be consistent with achievement of a State's energy conservation goal or interim goal if any.

Proposed § 420.6 consolidates current program requirements regarding energy conservation goals. An energy conservation goal for 1980 has been set for each State. While there is also an authority to set interim goals, DOE has no present plans to exercise this authority.

In order to receive financial assistance, the application must demonstrate compliance with minimum criteria for required program measures prescribed in proposed § 420.7 and proposed § 420.8. With the exception of RTOR, discussed above, the minimum criteria currently applicable to plans and supplemental plans remain unchanged. Continued funding will continue to require timely compliance with and satisfactory implementation of required program measures which satisfy the minimum criteria.

Proposed § 420.10 introduces certain minor revisions to the administrative review process so that it more closely follows the review process untilized in the comprehensive energy entension service program. These procedures continue to provide administrative review of DOE determinations to deny applications, as provided in proposed § 420.10(a), but, in addition, now also provide review of DOE determinations to suspend or terminate financial assistance for failure to meet program requirements, as provided in proposed § 420.10(b).

The proposal includes new or revised definitions of "DOE," "Energy Conservation," "Governor," "Grantee;" "Regional Representative," "Secretary," and "State." Technical corrections were made to the determinations of "Major building type", "Metropolitan Planning Organization", "Preferential traffic control", "Public building" and "Transit level of service." Several definitions have been deleted as unnecessary.

The proposed definition of energy conservation incorporates not only the efficient utilization of energy resources but now also incorporates the utilization of renewable energy resources where such action would result in energy savings based on a net reduction in the use of non-renewable energy resources.

The current guidelines did not include utilization of renewable resources as substitutes for depletable fuels because program measures were "expected to contribute to energy savings in a State's total energy consumption and not merely to shift usage from one energy source to another, as desirable as such shifting can be in appropriate circumstances" (41 FR 48326, November 3, 1976). After two years of further program experience, DOE has determined this perception to be overly restrictive. A shift from a depletable to non-depletable fuel source may not decrease the use of BTUs but it does carry out the intent of the National Energy Plan and DOE's present energy conservation objectives to decrease reliance upon depletable fuel sources. Moreover, DOE seeks to encourage the appropriate use of solar energy and other new technologies to harness renewable resources.

The definition of "energy conservation" has been modified both generally to track the definition used in the regulations of the EES and to clarify a point of program operation with respect to program measures dealing with renewable energy resources. As proposed, the definition includes utilization of renewable energy resources provided it results in energy savings based on a net reduction in the use of non-renewable energy resources. This addition is intended to clarify that any program measures dealing with renewable energy resources, if they are to be eligible for funding consideration, must result in energy savings.

With respect to only such measures, under the program methodology for determining energy savings, the BTU's from the renewable energy resources are not counted. For example, State X proposes in its annual application a new program measure as a modification to its plan, which measure would save 100 million BTU's from oil by utilizing both 100 million BTU's from wind and 50 million BTU's from various non-renewable energy resources. Under the program methodology, the savings would be 50 million BTU's (100 from oil minus 50 from the various non-renewable energy resources, but not subtracting the 100 from wind) and thus the program measures would be eligible for funding consideration.

The proposed change will enable States to consider program measures which encourage the use of renewable resources. However, States will still be expected to develop and implement a combination of program measures for a plan which are consistent with the State's achievement of its energy conservation goal and interim goals, if any, for a plan or supplemental plan as required by proposed § 420.5(a)(2).

V. Nondiscrimination

DOE published, on November 16, 1978, a proposed rulemaking in the Federal Register entitled, "Nondiscrimination in Federally Assisted Programs" (43 FR 53658, *et seq.*). Grantees will be responsible for compliance with the provisions of this regulation upon its final publication.

VI. Opportunity for Public Comment

A. Written Comment Procedures

Interested persons are invited to participate in this rulemaking by submitting data, views or arguments with respect to the proposal set forth in this notice to Margaret Sibley, Office of Conservation and Solar Applications, Department of Energy, Docket Number CAS-RM-79-501, 20 Massachusetts Avenue, N.W., Washington, D.C. 20545.

Comments should be identified on the outside of the envelope and on documents with the designation "State Energy Conservation Plan Guidelines." Ten copies should be submitted. All comments received by February 21, 1979, before 4:30 p.m., e.s.t., and all other relevant information, will be considered by DOE before final action is taken regarding the proposed guidelines.

Any information or data considered by the person furnishing it to be confidential must be so identified on one copy submitted in writing. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

B. Public Hearing

DOE had determined to have one, national public hearing on this proposal. It will be held at 9:00 a.m., e.s.t., on February 14, 1979, in room 3000A, 12th and Pennsylvania Avenue, N.W., Washington, D.C.

Any person who has an interest in this proceeding or who is a representative of a group of persons that has an interest in this proceeding may make a written request for an opportunity to make an oral presentation. Such a request should be directed to DOE at the address given at the beginning of this preamble, and must be received before 4:30 p.m., February 7, 1979. A request may be hand delivered between the hours of 8:00 a.m., and 4:30 p.m., Monday through Friday. Requests should be marked, as for written comments, with the additional notation "Request to Speak."

The person making the request should briefly describe the interest concerned, if appropriate, state why she or he is a proper representative of a group of persons that has such an interest, and give a concise summary of the proposed oral presentation and a phone number where she or he may be contacted through February 13, 1979. Each person selected to be heard will be notified by DOE before 4:30 p.m., local time, February 8, 1979. Each person selected to be heard must submit 15 copies of her or his statement to the address given for written comments before 4:30 p.m., e.s.t. February 13, 1979. In the event any

person wishing to testify cannot provide 15 copies, alternative arrangements can be made in advance of the hearing by so indicating in the letter requesting an oral presentation or by calling Ms. Margaret Sibley at 202-376-4802.

C. CONDUCT OF HEARING

DOE reserves the right to select the persons to be heard at the hearing, to schedule their respective presentations and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

A DOE official will be designated to preside at the hearing. This will not be a judicial or evidentiary type hearing. Questions may be asked of speakers only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. Any decision made by DOE with respect to the subject matter of the hearing will be based on all information available to DOE. At the conclusion of all initial oral statements at the hearing, each person who has made an oral statement will be given the opportunity if she of he so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person may submit questions to be asked, by those conducting the hearing, of any person making a statement. Questions should be sent to the address given for written comments before 4:30 p.m., February 8, 1979. DOE will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any person making an oral statement who wishes to ask a question at the hearing may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at the DOE Public Reading Room, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

VII. CONSULTATION WITH OTHER FEDERAL AGENCIES, ENVIRONMENTAL AND URBAN REVIEWS AND REGULATORY ANALYSIS

In preparing this proposed rulemaking, representatives of the Secretary of Transportation were consulted.

Pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.*, DOE completed an environmental assessment of the original program under EPCA. A subsequent environmental assessment of the ECPA amendments to the program was completed prior to issuance of the guidelines applicable to the supplemental plans. Notice of these assessments were published with the notices of proposed rulemaking (41 FR 24410, 24412-13, June 16, 1976, and 42 FR 16150, 16151, March 25, 1977).

Each plan and supplemental plan was required to include a detailed description of the increase or decrease in environmental residuals expected from the implementation of the subject plan and an indication of how these environmental factors were considered in the selection of program measures. Environmental impact determinations were considered and published for each plan prior to funding. Applications for financial assistance submitted in accordance with the proposed regulation will be subject to NEPA review, as appropriate, prior to approval in a manner similar to the treatment of applications filed under existing regulations.

The proposed regulation permits the inclusion of renewable resource program measures which had been excluded by the original plan guidelines. DOE does not believe that the substitution of renewable for non-renewable energy resources will have a significant adverse environmental impact, and the reduced consumption of fossil fuels is expected to have beneficial, although insignificant impacts. Therefore, an environmental assessment dealing with this shift in policy has not been prepared at this time.

DOE will, however, require that an environmental discussion accompany a State application. Should DOE, in its review of a State's submittal, find reason to reconsider its initial judgment regarding the insignificance of the impacts associated with the use of renewable resources, DOE will prepare an EA to support its consideration of the State's submittal.

The proposed rulemaking has been reviewed in accordance with DOE procedures for implementing Executive Order 12044, 43 FR 12661, May 1, 1978. Under these procedures, DOE has determined that the proposed rulemaking is "significant" but not "major" and therefore does not require regulatory analysis. The anticipated effects of the proposal, if made final, would be primarily to simplify program procedures. Virtually the only substantive change would be the revision of RTOR requirements which affects two States and one city. A comment period of 30 days is provided on today's proposal. The Deputy Secretary has waived the requirement for a 60-day comment period, because it would be in the public interest to simplify program guidelines at the earliest date practicable.

The proposed rulemaking has also been reviewed in accordance with OMB Circular A-116 to assess the impacts on urban centers and communities. DOE has found that the proposed rule does not constitute a major proposal under Circular A-116 which would require formal analysis.

Pursuant to Section 7(a)(1) of the Federal Energy Administration Act of 1974, as amended, 15 U.S.C. 766(a), a copy of this notice has been submitted to the Administrator of the Environmental Protection Agency (EPA) for comments concerning the impact of this proposal on the quality of the environment. The Administrator had no comments.

In consideration of the foregoing, the Department of Energy proposes to revise Part 420 of Chapter II of Title 10 of the Code of Federal Regulations, as set forth below.

Issued in Washington, D.C., January 17, 1979.

OMI WALDEN,
Assistant Secretary, Conservation and Solar Applications.

PART 420—STATE ENERGY CONSERVATION PLANS

Sec.

420.1 Purpose and scope.
420.2 Definitions.
420.3 Financial assistance.
420.4 Annual State applications
420.5 Review and approval of annual State applications and State plans
420.6 Energy conservation goals.
420.7 Minimum criteria for required program measures for plans.
420.8 Minimum criteria for required program measures for supplemental plans.
420.9 Extensions for compliance with required program measures.
420.10 Administrative review.
420.11 Technical assistance.
420.12 Recordkeeping.
420.13 Reports.
420.14 Prohibited expenditures.
420.15 Administration of financial assistance.

AUTHORITY: Title III, Part C, as amended, of the Energy Policy and Conservation Act, 42 U.S.C. 6321 *et seq.*; Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*

§ 420.1 Purpose and scope.

(a) This part prescribes requirements for program measures included in plans and supplemental plans, and

guidelines for the development, modification and funding of plans and supplemental plans. It is the purpose of this part to promote the conservation of energy and to reduce the rate of growth of energy demand through the development and implementation of a comprehensive State energy conservation plans program and the provision of Federal financial and technical assistance to States in support of such program.

(b) DOE has the responsibility to foster and promote comprehensive State energy conservation plans by providing technical and financial assistance for specific State initiatives to conserve and improve efficiency in the use of energy and to encourage the use of renewable resources. Because of the diversity of conditions among the various States and regions of the Nation, a wholly Federally administered program would not be as effective as one which is tailored to meet local requirements and to respond to local opportunities.

§ 420.2 Definitions.

As used in this part—

"Act" means Title III, Part C, as amended, of the Energy Policy and Conservation Act, 42 U.S.C. 6321 *et seq.*

"ASHRAE 90-75" means those designated standards developed by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Incorporated, as approved by its Board of Directors on August 11, 1975, to provide design requirements for improvements of energy utilization in new buildings.

"Btu" means British thermal unit.

"British thermal unit" means the quantity of heat necessary to raise the temperature of one pound of water one degree fahrenheit at 39.2 degrees Fahrenheit and one atmosphere of pressure.

"Building" means any structure which includes provision for a heating or cooling system, or both, or for a hot water system.

"Carpool" means the sharing of a ride by two or more people in an automobile.

"Carpool matching and promotion campaign" means a campaign to coordinate riders with drivers to form carpools and/or vanpools.

"Commercial building" means any building other than a residental building, including any building constructed for industrial or public purposes.

"DOE" means the Department of Energy.

"Energy audit" means a survey of a building or buildings that is conducted in accordance with § 420.7(b)(3) and Subpart B of 10 CFR part 450 and which—

(1) identifies the type, size, energy use level and the major energy using systems of such building or buildings;

(2) determines appropriate energy conservation maintenance and operating procedures; and

(3) indicates the need, if any, for the acquisition and installation of energy-conservation measures.

"Energy conservation" means energy conservation, efficient energy use or the utilization of renewable energy resources which results in energy savings based upon a net reduction in the use of non-renewable energy resources.

"Energy conservation measure" means a measure which is identified as an energy conservation measure in accordance with Subpart D of 10 CFR Part 450.

"Energy measure" means an energy conservation measure or a renewable-resource energy measure as prescribed in Subpart D of 10 CFR Part 450.

"Environmental residual" means any pollutant or pollution causing factor which results from any activity.

"Exempted building" means—

(a) any building whose peak design rate of energy usage for all purposes is less than one watt (3.4 Btu's per hour) per square foot of floor area for all purposes;

(b) any building with neither a heating nor cooling system;

(c) any mobile home; or

(d) any building owned or leased in whole or in part by the United States.

"Exterior envelope physical characteristics" means the physical nature of those elements of a building which enclose conditioned spaces through which thermal energy may be transferred to or from the exterior.

"Governor" means the chief executive officer of a State and the Major of the District of Columbia, or a person duly designated in writing by the Governor to act upon his or her behalf.

"Grantee" means the State or other entity named in the Notice of Grant Award as the recipient.

"HVAC" means heating, ventilating and air conditioning.

"Heating, ventilating and air conditioning" means a system that provides heating, ventilation and/or air conditioning within or associated with a building.

"HUD minimum property standard" means any of the rules and regulations adopted by the Department of Housing and Urban Development establishing minimum acceptable levels of site design, site preparation, exterior and interior appurtenances which standard is applied to single or multifamily housing units which seek assistance under one or more programs administered by the Assistant Secretary for Housing and Mortgage Credit of the Department of Housing and Urban Development.

"Industrial plant" means any fixed equipment or facility which is used in connection with, or as part of, any process or system for industrial production or output.

"Major building type" means a class of buildings within which similar functions occur such as hospitals, restaurants, hotels and supermarkets.

"Metropolitan Planning Organization" means that organization required by the Department of Transportation, and designated by the Governor as being responsible for coordination within the State, to carry out transportation planning provisions in a Standard Metropolitan Statistical Area.

"National energy conservation program" means a program which is authorized by Federal statute and is wholly implemented by the Federal Government, without the active participation of a State or local government, other than for usual coordination or acknowledgement.

"Park-and-ride lot" means a parking facility generally located at or near the trip origin of carpools, vanpools, and/or mass transit.

"Plan" means a State energy conservation plan including required program measures in accordance with § 420.7 and otherwise meeting the applicable provisions of this part.

"Political subdivision" means a unit of government within a State, including a county, municipality, city, town, township, parish, village, local public authority, school district, special district, council of governments, or any other regional or intrastate governmental entity or instrumentality of a local government exclusive of institutions of higher learning and hospitals.

"Preferential traffic control" means any one of a variety of traffic control techniques used to give carpools, vanpools and public transportation vehicles priority treatment over single occupant vehicles other than bicycles and other two-wheeled motorized vehicles.

"Program measure" means one or more State actions, in a particular area, designed to effect energy conservation, excluding actions in areas specifically covered by national energy conservation programs.

"Public building" means any building which is open to the public during normal business hours, except exempted buildings, including—

(a) any building which provides facilities or shelter for public assembly, or which is used for educational, office or institutional purposes;

(b) any inn, hotel, motel, sports arena, supermarket, transportation terminal, retail store, restaurant, or other commercial establishment which

provides services or retail merchandise;

(c) any portion of an industrial plant building used primarily as office space; or

(d) any building owned by a State or political subdivision thereof, including libraries, museums, schools, hospitals, auditoriums, sport arenas, and university buildings.

"Public transportation" means any scheduled or nonscheduled transportation service for public use.

"Regional Representative" means the Regional Representative of the Secretary.

"Renewable-resource energy measure" means a measure which is identified as a renewable resource energy measure in accordance with Subpart D of 10 CFR Part 450.

"Residential building" means any structure which is constructed for residential occupany.

"Secretary" means the Secretary of DOE.

"State" means a State, the District of Columbia, Puerto Rico, or any territory or possession of the United States.

"Supplemental plan" means a supplemental State energy conservation plan including required program measures in accordance with § 420.8 and otherwise meeting the applicable provisions of this part.

"Transit level of service" means characteristics of transit service provided which indicate its quantity, geographic area of coverage, frequency and quality (comfort, travel, time, fare and image).

"Urban area traffic restriction" means a setting aside of certain portions of an urban area as restricted zones where varying degrees of limitation are placed on general traffic usage and/or parking.

"Vanpool" means a group of riders using a vehicle, with a seating capacity of not less than eight individuals and not more than fifteen individuals, for transportation to and from their residences or other designated locations and their place of employment, provided the vehicle is driven by one of the pool members.

"Variable working schedule" means a flexible working schedule to facilitate carpool, vanpool and/or public transportation usage.

§ 420.3 Financial assistance.

(a) The Regional Representative shall provide financial assistance to develop, modify or implement a plan, a supplemental plan, or both, on a calendar year basis, from funds available for any fiscal year, to each State having an approved annual application.

(b) Financial assistance to develop, implement or modify plans shall be allocated among the States from funds available for any fiscal year, based on the following formula—

(1) forty percent of available funds will be divided on the basis of the resident population of the participating States as of July, 1976, as reported by the Department of Commerce, Bureau of Census, in their most recent publication of "Current Population Reports;"

(2) twenty-five percent of available funds will be divided among the prticipating States equally; and

(3) thirty-five percent of available funds will be divided on the basis of estimated energy savings in calendar year 1980 resulting from the implementation of State energy conservation plans; provided, however, that no State shall receive more than twenty percent of the funds available to be divided on the basis of the estimated energy savings in calendar year 1980; and

(c) Financial assistance to develop, implement or modify supplemental plans shall be allocated among the States from funds available for any fiscal year, based on he following formula—

(1) seventy-fie percent of available funds will be divided on the basis of the resident poulation of the prticipating States as of July, 1976, as reported by the Department of Commerce, Bureau of Census, in their most recent publication of "Current Population Reports;" and

(2) twenty-five percent of available funds will be divided among the participating States equally.

§ 420.4 Annual State applications.

(a) To be eligible for financial assistance under this part, a State on or before the last day of the calendar year shall submit an original and two copies to the Regional Representative of an annual application, executed by the Governor. The annual application shall be submitted in accordance with DOE Form CS-1 and shall request financial assistance for either a plan or a supplemental plan or for both.

(b) An application shall include—

(1) the name and address of the grantee;

(2) with respect to either a plan or supplemental plan or both—

(i) a description of proposed modifications, including new and amended program measures;

(ii) for the year in which financial assistance will be provided—

(A) a budget listed by program measure and by object class category;

(B) a narrative statement detailing the nature of amendments and of new program measures;

(C) a listing of milestones by calendar quarter; and

(D) a description of the source and amount of funding, if any, other than financial assistance provided under this part, which is expected to be available to the State;

(E) an explanation of how the minimum criteria for required program measures prescribed in § 420.7 for plans and § 420.8 for supplemental plans shall be satisfied.

(iii) a detailed description of the estimated energy savings and the estimated cost of implementation for each program measure described in the application; and

(3) a detailed description of the increase or decrease in environmental residuals expected from implementation of either a plan or supplemental plan, or both, defined insofar as possible through the use of information to be provided by DOE, and an indication of how these environmental factors were consideed in the selection of program measures.

(c) The detailed description of estimated energy savings for a plan, specified in subparagraph (b)(2)(iii) of this section, shall include—

(1) the estimated energy savings in Btu's expected as a result of the implementation of the program measure for calendar year 1980, and beyond;

(2) the sources of numerical data, any assumptions, and the actual calculations used by the state to estimate the energy savings;

(3) for those program measures for which DOE has not made available a methodology for estimating the energy savings, the methodology used to estimate the energy savings; and

(4) the manner in which the State will assess actual energy savings under the program measure.

(d) The Governor may request an extension of the annual submission date by submitting a written request to the Regional Representative on or before December 15. The extension shall only be granted, for a period not to exceed three months, if, in the Regional Representative's judgment, acceptable and substantial justification is shown, and the Regional Representative determines that prticipation by the State submitting the request is likely to result in significant progress toward achieving the purposes of this part

§ 420.5 Review and approval of annual State applications and State plans.

(a) The Regional Representative shall review each timely annual application and provide financial assistance if he or she determines that—

(1) the application conforms to the requirements of this part;

(2) the proposed program measures are consistent with a State's achievement of its energy conservation goal

and interim goals, if any, in accordance with § 420.6;

(3) the provisions of the application regarding program measures satisfy the minimum program requirements prescribed by § 420.7.

If the annual application is not approved according to paragraph (a) of this section, the Regional Representative shall return it to the State together with a written statement describing why the annual State application fails to meet the requirements of this part. The State will be given a reasonable period of time, as determined by the Regional Representative, to amend its annual application and submit it for reconsideration according to paragraph (a) of this section.

§ 420.6 Energy conservation goals.

(a) DOE shall set an energy conservation goal for each State for calendar year 1980 pursuant to § 364 of the Act.

(b) DOE may set interim goals for the States pursuant to § 364 of the Act.

(c) With regard to interim goals prescribed in accordance with paragraph (b) of this section, DOE shall specify the assumptions used in the determination of the projected energy consumption in each State, taking into account population trends, economic growth, and the effects of national energy conservation programs.

§ 420.7 Minimum criteria for required program measures for plans.

A plan shall satisfy all of the following minimum criteria for required program measures.

(a) Mandatory lighting efficiency standards for public buildings shall—

(1) be under implementation throughout all political subdivisions of the State;

(2) apply to all public buildings above a certain size, as determined by the State;

(3) for new public buildings, be no less stringent than provisions of section 9 of ASHRAE 90-75; and

(4) for existing public buildings, contain the elements deemed appropriate by the State.

(b) Program measures to promote the availability and use of carpools, vanpools and public transportation shall—

(1) have at least one of the following actions under implementation in at least one urbanized area with a population of 50,000 or more within the State or in the largest urbanized area within the State if that State does not have an urbanized area with a population of 50,000 or more—

(i) a carpool/vanpool matching and promotion campaign;

(ii) park-and-ride lots;

(iii) preferential traffic control for carpoolers and public transportation patrons;

(iv) preferential parking for carpools and vanpools;

(v) variable working schedules;

(vi) improvements in transit level of service for public transportation;

(vii) exemption of carpools and vanpools from regulated carrier status;

(viii) parking taxes, parking fee regulations or surcharge on parking costs;

(ix) full-cost parking fees for State and/or local government employees;

(x) urban area traffic restrictions;

(xi) geographical or time restrictions on automobile use; or

(xii) area or facility tolls; and

(2) be coordinated with the relevant Metropolitan Planning Organization, unless no Metropolitan Planning Organization exists in the urbanized area, and not be inconsistent with any applicable Federal requirements.

(c) Mandatory standards and policies affecting the procurement practices of the State and its political subdivisions to improve energy efficiency shall—

(1) with respect to all State procurement and with respect to procurement of political subdivisions to the extent determined feasible by the State, be under implementation; and

(2) contain the elements deemed appropriate by the State to improve energy efficiency through the procurement practices of the State and its political subdivisions.

(d) Mandatory thermal efficiency standards for new and renovated buildings shall—

(1) be under implementation, with respect to all buildings other than exempted buildings, throughout all political subdivisions of the State;

(2) take into account the exterior envelope physical characteristics, HVAC system selection and configuration, HVAC equipment performance and service water heating design and equipment selection;

(3) for all new commercial buildings, be no less stringent than a standard consistent with provisions of sections 4-9 of ASHRAE 90-75;

(4) for all new residential buildings, be no less stringent than either the HUD minimum property standards or a standard consistent with the provisions of sections 4-9 of ASHRAE 90-75; and

(5) for renovated buildings—

(i) apply to those buildings determined by the State to be renovated buildings; and

(ii) contain the elements deemed appropriate by the State regarding thermal efficiency standards for renovated buildings.

(e) A traffic law or regulation which permis the operator of a motor vehicle to make a right turn at a red light after stopping shall—

(1) be in a State's motor vehicle code and under implementation thoughout all political subdivisions of the State, except as provided in paragraph (e)(3) of this section;

(2) permit the operator of a motor vehicle to make a right turn (left turn with respect to the Virgin Islands) at a red traffic light after stopping except where specifically prohibited by a traffic sign for reasons of safety; and

(3) for any State without such traffic law or regulation in effect before December 31, 1978, be ready for implementation by December 31, 1978, be ready for implementation by December 31, 1979 and fully meet the requirements of paragraphs (e)(1) and (2) of this section thereafter.

§ 420. Minimum criteria for required program measures for supplemental plans:

A supplemental plan shall satisfy all of the following minimum criteria for required program measures.

(a) Procedures for carrying out a continuing public education effort to increase significantly public awareness of the energy and cost savings which are likely to result from the implementation, including implementation through group efforts, of energy measures shall—

(1) be under implementation; and

(2) provide a public awareness program regarding energy audits with respect to buildings and industrial plants which at least includes a campaign publicizing the availability of energy audits in at least one urbanized area with a population greater than 50,000 or in the largest urbanized area within a State if the State does not have an urbanized area with a population of 50,000 or more. The campaign must make clear reference to the range of technical assistance available to the owner or occupant of the building or industrial plant and provide a point of contact with the organization administering the energy audits, including a telephone number;

(b) Procedures for carrying out a continuing public education effort to increase significantly public awareness of information and other assistance, including information as to available technical assistance, which is or may be available with respect to the planning, financing, installing, and monitoring the effectiveness of measures likely to conserve, or to impove efficiency in the use of energy, including energy measures shall—

(1) be in place and under implementation; and

(2) contain the elements considered appropriate by a State.

(c) Procedures for ensuring that effective coordination exists among various local, State and Federal energy conservation programs within and affecting such State, including the com-

prehensive energy extension service program, under 10 CFR Part 460, shall—

(1) be in place and under implementation; and

(2) contain provisions for activities considered appropriate by a State such as coordinating local and State agencies to prevent duplication of energy conservation activities or conducting public hearings to ensure that individuals and groups concerned with program measures to be incorporated in a plan or supplemental plan and all other energy conservation programs in the State, shall be afforded the opportunity to participate in their development, implementation, and modification.

(d) Procedures for encouraging and for carrying out energy audits with respect to buildings and industrial plants shall—

(1) be under implementation throughout all political subdivisions of the State;

(2) be in accordance with subpart B of 10 CFR part 450; and

(3) provide and make available, to the extent feasible, Class A energy audits in at least one political subdivision for the buildings or industrial plants in at least one of the following categories and as many Class C energy audits as are practicable within the State in the remaining categories—

(i) apartment buildings;
(ii) educational institutions;
(iii) hospitals;
(iv) hotels and motels;
(v) industrial plants;
(vi) office buildings;
(vii) restaurants;
(viii) retail stores;
(ix) transportation terminals; and
(x) warehouses and storage facilities; and

(4) make available Class B or C audits to all individuals, as requested by such individuals, who are occupants of residential dwelling units in a State at no direct cost to those persons.

§ 420.9 Extensions for compliance with required program measures.

The Governor may request an extension of time, not to exceed December 31, 1979, by which a required measure meeting the minimum criteria of § 420.7 must be under implementation by submitting a written request to the Regional Representative supported by documentation that—

(a) the program measure—

(1) is in place and ready for implementation within not less than one political subdivision within the State; or

(2) is partially implemented upon a statewide basis; and

(b) the State is prepared to carry out an action plan submitted to the Regional Representative with specific quarterly milestones for full implementation of the program measure throughout the State in the shortest practicable period, but in no event later than December 31, 1979.

§ 420.10 Administrative review.

(a) If the Regional Representative intends to deny an annual State application resubmitted by the Governor according to § 420.5(b) or refuses to accept an annual State application resubmitted by the Governor after the time period referred to in § 420.5(b) has expired, the Regional Representative shall give notice to the Governor.

(b) If the Regional Representative determines that implementation of a State plan approved according to § 420.5 fails to meet the requirements of this part, the Secretary shall give notice to the Governor of his or her intent to terminate or suspend financial assistance to the grantee.

(c) The notice required by paragraphs (a) or (b) of this section shall be issued in writing by registered mail with return receipt requested and include—

(1) a statement of the reasons for the intended denial, termination or suspension of financial assistance;

(2) the date, place and time of a public hearing to be held by a review panel concerning the intended denial, termination or suspension of financial assistance, the hearing to be held within 15 working days after the date of receipt by the Governor of the notice; and

(3) the manner in which views may be presented.

(d) The Governor may submit written views with supporting data to the Regional Representative on or prior to the date of the public hearing and shall be offered an opportunity to make an oral presentation at the public hearing.

(e) The review panel shall be appointed by the Regional Representative and shall consist of three disinterested members.

(f) The review panel shall consider all relevant views and data submitted on or prior to the date of the public hearing. The review panel shall submit a written report containing its findings and recommendations to the Regional Representative within 10 working days after the date of the public hearing.

(g) The Regional Representative shall submit the report, together with his or her recommendations, to the Secretary within 5 working days after receipt of the report.

(h) The Secretary shall issue a final determination, accompanied by a statement of the reasons for the actions taken, within 10 working days after receipt of the submission from the Regional Representative.

(i) Upon issuance of the notice referred to in paragraphs (a) or (b) of this section, the Secretary may suspend financial assistance to the grantee pending a final determination. If the Secretary makes a final determination adverse to the grantee, the Regional Representative shall terminate financial assistance to the grantee.

§ 420.11 Technical assistance.

At the request of the Governor of any State to DOE and subject to the availability of personnel and funds, DOE will provide information and technical assistance to the State in connection with effectuating the purposes of this part.

§ 420.12 Recordkeeping.

Each State or other entity within a State receiving financial assistance under this part shall make and retain records required by the Secretary, including records which fully disclose the amount and disposition of financial assistance received; the cost of administration; the total cost of all activities for which assistance is given or used; the source and amount of any funds not supplied by the Secretary; and any data and information which the Secretary determines are necessary to protect the interests of the United States and to facilitate an effective financial audit and performance evaluation. The Secretary, or any of his or her duly authorized representatives, shall have access, until three years after the completion of the activities involved, to any books, documents, records or receipts which the Secretary determines are related or pertinent, either directly or indirectly, to financial assistance provided under this part.

§ 420.13 Reports.

Each State receiving financial assistance under this part shall submit to the Regional Representative a quarterly program performance report and a quarterly financial status report. The report shall contain such information as the Secretary may prescribe in order to monitor effectively the implementation of a plan or supplemental plan. The reports shall be submitted to the Regional Representative within 30 days following the end of each calendar quarter.

§ 420.14 Prohibited expenditures.

Grants awarded under this part shall not be used directly or indirectly—

(a) to purchase equipment, other than office equipment, such as weatherization materials and law enforcement equipment;

(b) for construction, such as construction of mass transit systems and exclusive bus lanes;

(c) to subsidize fares for public transportation; or

(d) for subsidies for utility rate demonstrations or State insulation tax credits.

§ 420.15 Administration of financial assistance.

Grants provided under this part shall comply with the requirements of—

(a) Office of Management and Budget Circular A-102, entitled "Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments;"

(b) Office of Management and Budget Circular A-95, entitled "Evaluation, Review and Coordination of Federal and Federally Assisted Programs and Projects;"

(c) Federal Management Circular 73-2 (34 CFR 251), entitled "Audit on Federal Operations and Programs by Executive Branch Agencies;"

(d) Federal Management Circular 74-4 (34 CFR 255), entitled "Cost Principles Applicable to Grants and Contracts with State and Local Governments;"

(e) Office of Management and Budget Circular A-97, entitled "Rules and Regulations Permitting Federal Agencies to Provide Specialized or Technical Services to State and Local Units of Government under Title III of the Intergovernmental Coordination Act of 1968;"

(f) Treasury Circular 1082 Revised, entitled "Notification to States of Grant-in-Aid Information;"

(g) Treasury Circular 1075, entitled "Treasury Fiscal Requirements Manual;" and

(h) Other procedures which DOE may from time to time prescribe for the administration of financial assistance provided under this part.

[FR Doc. 79-2292 Filed 1-18-79; 2:28 pm]

Federal Register

MONDAY, JANUARY 22, 1979
PART III

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

GENERAL OPERATING AND FLIGHT RULES

Proposed Revision Pursuant to Petition by Aircraft Owners and Pilots Association

[4910-13-M]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 91]

[Docket No. 18334; Notice No. 79-2]

GENERAL OPERATING AND FLIGHT RULES

Revision of Part 91

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Advance notice of proposed rule making.

SUMMARY: This notice sets forth the petition of the Aircraft Owners and Pilots Association, on behalf of its members, for revision of that Part of the Federal Aviation Regulations which contains the general operating and flight rules.

DATES: Comments must be received on or before April 23, 1979.

ADDRESS: Send written comments in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-24), Docket No. 18334 800 Independence Ave., S.W., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT:

Raymond E. Ramakis, Regulatory Projects Branch, Safety Regulations Division, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591; Telephone (202) 755-8716.

SUPPLEMENTARY INFORMATION:

COMMENTS INVITED

This advance notice of proposed rule making is issued to invite public participation in the identification and selection of a course or alternate courses of action with respect to a particular rule making problem. Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should be submitted in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-24), Docket No. 18334, 800 Independence Avenue, S.W., Washington, D.C. 20591. All comments submitted will be available in the Rules Docket, both before and after the closing date for comments, for examination by interested persons. If it is determined to proceed further, after consideration of the available data and the comments received in response to this notice, a notice of proposed rule making will be issued and will be filed in the public docket.

AVAILABILITY OF ANPRM

Any person may obtain a copy of this advance notice of proposed rule making (ANPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Ave., S.W., Washington, D.C. 20591, or by calling (202) 426,8058. Communication must identify the notice number of this ANPRM. Persons interested in being placed on a mailing list for future ANPRM's and NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

BACKGROUND

By petition dated August 9, 1978, the Aircraft Owners and Pilots Association (AOPA) petitioned the Federal Aviation Administration to revise Part 91 of the Federal Aviation Regulations (14 CFR Part 91).

The FAA believes the petition discloses adequate reasons to publish it in the form of an advance notice of proposed rule making for the purpose of obtaining public comments on it.

Although this advance notice sets forth the contents of the petition without substantive changes, it should be understood that its publication does not represent an FAA position, or otherwise commit the Agency, on the merits of any particular amendment proposed. The Agency intends to reach a conclusion on the merits of the individual proposals only after it has had an opportunity to carefully evaluate them in the light of all comments received. Thereafter, if the FAA determines that it should proceed further, a notice of proposed rule making will be issued which reflects the FAA evaluation of the proposals.

AOPA PETITION

PETITION FOR RULEMAKING

Proposed Revision of Part 91 of the Federal Aviation Regulations

The Aircraft Owners and Pilots Association, on behalf of more than 210,000 members petitions the Federal Aviation Administration to revise Part 91 of the Federal Aviation Regulations to make the regulations simpler and more comprehensible.

Present Part 91 reflects the ever increasing volume of air traffic and changes in aviation technology since the first set of regulations were promulgated almost fifty years ago. New regulations are regularly added and old ones revised, with very few being deleted. Where sections have been amended several times in attempts to make them more explicit, or to reflect changes in other regulations, they have become convoluted with much of the language superfluous.

Under the codification system used, it has been difficult to keep the regulations in any kind of logical order. The only provision for adding new regulations has been to leave blanks between the section numbers, but these blanks are soon exhausted resulting in a rather random listing of regulations. The best solution to this problem is a new numbering system such as that employed by ICAO. This has not been done in this proposal because to do so might obscure the basic purpose of simplifying the regulations and format in Part 91, and raise additional problems in having the proposal adopted.

We believe Part 91 should contain only those regulations a pilot needs to know in order to operate legally and, hopefully, safely. The regulations should be as short and uncomplicated as possible, and understandable to all pilots. Material which may state good operating procedures but is extraneous to a basic regulation should be deleted and placed in Advisory Circulars, training manuals and other publications.

The Accompanying proposal contains four areas of change from present Part 91: I Reorganization; II Simplification; III Deletion; and IV Addition.

I. REORGANIZATION

The regulations are organized into seven subparts, with the sections in each subpart assigned the odd numbers in series of 100; i.e., §§ 91.15, 91.115, 91.215, etc.

Subpart A: General Regulations, and Subpart B, Basic Flight Rules, are applicable to all operations. These two subparts contain all the regulations pertinent to the non-instrument rated pilot flying small aircraft in ordinary not-for-hire operations.

Subpart C contains the Instrument Flight Rules, including those governing Category II operations.

Subpart D, Special Flight Operations, governs aerobatic flight, aircraft flight test areas, flight instruction, simulated instrument flight, parachuting (general and reference to part 105), and towing (gliders and others).

Subpart E contains Additional Regulations for Commercial Operators and Operations for Hire. These regulations are retained in Part 91 because some for-hire operations and some operations by commercial operators are governed only by Part 91.

Subpart F, Operation of Certain Aircraft, contains regulations from Present Part 91 applicable to experimental, limited, provisional restricted, and transport category aircraft; turbojet-powered airplanes; sonic boom; and in-

creased weights for certain airplanes in Alaska.

Subpart G contains the aircraft maintenance regulations from Subpart C of present part 91.

This proposal does not include present Subpart D, Large and Turbine Powered Multi-Engine Airplanes; or Subpart E, Operating Noise Levels. These could remain as additional subparts to Part 91 or, more appropriately, could be published as new parts to the Federal Aviation Regulations.

II. SIMPLIFICATION

For purposes of achieving clarity and simplicity, much of the language has been changed. Regulations of little or no concern to most general aviation pilots have been unchanged in this proposed revision.

The removal from Part 91 of several tables, complicated appliance approval standards, and specifics adequately covered by a basic regulation is intended to simplify many regulations without altering their applicability. Material which has been removed will be noted under *Changes* in each specific proposal. Some examples are:

A. Reference to TSOs or other approval standards for appliances. [Present §§ 91.24, 91.33, 91.36, and 91.52].

Throughout, we have deleted from Part 91 most references to TSO or other approval standards for appliances. We are not suggesting that appliances need not meet stated standards where approval is presently required. We are recommending that requirements for such approval be placed in other Parts of the FARs (Parts 21, 37, 43, or the various airworthiness Parts), or that a new Part containing all approval requirements be established.

The extent to which the regulations succeed in providing a safe flight environment is predicated to a very large degree on how well pilots understand them and the reasonableness of requiring compliance. It is reasonable to require a pilot to ascertain the airworthiness of an aircraft by looking at the airworthiness certificate, checking the aircraft logbooks to determine the date of the most recent required inspection, and giving the aircraft a thorough preflight inspection. It is unreasonable to expect a pilot to determine whether all appliances meet technical approval standards which may be in effect. Three examples should adequately illustrate this:

1. Transponders are required to meet one of four TSOs, two of which are unacceptable unless the transponder has been upgraded to meet one of the other TSOs. The manufacturer may indicate on the face of the transponder that it is TSO'd, but the pilot cannot tell which TSO it meets.

2. Anticollision light systems must meet standards prescribed in various airworthiness Parts of the regulations. These systems are not marked in any way to indicate to the pilot that they meet the required standards.

3. Emergency locator transmitters must be TSO'd, but many of them are installed in aircraft in such a way as to be inaccessable to a pilot making a conscientious preflight inspection.

In most cases, examination of aircraft equipment lists or maintenance records does not reveal whether the items meet required standards. Usually, only the type (and occasionally a brand name) of item is listed. Even knowing the name of the manufacturer and model number would not tell the pilot whether it was approved, unless he had a complete list of all items which meet all required standards. It is obviously impractical to expect pilots to keep, or even use such a list.

We realize that a prohibition against the use of unapproved appliances should remain in Part 91, and we have provided this in proposed § 91.17.

B. Specific information required under Preflight Action. [Present § 91.5(a) and (b)]. Deleting the specific items in paragraphs (a) and (b) does not lessen a pilot's responsibility for including them in the information considered pertinent to the safe operation of a flight. This is the type of information that comes under good operating procedures and belongs in other publications.

C. Tables for determining flight levels based on atmospheric pressure and converting minimum altitude to minimum flight level. [Present § 91.91]. This, too, belongs in manuals, not Part 91.

III DELETION

Several sections and large portions of present Part 91 have been deleted, but, for the most part, this does not result in any change to present operating practices nor lowering of safety standards. The major deletions are:

A. Section 91.4, Pilot in Command of Aircraft Requiring More than One Required Pilot.

This regulation belongs in Part 61. If § 61.58 does not state the requirement contained in § 91.4, it should be amended to do so. There appears to be no more reason to retain this cross reference than to have similar references in Part 91 to requirements for instrument ratings to operate IFR, type ratings for large aircraft, etc.

B. Section 91.12, Carriage of Narcotic Drugs, Marihuana, and Depressant or Stimulant Drugs or Substances.

Our sole consideration in deleting this regulation is an attempt to eliminate from Part 91 regulations unnecessary for safe flight operations, and the deletion should not be construed in any way as our condoning the use of aircraft for any illicit purpose. We have reread the preambles which accompanied this regulation when it was adopted and the subsequent amendments to it and find the arguments offered in justification could be used to justify regulations against the use of aircraft for just about any illicit act: fleeing from a crime, kidnapping, aircraft theft, etc.

If aircraft carrying drugs engages in any unsafe flight operation, FAA retains enforcement authority under at least one remaining regulation if present § 91.12 is deleted; and other Federal and State statutes remain to outlaw the illegal possession and carriage of drugs.

If a regulation against the carriage of drugs in aircraft is retained, it should appear in another Part of the FARs because it is too remote from flight safety considerations to remain in Part 91.

C. Sections 91.24(b)(3) and 91.90(c), Group III Terminal Control Area.

Regulations for Group III TCAs have been deleted because there aren't any. and, hopefully, there won't be any, at least not for some time to come. If Group III TCAs are established at some future date, Part 91 can be amended accordingly. In the meantime, references to them in Part 91 constitute needless clutter.

D. Section 91.27(b), Display of Airworthiness Certificate.

The requirement to dsiplay the airworthiness certificate so that it is legible to passengers and crew is deleted because, in most cases, the airworthiness certificate is meaningless without reference to the aircraft maintenance records. It may be valid to require prominent display of nonstandard airworthiness certificates, such as ferry permits and experimental certificates.

E. Section 91.36, Data Correspondence Between Automatically Reported Pressure Altitude Data and the Pilot's Altitude Reference.

Paragraph (a)—No person may operate any automatic pressure altitude reporting equipment assoicated with a radar beacon transponder when deactiviation of that equipment is directed by ATC.

This paragraph is deleted because it appears to be covered by the prohibition against operating an aircraft contrary to an ATC instruction. (Present § 91.75(b) and proposed § 91.125(b).) If FAA considers present § 91.75(b) not to apply to the operation of equipment aboard an aircraft, we have no objection to retaining present § 91.36(a), but recommend that it be included as a paragraph under proposed § 91.125, Compliance with ATC Clearances and Instructions.

Paragraph (b) and (c)—Test and calibration and TSO requirements for automatic pressure altitude reporting equipment. These requirements

should be placed on the owner and/or the person who installs the equipment, not on the pilot. (See example A under Simplification, removing references to TSO or other approval standards for appliances.)

F. Section 91.54, Truth in Leasing Clause Requirement in Leases and Conditional Sales Contracts.

This section belongs in Part 49 if it belongs anywhere in the FARs. The requirements to carry a copy of a lease or contract in the aircraft and to notify the nearest FAA office prior to a flight might be retained in Part 91.

G. Sections 91.70(b); 91.85(b), (c) and (d); and Part 1, Airport Traffic Areas.

This is the only deletion which results in what may be considered a potentially significant change in operating practices.

1. Aircraft may be operated below 3,000 feet MSL closer than 5 miles to a tower controlled airport for purposes other than landing or taking off, and without communicating with the tower, as long a they avoid the traffic pattern.

2. Communication with a tower not operated by the U.S. is not mandatory.

Many of the busiest airports are now within TCAs, making airport traffic areas unnecessary for them; and requiring clearances for operations within traffic patterns at other airports with control towers provides a necessary level of safety. It may be pertinent to point out that under present regulations aircraft may operate within airport traffic areas without clearances if they are taking off or landing at a nontower airport within the area.

H. Section 91.101, Operations to, or over Cuba. This regulation is political in nature rather than related to aviation safety and, as such, it should come under the Department of State, not the FAA.

IV. ADDITIONS AND CHANGES

Regulations which have been added or changed mainly expand or clarify a privilege or an exception contained in present regulations, or acknowledge present good operating procedures. There are two major (or significant) changes:

A. Proposed § 91.17 imposes prohibitions against the installation of any appliance which does not meet approval standards when approval is required, and against the use of appliances which the pilot determines do not meet required approval standards. These prohibitions take up the slack left by deleting from Part 91 specific approval standards.

B. Proposed § 91.307 permits flight instruction and simulated instrument flight in aircraft without dual controls provided the pilot manipulating the controls meets certain qualifications.

NOTES

(1) On the Contents pages for the proposed new part, the numbers of corresponding sections in present Part 91 appear to the right of section titles.

(2) The sections in each Subpart of the proposal have been assigned the odd numbers from a different series of 100; i.e., 91.15, 91.115, 91.215, etc.

*(3) A copy of the present regulations, on white paper, faces each corresponding proposed section which is on yellow paper, for easy comparison.

*(4) On the reverse side of each white sheet, two numbers are in the upper right-hand corner. The top number is the number of the proposed section, and below it is the number of the corresponding present section in parenthesis.

(5) Throughout the proposal, we have tried to consistently change the word "may" to "shall" when it is used in the negative ("no person *shall*"). "May" is still used in a permissive sense to state authority or permission to do the act prescribed.

(6) In Subpart G, Aircraft Maintenance, Inspections, Preventive Maintenance, Alterations, and Equipment Tests, the word "inspection" is used separately from "maintenance" (which presently includes inspection as part of its definition). It is intended that "maintenance" be redefined accordingly, and that a definition of "inspection" be inserted in Part 1.

PART 91—OPERATING AND FLIGHT RULES

Subpart A—General

Sec.		Corresponding present regulation
91.1	Applicability	91.1 & 91.20
91.3	Airmen: Required Certification	New
91.5	Responsibility and Authority of the Pilot in Command	91.3
91.7	Careless or Reckless Operation	91.9 & 91.10
91.9	Aircraft: Required Certification	91.27(a)
91.11	Aircraft Airworthiness	91.29
91.13	Civil Aircraft Operating Limitations	91.31
91.15	Aircraft Instrument and Equipment Requirements	91.24, 91.32, 91.33, 91.52 & New
91.17	Prohibition Against Certain Appliances and Portable Electronic Devices	91.19 & New
91.19	Liquor and Drugs	91.11
91.21	Carriage of Narcotic Drugs, Marihuana, and Depressant or Stimulant Drugs or Substances.	91.12
91.23	Preflight Action	91.5
91.25	Waivers	91.63
91.27	Prohibition Against Interference with Crewmembers	91.8
91.29	Special Rules for Foreign Civil Aircraft	91.27, 91.28, 91.43 & 91.103

Subpart B—Basic Flight Rules

91.101	Applicability	91.61
91.103	Flight Crewmembers at Station	91.7
91.105	Use of Seatbelts and Shoulder Harnesses	91.14
91.107	Operating Near other Aircraft	91.65(a) & (b)
91.109	Right-of-Way Rules, Except Operations on Water	91.67
91.111	Right-of-Way: Operations on Water	91.69
91.113	Use of Aircraft Position Lights	91.73
91.115	Aircraft Speed	91.70
91.117	Weather Minimums: Visual Flight Rules	91.105
91.119	Special Weather Minimums in Control Zones	91.107
91.121	Minimum Safe Altitudes	91.79
91.123	Cruising Altitudes: Visual Flight Rules	91.109
91.125	Altimeter Settings	91.81 & New
91.127	Dropping Objects	91.13
91.129	Compliance with ATC Clearances and Instructions	91.65(d), 91.75 & New
91.131	ATC Light Gun Signals	91.77
91.133	Flight Plans: General	91.83(a) & (d)
91.135	Flight Plans: Flights Between Mexico and Canada and the United States.	91.84
91.137	Operating on or in the Vicinity of an Airport: General	91.85(a) & 91.89
91.139	Operations at Airports with Operating Control Towers	91.87(a), (b), (d), (e), (f), (g), & (h)
91.141	Terminal Control Areas	91.90(a) & (b), & 91.24(b) & (c)
91.143	Operation in Specially Designated Areas	91.95 & 91.97
91.145	Temporary Flight Restrictions	91.91, 91.102 & 91.104

Subpart C—Instrument Flight Rules (IFR)

91.201	Applicability	New
91.203	Flight Plan and ATC Clearance Requirements	91.115
91.205	Equipment Requirements	91.33(a), (d), & (e)
91.207	VOR Equipment Check for IFR Operation	91.25
91.209	Fuel Requirements	91.23
91.211	Alternate Airport	91.83(a)(9), (b) & (c)
91.213	Minimum Altitudes	91.119(a)
91.215	Cruising Altitude or Flight Level	91.121
91.217	Course to be Flown	91.123
91.219	Climb Enroute	91.119(b)
91.221	Instrument Approach Procedures at Civil Airports	91.116(a), (f), (g), (h) & 91.117(c)

PART 91—OPERATING AND FLIGHT RULES

Subpart C—Instrument Flight Rules (IFR) —Continued

Sec.		Corresponding present regulation
91.223	Descent Below MDA or DH; and IFR Landing Minimums at Civil Airports.	91.116(b) & (c), & 91.117(a) & (b)
91.225	Military Airports; Takeoff and Landing under IFR	91.116(d)
91.227	Radio Communications	91.125
91.229	Two-Way Radio Communications Failure	91.127
91.231	Radio Malfunction Reports	91.129 & New
91.233	Category II Operations	91.2, 91.6, 91.33(f) & 91.34

Subpart D—Special Flight Operations

91.301	Applicability	New
91.303	Aerobatic Flight	91.15(c), (d), (e); 91.71
91.305	Aircraft Flight Test Areas	91.93
91.307	Flight Instruction, Simulated Instrument Flight, and Certain Pilot Flight Tests.	91.21
91.309	Parachuting	91.15 (a) and (b)
91.311	Towing: Gliders	91.17
91.313	Towing: Other than Gliders	91.18

Subpart E—Additional Regulations for Commercial Operators, and Operations for Hire

91.401	Applicability	New
91.403	Emergency Exits for Airplanes Carrying Passengers for Hire	91.47
91.405	Flight Recorders and Cockpit Voice Recorders	91.35
91.407	Over-Water Operations	91.33(a) and (b)(11)
91.409	Night Operations	91.33(a) and (c)(4)
91.411	Formation Flights with Passengers for Hire	91.65(c)

Subpart F—Operation of Certain Aircraft

91.501	Applicability	New
91.503	Experimental Aircraft	91.42
91.505	Limited Category Civil Aircraft	91.40
91.507	Provisionally Certificated Civil Aircraft	91.41
91.509	Restricted Category Civil Aircraft	91.39
91.511	Transport Category Civil Airplanes: Weight Limitations	91.37
91.513	Transport Category Airplanes: Aural Speed Warning Device	91.49
91.515	Transport Category Airplanes: Pitot Heat Indication System	91.50
91.517	Turbojet-Powered Civil Airplanes: Altitude Alerting System or Device	91.51
91.519	Turbojet-Powered Civil Airplanes: Use of Flaps	91.85(c)
91.521	Authorization for Ferry Flight with One Engine Inoperative	91.45
91.523	Sonic Boom	91.55
91.525	Increased Maximum Certificated Weights for Certain Airplanes Operated in Alaska.	91.38

Subpart G—Aircraft Maintenance, Inspections, Preventive Maintenance, Alterations, and Equipment Tests

91.601	Applicability	91.161
91.603	General	91.163(a); 91.165
91.605	Maintenance and Inspections: Who May Perform	91.163(b); 43.3(h)
91.607	Maintenance Required	91.163(c); 91.165
91.609	Inspections Required	91.169
91.611	Progressive Inspections	91.171
91.613	Altimeter System Tests and Inspections	91.170
91.615	ATC Transponder Tests and Inspections	91.177
91.617	Carrying persons After Repairs or Alterations	91.167
91.619	Maintenance Records	91.173
91.621	Rebuilt-Engine Maintenance Records	91.175
91.623	Transfer of Maintenance Records	91.174

Subpart A—General

NOTE.—This Subpart is basically the same as Subpart A of present Part 91 except that many of the regulations in the present Subpart have been moved to other Subparts in the proposal. For instance, all of the regulations pertaining to instrument flight or Category II operations have been moved to proposed Subpart C; and the regulations relating to operation of experimental, limited, restricted, etc., category aircraft are in proposed Subpart F. A few regulations from Subpart B of present Part 91 have been moved to this Subpart, and some material has been added.

§ 91.1 Applicability.

(a) This Part prescribes rules governing the operation of aircraft within the United States. Paragraph (b) of this section governs the operation of United States registered civil aircraft outside the United States. This Part does not govern operations of moored balloons, kites, unmanned rockets, and unmanned free balloons.

(b) Each operator of a United States registered civil aircraft operating outside the United States shall:

(1) When over the high seas, comply with Annex 2 (Rules of the Air) to the Convention on International Civil Aviation, and with the regulations of this Part to the extent that they are not inconsistent with Annex 2;

(2) When over the North Atlantic Ocean (NAT) within Minimum Navigation Performance Specifications (MNPS) air space, comply with Appendix C of this Part;

(3) When within a foreign country, comply with the rules of that country governing the flight and maneuvering of aircraft, and with the regulations of this Part to the extent that they are not inconsistent with applicable foreign rules.

Origin: §§ 91.1; 91.20
Changes:
1. Present § 91.1(b) (4) and § 91.20 have been combined in proposed § 91.1(b) (2).
2. Present § 91.1(c) has been deleted because it is superfluous. Annex 2 is already incorporated by reference in § 91.1(b).
3. Some language changes with no substantive changes intended.

§ 91.3 Airmen: required certification.

No person shall serve as pilot or other required flight crewmember on a United States registered civil aircraft within the United States unless he has in his personal possession:

(a) A valid and appropriate airman certificate issued under FAR Part 61; and

(b) A valid and appropriate medical certificate as specified in FAR 61.3(c).

Origin: NEW.
Changes:
1. This brings the requirement for a pilot certificate into the operation rules, in addition to having it in a certification Part. Just as the requirements for various aircraft certificates are laid out in Part 91, it seems appropriate to include mention of the airman certificate requirements for those who use Part 91 as their basis for knowing the regulations.
2. Pilot certification requirements for operation of foreign civil aircraft within the United States are in § 91.27, Special Rules for Foreign Civil Aircraft.

§ 91.5 Responsibility and authority of the pilot in command.

(a) The pilot in command of an aircraft is directly responsible for, and is the final authority as to, the operation of that aircraft.

(b) In an emergency requiring immediate action, the pilot in command may deviate from any rule of this Part to the extent required to meet that emergency.

(c) A pilot in command who deviates from a rule under paragraph (b) of this section shall, if requested by the Administrator, provide a written report of that deviation.

Origin: § 91.3
Changes:
1. Emergency deviation may include any rule of this Part. This change merely places the maintenance regulations under the provisions of this paragraph. It is not anticipated that this will provoke unnecessary deviations by pilots because what constitutes an emergency is still subject to review and interpretation in an enforcement case arising out of any suspected abuses of this authority.
2. Minor changes in language with no substantive changes intended.

§ 91.7 Careless or reckless operation.

(a) No person shall operate an aircraft for the purpose of air navigation in a careless or reckless manner so as to endanger the life or property of another.

(b) No person shall operate an aircraft for purposes other than air navigation on the surface of an airport used by aircraft for air commerce in a careless or reckless manner so as to endanger the life or property of another.

Origin: §§ 91.9; 91.10
Changes:
1. Present §§ 91.9 and 91.10 are combined in one proposed section.
2. The phrase, "for the purpose of air navigation," is inserted in proposed paragraph (a) to clarify the distinction between paragraphs (a) and (b) for those not cognizant of the definition of "operate."
3. Minor changes in language with no substantive changes intended.

§ 91.9 Aircraft: required certification.

(a) No person shall operate a United States registered civil aircraft unless it has within it a valid registration certificate issued under FAR Part 47.

(b) No person shall operate a civil aircraft unless it has within it an appropriate and current airworthiness certificate.

Origin: § 91.27(a)
Changes:
1. The requirement for the airworthiness certificate to be displayed at the cabin or cockpit entrance so that it is legible to passengers or crew is deleted because displaying the airworthiness certificate is meaningless without reference to the aircraft maintenance records.
2. Some changes in language with no substantive changes intended. All of the verbage in the present regulation concerning the need for a registration number on the airworthiness certificate, or exceptions to the need, is covered by the word "appropriate." Parts 21, 45, and/or 47 should specify what constitutes an appropriate airworthiness certificate and the necessity for a registration number on it.
3. Certificates and authorizations for foreign civil aircraft are contained in proposed § 91.27.

§ 91.11 Civil aircraft airworthiness.

(a) No person shall operate a civil aircraft unless it is in an airworthy condition.

(b) The pilot in command of a civil aircraft is responsible for determining whether an aircraft is in condition for safe flight.

(c) The pilot in command shall discontinue a flight when he detects evidence of any unsafe mechanical or structural condition.

Origin: § 91.29
Changes:
1. Minor changes in language with no substantive changes intended.

§ 91.13 Civil aircraft operating limitations.

(a) *Compliance Required.* Each person operating a civil aircraft shall comply with the operating limitations prescribed for that aircraft by the certificating authority of the country of registry.

(b) *Limitations.* No person shall operate a United States registered civil aircraft unless limitation prescribed by the Administrator for that aircraft is available in the aircraft. These limitations must be available in—

(1) A current approved Airplane or Rotorcraft Flight Manual if a manual is required by FAR § 21.5, or the manual provided for in FAR § 121.141(b); or

(2) A current approved Airplane or Rotorcraft Flight Manual (if one is available although not required by § 21.5), approved manual material, markings, and placards, or any combination thereof.

Origin: § 91.31
Changes:
1. The list of specific items which must be contained in the operating limitations is deleted. The list is overly specific without being all inclusive while, at the same time, it contains some items which don't apply to all aircraft. This change shouldn't alter the regulatory effectiveness.
2. Minor changes in language with no substantive changes intended.
3. Present § 91.31(c) is deleted because it merely restates a requirement adequately covered by Part 45.
4. Present § 91.31(d) is deleted because the exception for complying with the helicopter height-speed envelope properly belongs in the Flight Manual.

§ 91.15 Aircraft instrument and equipment requirements.

(a) *General.* No person shall operate an aircraft unless the instruments and equipment required by this section for the kind of operations conducted are installed and operable in that aircraft.

(b) *Basic Instruments and Equipment.* U.S. registered heavier-than-air aircraft certificated by FAA in the standard category must contain at least the following instruments and equipment (or FAA-approved equivalents):

(1) *Visual Flight Rules, Day.* For flights between sunrise and sunset—

(i) Airspeed indicator,

(ii) Altimeter,

(iii) Magnetic direction indicator (compass),

(iv) Tachometer for each engine, and for the main rotor system if the aircraft is a helicopter,

(v) Oil pressure gauge for each engine with pressure lubrication,

(vi) Temperature gauge for each liquid-cooled engine,

(vii) Oil temperature gauge for each air-cooled engine,

(viii) Manifold pressure gauge for each engine with a controllable propeller or a supercharger,

(ix) Fuel quantity gauge for each fuel tank,

(x) Landing gear position indicator, if aircraft has a retractable gear,

(xi) An approved safety belt for each occupant more than two years of age. More than one occupant may use one belt provided the belt is properly secured about them, and

(xii) An approved shoulder harness for each front seat of a small airplane manufactured after July 18, 1978. For the purposes of this paragraph, the date of manufacture is the date the airplane is completed and its first Airworthiness Certificate is issued, and a front seat is a seat located at a pilot station and any seat alongside that seat.

(2) *Visual Flight Rules, Night.* For flight between sunset and sunrise—

(i) Instruments and equipment specified in subparagraph (1),

(ii) Aircraft position lights,

(iii) An anticollision light system. Anticollision light systems installed after August 11, 1971, on aircraft type certificated before that date must meet the standards in effect on August 10, 1971, except that the color may be either aviation red or white. In the event of the failure of all or part of an anticollision light system, flight may be continued to a stop where repairs or replacements can be made,

(iv) An adequate source of electrical energy for all installed electrical equipment, and

(v) Resetable circuit breakers for all major electrical circuits, or either a set of spare fuses or three spare fuses of each kind.

(3) *Instrument Flight Rules.* The minimum instrument and equipment requirements for flight under instrument flight rules, or for night flight in a control zone under the special weather minimums provision of § 91.119, are prescribed in § 91.205.

(c) *Emergency Locator Transmitter.* (1) A personal type or automatic type emergency locator transmitter must be attached to any U.S. registered civil airplane, except as provided in subparagraph (4) below. An emergency locator transmitter required for an airplane operated under FAR Parts 121, 123, or 135 must be of the automatic type.

(2) Each emergency locator transmitter required by subparagraph (1), above, must be attached to the airplane firmly in such a manner that probability of damage to the transmitter is minimized.

(3) Batteries used in required emergency locator transmitters must be replaced (or recharged, if the battery is rechargeable)—

(i) When the transmitter has been in use for more than one cumulative hour; or

(ii) When 50 percent of their useful life (or, for rechargeable batteries, 50 percent of their useful life of charge), as established by the transmitter manufacturer, has expired.

The new expiration date for the replacement (or recharge) of the battery must be legibly marked on the outside of the transmitter and entered in the aircraft logbook. Subparagraph (ii) does not apply to batteries (such as water-activated batteries) that are essentially unaffected during probable storage intervals.

(4) Emergency locator transmitters are not required for the following:

(i) Turbojet powered airplanes;

(ii) Airplanes engaged in scheduled flights by scheduled air carriers certificated by the Civil Aeronautics Board;

(iii) Airplanes engaged in local training operations conducted entirely within a 50-mile radius of the airport from which the flight originated;

(iv) Airplanes engaged in flight operations incident to design and testing;

(v) New airplanes engaged in flight operations incident to their manufacture, preparation, and delivery;

(vi) Airplanes engaged in flight operations incident to the aerial application of chemicals or other substances for agricultural and pest control purposes;

(vii) Airplanes certificated by the Administrator for research and development purposes.

(viii) Airplanes used for showing compliance with regulations, crew training, exhibition, air racing, or market surveys;

(ix) Airplanes equipped to carry not more than one person; and

(x) An aircraft during any period for which the transmitter has been temporarily removed for inspection, repair, modification or replacement, subject to the following:

(A) No person may operate the aircraft unless the aircraft records contain an entry which includes the date of initial removal, the make, model, serial number and reason for removal of the transmitter, and a placard is located in view of the pilot to show "ELT not installed."

(B) No person may operate the aircraft more than 90 days after the ELT is initially removed from the aircraft.

(5) Notwithstanding subparagraph (1), above, a pilot may ferry without passengers—

(i) A newly-acquired airplane to a place where an emergency locator transmitter is to be installed, or

(ii) An airplane with an inoperative emergency locator transmitter to a

place where repairs or replacements can be made.

(d) *Transponder Equipment.* (1) *Transponder Required.* No person shall operate an aircraft in controlled airspace above 12,500 feet MSL, unless that aircraft is equipped with a functioning radar beacon transponder capable of responding to ATC interrogation with the code specified by ATC, and which has automatic pressure altitude reporting capability, subject to the following:

(i) Transponder equipment is not required at or below 2,500 feet above ground level, except in Terminal Control Areas;

(ii) Transponder equipment is not required in a glider above 12,500 feet MSL but below the floor of the positive control area.

(2) *ATC Authorized Deviations.* ATC may authorize deviations from the above requirements—

(i) Immediately, to allow an aircraft with an inoperable transponder to continue to the airport of ultimate destination, including any intermediate stops, or proceed to a place where suitable repairs can be made, or both;

(ii) Immediately, for operations of an aircraft with an operating transponder, but without operating altitude reporting equipment; or

(iii) On a continuing basis or for individual flights for operations of an aircraft without a transponder, in which cases the request for a deviation must be submitted to the ATC facility having jurisdiction over the airspace concerned at least two hours before the proposed operation.

Supplemental Oxygen. (1) *General.* No person shall operate a U.S. registered civil aircraft—

(i) At cabin pressure altitudes above 12,500 feet MSL up to and including 14,000 MSL unless the required minimum flight crew has available and uses supplemental oxygen for that part of the flight at those altitudes which is of more than 30 minutes duration;

(ii) At cabin pressure altitudes above 14,000 feet MSL unless the required minimum flight crew has available and uses supplemental oxygen during the entire flight time at those altitudes; and

(iii) At cabin pressure altitudes above 15,000 feet MSL unless each occupant of the aircraft is provided with supplemental oxygen.

(2) *Pressurized Cabin Aircraft.* No person may operate a U.S. registered civil aircraft which has a pressurized cabin—

(i) At flight altitudes above flight level 250 unless at least a 10-minute supply of supplemental oxygen in addition in addition to any oxygen required to satisfy subparagraph (1), above, is available for each occupant of the aircraft.

At flight altitudes above flight level 350 unless one pilot at the controls is wearing and using an oxygen mask which is secured and sealed, and which either supplies oxygen at all times or automatically supplies oxygen when the cabin pressure exceeds 14,000 feet MSL, except that neither pilot is required to wear an oxygen mask while at or below flight level 410 if there are two pilots at the controls and each pilot has a quick-donning type of oxygen mask which can be placed on the face with one hand from ready position within five seconds, supplying oxygen and properly secured and sealed.

(iii) Notwithstanding subparagraph (ii), above, if for any reason it is necessary for one pilot to leave his station at the controls of an aircraft when operating at flight altitudes above flight level 350, the pilot remaining at the controls shall put on and use his oxygen mask until the other pilot has returned to his station.

(f) *Additional Instrument and Equipment Requirements.* Subparts B (Basic Flight Rules), C (Instrument Flight Rules), D (Special Flight Operations), E (Commercial Operations), and F (Operation of Certain Aircraft) of this Part impose instrument and equipment requirements in addition to those required by this section.

Origin; §§ 91.24, 91.32, 91.33, 91.52, NEW:

Comments: In trying to keep the regulations compact and in reasonable order, most of the required intruments and appliances have been placed in this one section: Basic Instruments and Equipment, ELTs, Oxygen Equipment, etc. In so doing, this section has become very long. Some equipment requirements have been placed in other subparts because they are the logical places for pilots to look for them: Radio and transponder are listed as required equipment under the section on TCA's; Instruments and Equipment for IFR are in Subpart C, Instrument Flight Rules; requirements for parachutes are in Subpart D, Special Flight Operations; requirements for certain survival gear for over-water operations and landing lights are in Subpart E, Special Regualtions for Commercial Operations; etc. Pilots are alerted to these additional requirements by paragraph (f) of this section (§ 91.15).

Changes:

1. Equipment and instrument requirements which are in several separate sections in the present regulations are incorporated as paragraphs under one section in this proposal.

The word, "aproved," and the basis for approval of instruments and equipment have been deleted in most places because, in many cases, the pilot has no way of determining the approved status of equipment. Under this section, the pilot is responsible for determining that instruments and equipment are operable, and under proposed § 91.17 he can't use or permit the use of, anything he determines causes harmful interference with any other piece of required equipment.

3. Instruments and equipment requirements for IFR and Category II operations are moved to Subpart C, Instrument Flight Rules.

4. Requirements for flotation gear and a landing light when operating for hire are moved to Subpart E, Special Regulations for Commercial Operators and Operations for Hire.

5. The requirement for DME above 24,000 feet MSL is moved to Subpart C.

6. The requirement for attaching ELTs as far aft as possible is deleted.

7. The lead time for submitting requests for deviations on a continuing basis from the transponder requirement is reduced form 4 to 2 hours.

8. The exception from the transponder requirement for helicopters operated at or below 1,000 feet AGL in terminal control areas under the terms of a letter of agreement (present § 91.24(b)) is deleted because it appears that this is adequately covered by proposed § 91.15 (d)(2)(iii), ATC authorized deviations on a continuing basis.

9. Paragraph (f) is added to alert operators to additional requirements for more sophisticated operations.

10. Some other changes in language with no substantive changes intended.

§ 91.17 Prohibition against certain appliances and portable electronic devices.

(a) No person shall install in a United States registered civil aircraft operated in air commerce any appliance which does not meet FAA required approval standards or causes harmful interference with the operation of any required appliance in an aircraft.

(b) No person shall operate, nor shall any operator or pilot in command permit the operation of, any appliance or portable electronic device aboard an aircraft which the operator or pilot in command has determined causes harmful interference with the operation of any required appliance of an aircraft.

Origin: FAR 91.19; New

Changes:

1. A prohibition against the installation of any appliance which does not meet approval standards when approval is required or which causes harmful interference with required appliances is added in proposed Part 91. This places the responsibility for determining whether such appliances are satisfactory ("approved", when necessary) on the person installing the equipment rather than the pilot. It is impractical to expect the pilot (particularly when the pilot isn't the owner) to know whether appliances are approved or not. In many cases, he has no way of telling.

2. The pilot retains the responsibility for not using appliances or portable electronic devices which he has determined cause harmful interference.

3. Deleted from present § 91.19 is the list of portable electronic devices exempt from the regulation and the specification of who determines whether or not a portable electronic device does or does not cause interference. These seem overly specific and the dangers invisioned are adequately guarded against in the proposal.

§ 91.19 Liquor and drugs.

(a) Crewmembers. No person shall act as a crewmember of an aircraft—

(1) Within eight hours after the consumption of any alcoholic beverage;

(2) While under the influence of alcohol; or

(3) While under the influence of, or using any drug which affects his faculties in any way contrary to safety.

(b) Passengers. No pilot shall knowingly allow a person who is obviously under the influence of intoxicating liquor or drugs to be carried in an aircraft unless such person is under proper care.

Origin: § 91.11
Changes:
1. A person obviously under the influence of intoxicating liquor but under proper care may be carried as a passenger.
2. Some changes in language with no substantive changes intended.

§ 91.21 Carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances.

(a) Except as provided in paragraph (b) of this section, no person shall operate a civil aircraft within the United States with knowledge that narcotic drugs, marihuana, and depressant or stimulant drugs or substances as defined in Federal or State statutes are carried in the aircraft.

(b) Paragraph (a) of this section does not apply to any carriage of narcotic drugs, marihuana, and depressant or stimulant drugs or substances authorized by or under any Federal or State statute or by any Federal or State agency.

Origin: § 91.12
Changes: None

§ 91.23 Preflight action.

Before beginning any flight, the pilot in command shall familiarize himself with all available information pertinent to the safe operation of that flight.

Origin: § 91.5
Changes:
1. The phrase, "pertinent to the safe operation of," has been substituted for the word, "concerning", which is used in the present regulation.
2. The list of specific items to be checked by the pilot has been deleted. This does not lessen the pilot's responsibility for including those items in the information considered pertinent to the safe operation of a flight.

§ 91.91 Waivers.

(a) The Administrator may issue a certificate of waiver authorizing the operation of aircraft in deviation of a rule of this Part if he finds that the proposed operation can be safely conducted under the terms of that certificate of waiver.

(b) An application for a certificate of waiver under this section is made on a form and in a manner prescribed by the Administrator and may be submitted to any FAA office.

(c) A certificate of waiver is effective as specified in that certificate.

Origin: § 91.63
Changes:
1. Waivers may be issued for any rule of proposed Part 91 rather than just Subpart B as in the present regulations. This change is proposed more for purposes of simplifying the regulation than for expanding the number of rules which may be waived. It is anticipated that FAA offices responsible for issuing waivers will receive proper and uniform guidance from FAA headquarters on rules which should not be waived.

§ 91.27 Prohibition against interference with crewmembers.

No person may assault, threaten, intimidate, or interfere with a crewmember in the performance of the crewmember's duties aboard an aircraft being operated.

Origin: § 91.8
Changes: None.

§ 91.29 Special flight rules for foreign civil aircraft.

Each person operating a foreign civil aircraft within the United States shall comply with the pertinent requirements of this section, in addition to other applicable regulations of this Chapter (the Federal Aviation Regulations).

(a) *Aircraft Certificates.* No person shall operate a foreign civil aircraft within the United States unless it contains a registration certificate issued to its owner and an airworthiness certificate issued or validated by the country in which it is registered or a special flight authorization issued under paragraph (g) below.

(b) *Air Crewman Certificates.* No person shall serve as a pilot or other required flight crewmember on a foreign civil aircraft within the United States unless he has in his personal possession valid and appropriate airman and medical certificates issued or validated by the country of registry, or valid United States airman and medical certificates appropriate to the aircraft and flight operations conducted.

(c) *Visual Flight Rules.* No person may conduct VFR operations which require two-way radio communications under this part, unless at least one crewmember of that aircraft is able to conduct two-way radio communications in the English language and is on duty during that operation.

(d) *Instrument Flight Rules.* No person shall operate a foreign civil aircraft under instrument flight rules unless—(1) That aircraft is equipped with:

(i) Radio equipment allowing two-way radio communications with ATC facilities controlling the flight;

(ii) Radio naviagational equipment appropriate to the navigational facilities to be used; and

(iii) If VOR navigation equipment is required under paragraph (c) (1) (ii) of this section, no person may operate a foreign civil aircraft within the 50 states and the District of Columbia at or above 24,000 feet MSL, unless the aircraft is equipped with distance measuring equipment (DME) capable of receiving and indicating distance information from the VORTAC facilities to be used. When DME required by this paragraph fails at and above 24,000 feet MSL, the pilot in command of the aircraft shall notify ATC immediately, and may then continue operations at and above 24,000 feet MSL to the next airport of intended landing at which repairs or replacement of the equipment can be made. However, DME is not required on foreign civil aircraft when operated for the following purposes, and if ATC is notified prior to each takeoff:

(A) Ferry flights to and from a place in the United States where repairs or alterations are to be made;

(B) Ferry flights to a new country of registry;

(C) Flight of a new aircraft of U.S. manufacture for the purpose of—

(I) Flight testing the aircraft;

(II) Training foreign flight crews in the operation of the aircraft; or

(III) Ferrying the aircraft for export delivery outside the United States.

(D) Ferry, demonstration, and test flights of an aircraft brought to the United States for the purpose of demonstration or testing the whole or any part thereof.

(2) Each required pilot of the aircraft—

(i) Is authorized by his foreign pilot certificate to operate as an instrument pilot under IFR, or holds a current United States instrument rating; and

(ii) Is thoroughly familiar with the United States departure, enroute, holding and approach procedures; and

(iii) At least one crewmember is competent to conduct two-way radio voice communications in the English language, and that crewmember is on duty when the aircraft is approaching, operating within, or departing from the United States.

(e) *Over water.* Each person operating a foreign civil aircraft over water off the coast of the United States shall give flight notification or file a flight plan, in accordance with the Supplementary Procedures for the ICAO Region concerned.

(f) *Civil Aircraft of Cuban Registry.* No person shall operate an aircraft of Cuban registry within the United States except in controlled airspace, and in accordance with air traffic clearances or air traffic control instructions which may require the

use of specific airways, routes, and airports.

(g) *Special Flight Authorization for Foreign Aircraft.* (1) A foreign civil aircraft may be operated in the United States without the airworthiness certificate required by paragraph (a) of this section if a special flight authorization is issued under this paragraph. Application for a special flight authorization must be made to the Regional Director of the FAA Region in which the aircraft is located. Application for a special flight authorization under subparagraph (2)(vi), below, should be made to the Regional Director of the FAA Region in which the demonstrations or show will take place.

(2) The Administrator may issue a special flight authorization, subject to any conditions and limitations he considers necessary for safety, for any of the following operations:

(i) The flight of a damaged aircraft to a place where repairs or alterations are to be made, if the regulations of the country of registry indicate that the aircraft has been damaged to the extent that its airworthiness certificate is invalid.

(ii) The flight of an aircraft to a new country of registry, if the airworthiness certificate has been invalidated by the former country of registry because of a change in ownership.

(iii) The flight of an aircraft of United States manufacture for flight testing, or training a foreign buyer or his representatives in the operation of the aircraft, or for the purpose of ferrying the aircraft outside of the United States when title has passed to a foreign buyer and there is no airworthiness certificate for it. An authorization may be issued for this purpose even though no registration certificate has been issued by the country of the foreign buyer, provided the aircraft bears identification markings issued by the country of intended registry.

(iv) The flight of an aircraft for the purpose stated in subparagraph (iii), above, in the case of a foreign civil aircraft which has undergone modifications in the United States which invalidated its airworthiness certificate.

(v) The flight of a foreign civil aircraft without a standard airworthiness certificate brought to the United States for demonstrations in connection with market sales or surveys, or for testing the whole aircraft or any part thereof. For market sales or surveys, the applicant must show at least that:

(A) The applicant is the manufacturer of the aircraft;

(B) The applicant has applied for a United States type certificate or supplement type certificate;

(C) The aircraft has flown for 50 hours, or at least 5 hours if it is a U.S. type certificated aircraft which has been modified;

(D) The applicant has established operating limitations in an appropriate document, and certifies that the aircraft will be operated within such limitations; and

(E) The applicant has established an inspection and maintenance program for the continuing airworthiness of the aircraft.

(vi) The flight of foreign registered amateur-built experimental aircraft, brought to the United States for the purpose of demonstration at an air meet within the United States.

Origin: §§ 91.28; 91.27; 91.43 and 91.103
Changes:

1. Three present sections have been combined in one proposed section.
2. Foreign registered amateur-built experimental aircraft may operate at air meets in the U.S. Present regulation restricts it to Canadian only.
3. Some minor changes in language and format with no substantive changes intended.

Subpart B—Basic Flight Rules

NOTE.—This Subpart contains most of what is contained in present Subpart B of Part 91, except those regulations pertaining to instrument flight which have been moved to proposed Subpart C.

§ 91.101 Applicability.

This subpart prescribes the basic flight rules for aircraft operating within the United States.

Origin: § 91.61
Changes:
1. Minor changes in language with no substantive change intended.

§ 91.103 Flight crewmembers at stations.

(a) During takeoff and landing, and while enroute, each required flight crewmember shall be at his station with his seat belt fastened unless his absence is necessary in the performance of his duties or in connection with his physiological needs.

(b) Each required crewmember of a U.S. registered civil airplane shall, during takeoff and landing, keep the shoulder harness fastened while at his station, if the station is equipped with a shoulder harness. This paragraph does not apply if the crewmember would be unable to perform his required duties with the shoulder harness fastened.

Origin: § 91.7
Changes:
1. Minor changes in language with no substantive changes intended.

§ 91.105 Use of seat belts and shoulder harnesses.

(Not applicable to airships, free balloons nor operations conducted under FAR Parts 121, 123, or 127.)

(a) Unless otherwise authorized by the Administrator—

(1) No pilot may take off or land a U.S. registered civil aircraft unless the pilot in command of that aircraft ensures that each person on board has been notified to fasten his safety belt.

(2) During the takeoff and landing of U.S. registered civil aircraft, each person on board that aircraft must occupy a seat or berth with a safety belt properly secured about him (separate seats and separate safety belts are not required). However, a child less than two years of age may be held by an adult who is occupying a seat or berth, and a person on board for the purpose of engaging in sport parachuting may use the floor of the aircraft as a seat.

(b) Paragraph (a)(2) of this section does not apply to persons subject to § 91.103.

Origin: § 91.14
Changes:
1. Some changes in language with no substantive changes intended.

§ 91.107 Operating near other aircraft.

(a) No person shall operate an aircraft so close to another aircraft as to create a collision hazard.

(b) *Formation Flights.* No person shall operate an aircraft in a formation flight except by arrangement with the pilot in command of each aircraft in the formation.

Origin: § 91.65(a) and (b)
Changes:
1. The rule prohibiting a pilot from operating in accordance with a clearance or vectors issued to another pilot has been placed in § 91.129, Compliance with ATC Clearances and Instructions.
2. The rule prohibiting formation flight if an aircraft is carrying passengers for hire has been placed in Subpart E, Additional Regulations for Commercial Operators and Operations for Hire.
3. No substantive change in the rules is intended by changes 1 and 2.

§ 91.109 Right of way in flight.

(a) *General.* When weather conditions permit, regardless of whether an operation is conducted under the Instrument Flight Rules of Subpart C of this Part or the rules of this Subpart, vigilance shall be maintained by each person operating an aircraft to see and to avoid other aircraft in compliance with this section. When the rules of this section give another aircraft the right of way, a pilot shall give way to that aircraft, and shall not pass over, under, or ahead of it unless well clear.

(b) *Aircraft in Distress.* An aircraft in distress has the right of way over all other air traffic.

(c) *Converging Aircraft.* When aircraft of the same category are converging at approximately the same altitude (except head-on or nearly so), the aircraft to another's right has the

right of way. If the aircraft are of different categories—

(1) A free balloon has the right of way over any other category of aircraft;

(2) A glider has the right of way over an airship, airplane, or rotorcraft; and

(3) An airship has the right of way over an airplane or rotorcraft.

However, an aircraft which has another aircraft in tow, or is in the process of refueling another aircraft has the right of way over all other powered aircraft.

(d) *Approaching Head-On.* When aircraft are approaching each other head-on, or nearly so, the pilot of each aircraft shall alter course to the right.

(e) *Overtaking.* An aircraft which is being overtaken has the right of way, and the pilot of each overtaking aircraft shall alter course to the right so as to pass well clear.

(f) *Landing.* Aircraft on final approach or landing have the right of way over other aircraft in flight or operating on the surface. When two or more aircraft are approaching an airport for a landing, the aircraft at the lower altitude has the right of way, but a pilot shall not take advantage of this rule to cut in front of another aircraft which is on final approach to land, nor to overtake that aircraft.

(g) *Inapplicability.* This section does not apply to the operation of an aircraft on water.

Origin: § 91.67
Changes:

1. Minor changes in language with no substantive changes intended.

§ 91.111 Right-of-way rules; operations on water.

(a) *General.* Each person operating an aircraft on the water shall, insofar as possible, keep clear of all vessels and avoid impeding their navigation, and shall give way to any vessel or other aircraft that is given the right-of-way by any rule of this section.

(b) *Crossing.* When aircraft, or an aircraft and a vessel are on crossing courses, the aircraft or vessel to the other's right has the right-of-way.

(c) *Approaching Head-On.* When aircraft, or an aircraft and a vessel, are approaching head-on or nearly so, each shall alter its course to the right to keep well clear.

(d) *Overtaking.* Each aircraft or vessel that is being overtaken has the right-of-way, and the one overtaking shall alter course to keep well clear.

(e) *Special Circumstances.* When aircraft, or an aircraft and a vessel, approach so as to involve risk of collision, each aircraft or vessel shall proceed with careful regard to existing circumstances, including the limitations of the respective craft.

Origin: § 91.69

Changes: No change.

§ 91.113 Use of aircraft position lights.

Origin: § 91.73
Changes: None

§ 91.115 Aircraft speed.

(a) No person shall operate an aircraft below 10,000 feet MSL at an indicated airspeed of more than 250 knot (288MPH), unless otherwise authorized by the Administrator.

(b) Unless otherwise authorized or required by ATC, no person shall operate an aircraft within an airport traffic area at an indicated airspeed of more than 200 knots (230MPH). This paragraph does not apply to any operations within a Terminal Control Area. Such operations shall comply with paragraph (a) of this section.

(c) No person shall operate an aircraft in the airspace underlying a Terminal Control Area, or in a VFR corridor designated through a Terminal Control Area, at an indicated airspeed of more than 200 knots (230MPH). However, if the minimum safe airspeed for any particular operation is greater than the maximum speed prescribed in this section, the aircraft may be operated at that minimum speed.

Origin: 91.70
Changes:

1. In paragraph (b), different speed limits for aircraft with reciprocating engines and turbine engines are changed to one speed limit, the one which presently applies to turbines. An aircraft powered by a reciprocating engine traveling at 200 knots presents no greater hazard than one powered by a turbine engine, so it appears unnecessary to complicate this regulation by having different speed limits apply to different kinds of aircraft.

§ 91.117 Weather minimums: visual flight rules (VFR).

(a) *General.* Except as provided in § 91.119 (Special Weather Minimums in a Control Zone) and in Subpart C (Instrument Flight Rules), no person shall operate an aircraft when the flight visibility is less, or at a distance from clouds which is less, than the minimums prescribed in the following table, nor within a control zone when the ceiling or visibility is less than specified in paragraph (c), below.

Altitude	Flight visibility	Distance from clouds
1,200 feet or less above the surface, regardless of MSL altitude:		
Within controlled airspace	3 statute miles	500 feet below 1,000 feet above 2,000 feet horizontally
Outside controlled airspace	1 statute mile (except helicopters).	Clear of clouds
More than 1,200 feet above the surface, but less than 10,000 feet MSL:		
Within controlled airspace	3 statute miles	500 feet below 1,000 feet above 2,000 feet horizontally
Outside controlled airspace	1 statute mile	1,000 feet below 1,000 feet above 1 mile horizontally
At and above 10,000 feet MSL and more than 1,200 feet above the surface.	5 statute miles	1,000 feet below 1,000 feet above 1 mile horizontally

(b) *Helicopter Visibility.* A helicopter may be operated outside controlled airspace at 1,200 feet or less above the surface when the visibility is less than one mile, provided it is operated at a speed which allows the pilot adequate opportunity to see any air traffic or obstruction in time to avoid a collision.

(c) *VFR Flight Within a Control Zone.* (Except as provided in § 91.119.)

(1) No person shall operate an aircraft within a control zone beneath the ceiling when the ceiling is less than 1,000 feet.

(2) No person shall take off or land an aircraft or enter the traffic pattern of an airport within a control zone under visual flight rules unless the ground visibility is at least 3 statute miles, or if ground visibility is not reported at that airport, unless the flight visibility on takeoff or landing or when operating in the traffic pattern is at least 3 statute miles.

(d) *Aircraft at the Base of a Transition or Control Area.* For the purpose of this section, an aircraft operating at the base altitude of a transition area or a control area is considered to be within the airspace directly below that area.

Origin: § 91.105
Changes: Minor changes in language with no substantive changes intended.

§ 91.119 Special weather minimums in control zones.

When a person has received a Special VFR Clearance from ATC for a flight in a control zone, the following special rules apply to that portion of

the flight which is within the control zone:

(a) *Special Weather Minimums:*

(1) Ceiling—The aircraft must remain clear of all clouds;

(2) Visibility—(other than helicopters)

(i) Ground visibility of one statute mile; or

(ii) If the ground visibility is not reported at that airport, the flight visibility during takeoff and landing must be at least one statute mile.

(b) *Special VFR Night Flight.* No person shall operate an aircraft (except a helicopter) at night (or in Alaska when the sun is more than six degrees below the horizon) under a Special VFR clearance unless he meets the requirements for instrument flight under FAR Part 61 and the aircraft is equipped for IFR flight.

Origin: § 91.107
Changes:
1. Reference to Part 93 is deleted. Sectional charts and other publications identify airports where Special VFR is not permitted.
2. Some changes in language with no substantive changes intended.

§ 91.121 Minimum safe altitudes.

Except when necessary for take-off and landing, no person shall operate an aircraft below the following altitudes:

(a) *Anywhere.* An altitude allowing, in the event of a power failure, an emergency landing without undue hazard to persons or property on the surface.

(b) *Over Congested Areas.* Over any congested area of a city, town, or settlement, or over any open air assembly of persons, an altitude of 1,000 feet above the highest obstacle within a horizontal radius of 2,000 feet from the aircraft.

(c) *Over other than Congested Areas.* An altitude of 500 feet above the surface, except over open water or sparsely populated areas. In that case, the aircraft shall not be operated closer than 500 feet to any person, vessel, vehicle or structure.

(d) *Helicopters.* Helicopters may be operated at less than the minimums in (b) and (c), above, if the operation is conducted without hazard to persons or property on the surface. In addition, each person operating a helicopter shall comply with special routes and altitudes specifically prescribed by the Administrator.

Origin: § 91.79.
Changes: No change

§ 91.123 Cruising Altitudes: VFR.

Each person operating an aircraft under VFR in level cruising flight at an altitude more than 3,000 feet above the surface shall maintain the appropriate cruising altitude or flight level prescribed below, except while turning, or unless otherwise authorized by ATC.

(a) When operating below 18,000 MSL and—

(1) On a magnetic course of zero degrees through 179 degrees, any odd thousand foot MSL altitude + 500 feet (such as 3,500, 5,500 or 7,500); or

(2) On a magnetic course of 180 degrees through 359 degrees, any even thousand foot MSL altitude + 500 feet (such as 4,500, 6,500 or 8,500).

(b) When operating above 18,000 feet MSL to flight level 290 (inclusive), and—

(1) On a magnetic course of zero degrees through 179 degrees, any odd flight level + 500 feet (such as 195, 215, or 235); or

(2) On a magnetic course of 180 degrees through 359 degrees, any even flight level + 500 feet (such as 185, 205 or 225).

(c) When operating above flight level 290 and—

(1) On a magnetic course of zero degrees through 179 degrees, any flight level, at 4,000-foot intervals, beginning at and including flight level 300 (such as flight level 300, 340, or 380); or

(2) On a magnetic course of 180 degrees through 359 degrees, any flight level, at 4,000-foot intervals, beginning at and including flight level 320 (such as flight level 320, 360 or 400).

Origin: § 91.109
Changes:
1. The phrase, "or in holding pattern of 2 minutes or less," is deleted because it appears to be adequately covered under "otherwise authorized by ATC."
2. Some changes in language with no substantive changes intended.

§ 91.125 Altimeter settings.

(a) Each person operating an aircraft shall maintain his cruising altitude by reference to an altimeter which is set:

(1) When operating below 18,000 feet MSL, to:

(i) The currently reported altimeter setting to a station along his route and within 100 nautical miles of the aircraft; or

(ii) If there is no reporting station within the area prescribed in (i) above, the most appropriate available altimeter setting; or

(iii) In the case of an aircraft without radio, the elevation of the departure airport or an appropriate altimeter setting available before takeoff.

(2) To 29.92" Hg when operating above 18,000 feet MSL. Minimum usable flight levels and safe obstacle clearance altitudes shall be determined by reference to published tables.

(b) A glider engaged in local flights, or an aerial applicator aircraft while dispensing agricultural chemicals or other substances may be operated with its altimeter set to zero before takeoff.

Origin: § 91.81; New.
Changes:
1. Subparagraph (b) is added to legalize a common practice with aerial applicators and glider operators.
2. The tables for pressure corrections for flight at preset altimeter setting 29.92" Hg have been omitted as more appropriate to technical manuals and aids than as a part of the regulations.
3. Some changes in language with no substantive change intended.

§ 91.127 Dropping objects.

No pilot in command of a civil aircraft may allow any object or substance to be dropped from that aircraft which creates a hazard to persons or property. This section does not prohibit the dropping of any object if reasonable precautions are taken to avoid injury or damage to persons or property.

Origin: § 91.13
Changes: Minor changes in language with no substantive changes intended.

§ 91.129 Compliance with ATC clearances and instructions.

(a) No pilot shall deviate from an ATC clearance after it has been accepted, except in an emergency, until he obtains an amended clearance. This does not prohibit him from cancelling an IFR flight plan, except in positive controlled airspace, if he is operating in VFR conditions. If a pilot is uncertain of the meaning of an ATC clearance, he shall immediately request a clarification.

(b) No person shall operate an aircraft contrary to an ATC instruction (including light gun signals) in an area where air traffic control is exercised, except in an emergency.

(c) Unless otherwise authorized by ATC, no person shall operate an aircraft in accordance with any clearance or instruction which has been issued to the pilot of another aircraft for radar air traffic control purposes.

(d) Each pilot in command who deviates, in an emergency, from an ATC clearance or instruction shall notify ATC of that deviation as soon as possible.

(e) Every pilot in command who is given priority by ATC in an emergency shall, if requested by ATC, submit a detailed report of that emergency within 48 hours to the chief of the ATC facility involved, even though he has not deviated from a rule of this part.

Origin: FAR 91.75; 91.65(d)
Changes:
1. The prohibition against operating in accordance with a clearance issued to another pilot is included in this section.
2. Some changes in language with no substantive changes intended.

§ 91.131 ATC light gun signals.

Origin: § 91.77
Changes: None

§ 91.133 Flight plans: general.

(a) Each person filing a flight plan shall include in it the information ATC believes is necessary for ATC purposes and the information the pilot in command believes is necessary for search and rescue purposes.

(b) Upon completion or cancellation of a flight for which a flight plan has been activated, the pilot shall promptly notify an FAA Flight Service Station or ATC facility.

Origin: § 91.83 (a) and (d).
Changes:

1. The list of items included on the flight plan form has been omitted as unnecessary. In actual practice, some of the items are not used or are abridged. The present regulation allows ATC to authorize something less than the items listed, and allows a pilot or ATC to provide more than what is listed. Publications containing good operating procedures (such as the Airman's Information Manual) are the proper places to alert pilots to what may be expected of them.

2. Requirements for listing an alternate airport on an IFR flight plan are contained in Subpart C, Instrument Flight Rules.

§ 91.135 Flights between Mexico and Canada and the United States.

Unless otherwise authorized by ATC, no person may operate a civil aircraft between Mexico or Canada and the United States without filing an IFR or VFR flight plan, as appropriate.

Origin: § 91.84
Changes: None

§ 91.137 Operating on or in the vicinity of an airport; generally.

(a) Each person operating an aircraft on or in the vicinity of an airport shall comply with the requirements of this section, or when appropriate, § 91.139 (Airports with Control Towers) and § 91.141 (Terminal Control Areas); or the special rules for those airports governed by FAR Part 93.

(b) Each person operating an aircraft to or from an airport shall comply with the following, unless otherwise authorized or required by ATC:

(1) Airplanes approaching to land shall make all turns to the left, unless the airport displays lights or visual markings to indicate that turns should be made to the right;

(2) Helicopters approaching to land shall avoid the flow of fixed wing traffic; and

(3) Aircraft departing the airport shall comply with any departure procedures established for that airport by the FAA.

Origin: §§ 91.85(a); 91.89
Changes:

1. Minor changes in language with no substantive change intended.

§ 91.139 Operations at airports with operating control towers.

Each pilot operating an aircraft to, from, or on an airport with an operating control tower shall comply with the applicable requirements of this section, unless otherwise authorized or required by ATC.

(a) *Communications with Control Towers Operated by the United States.* No pilot shall, within an airport traffic area operate an aircraft to, from, or on an airport with a control tower operated by the United States government unless he first establishes and maintains two-way communications with that tower. However, if the radio fails in flight, he may continue to operate that aircraft and land, provided the weather conditions are at or above basic VFR minimums and he maintains visual contact with the tower and receives a clearance to land by radio or light signals. If the radio fails in flight under instrument flight rules, the pilot shall proceed as prescribed in § 91.229.

(b) *Clearances Required.* No pilot shall, at an airport with an operating control tower, taxi an aircraft on a runway or taxiway, nor take off, land, nor operate an aircraft within the traffic pattern of that airport unless he has received an appropriate clearance from the tower. A clearance to "taxi to" the takeoff runway assigned to the aircraft is not a clearance to cross that assigned takeoff runway, or to taxi on that runway at any point, but is a clearance to cross other runways that intersect the taxi route to that assigned takeoff runway. A clearance to "taxi to" any point other than an assigned takeoff runway is a clearance to cross all runways that intersect the taxi route to that point.

(c) *Approaches.* The pilot of an airplane shall approach an airport with an operating control tower so as to circle to the left. The pilot of a helicopter shall plan his approach to avoid the flow of fixed wing traffic.

(d) *Departures.* The pilot of a departing aircraft shall comply with any departure procedures established for that airport by the FAA.

(e) *Visual Approach Slope Indicators.* The pilot of an airplane approaching to land on a runway served by a visual approach slope indicator shall maintain an altitude above the indicated approach slope until a lower altitude is necessary for a safe landing. However, this requirement does not prohibit normal bracketing above and below the approach slope for the purpose of staying on the indicated approach slope.

(f) *Special Rules for Turbine-Powered and Large Airplanes.* When operating at an airport with an operating control tower, each pilot of any turbine-powered airplane or other large airplane shall:

(1) Unless prevented by distance from cloud criteria, when within five statute miles of the airport, maintain an altitude of at least 1,500 feet above the surface of the airport, until further descent is necessary for a safe landing;

(2) When approaching to land on a runway served by an ILS system, if the airplane is ILS equipped, fly that airplane at an altitude on or above the glide slope between the outer marker, or a point of interception closer in if required by cloud separation criteria, and the middle marker. However, this rule does not prohibit normal bracketing maneuvers above and below the glide slope for the purpose of remaining on the glide slope;

(3) When departing after takoff, climb to an altitude of 1,500 feet above the surface as rapidly as is feasible, unless otherwise required by established departure procedures or cloud separation criteria; and

(4) when landing on or taking off from an airport for which a formal runway use program has been established by the FAA, use the runway assigned by ATC for noise abatement purposes. However, the pilot has final authority and responsibility for the safe operation of his airplane, and if he determines that in the interest of safety another runway should be used, ATC will assign that runway, if air traffic and other conditions permit.

Origin: § 91.87 (except paragraph (c) which is deleted)
Changes:

1. The requirement for radio communications with control towers not operated by the U.S. is deleted. Such communications should be a recommended practice by not a regulation. It seems wrong that someone operating an aircraft without a radio can go in and out of these airports and not be subject to a violation while another pilot operating an aircraft containing a radio is subject to a violation if he doesn't use it. Clearances are still required at all airports with operating control towers regardless who the operator is.

§ 91.141 Terminal control areas.

(a) *Group I Terminal Control Areas.* (1) *Operating Rules.* (i) No person shall operate an aircraft within a Group I Terminal Control Area unless he has received an appropriate authorization from ATC prior to the operation of that aircraft in that area; and unless two-way radio communications are maintained within that area, between the aircraft and the ATC facility.

(ii) Each person operating a large turbine-powered airplane to or from a primary airport shall, unless otherwise authorized by ATC, operate at or

above the designated floors while within the lateral limits of the terminal control area.

(2) *Pilot Requirements.* The pilot in command of a civil aircraft shall not land or take off that aircraft from an airport within a Group I Terminal Control Area unless he holds at least a private pilot certificate.

(3) *Equipment Requirements.* Unless otherwise authorized by ATC, no person shall operate an aircraft within a Group I Terminal Control Area unless that aircraft is equipped with:

(i) An operable VOR or TACAN receiver (except in the case of helicopters);

(ii) An operable two-way radio capable of communicating with ATC on appropriate frequencies for that Terminal Control Area; and

(iii) An operable transponder capable of replying to ATC interrogation with the code specified by ATC, and equipped with automatic pressure altitude reporting equipment.

(b) *Group II Terminal Control Areas.* (1) *Operating Rules.* (i) No person shall operate an aircraft within a Group II Terminal Control Areas unless he has received an appropriate authorization from ATC prior to the operation of that aircraft in that area; and unless two-way radio communications are maintained, within that area, between that aircraft and the ATC facility.

(ii) Unless otherwise authorized by ATC, each person operating a large turbine-powered airplane to or from a primary airport shall operate at or above the designated floors while within the lateral limits of the Terminal Control Area.

(2) *Equipment Requirements.* Unless otherwise authorized by ATC, no person shall operate an aircraft within a Group II Terminal Control Area unless that aircraft is equipped with:

(i) An operable VOR or TACAN receiver (except in the case of helicopters);

(ii) An operable two-way radio capable of communicating with ATC on the appropriate frequencies for that terminal control area; and

(iii) An operable transponder capable of replying to ATC interrogation with the code specified by ATC, except that a transponder is not required for IFR flights operating to or from an airport outside, but in close proximity to the Terminal Control Area when the commonly used transition, approach, or departure procedures to such airport require flight within the terminal control area.

(c) *ATC Authorized Deviations.* ATC may authorize deviations from equipment requirements of this section:

(1) Immediately, in the case of in-flight VOR, TACAN, or two-way radio failure;

(2) Immediately, in the case of a transponder or automatic pressure altitude reporting equipment failure occurring at any time; or

(3) On a continuing basis, or for individual flights, in which case the request for a deviation must be submitted to the ATC facility having jurisdiction over the airspace concerned at least two hours before the proposed operation.

Origin: §§ 91.90, 91.24(c)
Changes:

1. Regulations pretaining to Group III TCAs are deleted because there aren't any Group III TCAs, and it doesn't appear likely that there will be any.
2. The cross reference to another section for transponder and automatic pressure altitude reporting equipment requirements has been changed to a statement of the requirement.
3. The authorized deviations from the equipment requirements has been expanded slightly by allowing ATC to authorize deviations from all of the equipment requirements (instead of just transponders) on a continuing basis or for individual flights.
4. The lead time for submitting a request for deviations has been dropped from four hours to two hours.
5. A regulation has been added for Group I TCAs in paragraph (a)(1). The requirement for maintaining two-way radio communications within Group I TCAs is omitted in present section 91.90. The omission was probably an oversight because the requirement is in the present operating rules for Group II TCAs.

§ 91.143 Operations in specially designated areas.

(a) *Restricted and Prohibited Areas.* (1) No person shall operate an aircraft within a Restricted Area designated in FAR Part 73 contrary to the restrictions imposed, or within a Prohibited Area, unless he has the permission of the using or controlling agency, as appropriate.

(2) Each person conducting, within a Restricted Area, an aircraft operation (approved by the using agency) that creates the same hazards as the operations for which the Restricted Area was designated, may deviate from the rules of this subpart that are not compatible with his operation of the aircraft.

(b) *Positive Control Areas and Route Segments.* (1) No person shall operate an aircraft within a Positive Control Area, or Positive Control Route Segment designated in FAR Part 71, unless that aircraft is:

(i) Operated under IFR at a specified flight level assigned by ATC;

(ii) Equipped with the instruments and equipment required for IFR flight;

(iii) Flown by a pilot rated for instrument flight;

(iv) Equipped with an operable transponder capable of replying to ATC interrogation with the code specified by ATC, and with automatic pressure altitude reporting equipment; and

(v) Two-way radio capable of providing communications on frequencies specified by ATC.

(2) ATC may authorize deviations from subparagraph (1), above, immediately in the case of in-flight equipment failure. In cases of other requests for deviations, written requests must be submitted at least 24 hours before the proposed operation to the ATC Center having jurisdiction over the airspace concerned. ATC may authorize a deviation on a continuing basis or for an individual flight, as appropriate.

Origin: §§ 91.95, 91.97
Changes:

1. The rules now in § 91.95 and § 91.97 have been combined in a single section.
2. Deviations in the case of any kind of in-flight equipment failure may be authorized immediately.
3. Some changes in language with no substantive change intended.

§ 91.145 Temporary flight restrictions.

(a) *General.* The Administrator may, when he finds it necessary because of a particular incident or event, issue a Notice to Airmen (NOTAM) designating an area within which temporary flight restrictions apply for the safety of air traffic, the security and safety of persons on the surface, or to expedite the conduct of emergency or special flight operations. When a NOTAM has been issued under this section, each person operating an aircraft within the designated area shall comply with paragraph (b), (c) or (d) of this section, as appropriate.

(b) *Flight Restrictions in the Proximity of Space Flight Recovery Operations.* No person may operate any aircraft of United States registry, or pilot any aircraft under the authority of an airman certificate issued by the Federal Aviation Administration within areas designated in a Notice to Airmen (NOTAM) for space flight recovery operations except when authorized by ATC, or operated under the control of the Department of Defense Manager for Manned Space Flight Support Operations.

(c) *Flight Restrictions in the Proximity of Presidential and Other Parties.* No person may operate an aircraft over, or in the vicinity of any area to be visited or traveled by the President, the Vice President, or other public figures contrary to the restrictions established by the Administrator and published in a Notice to Airmen (NOTAM).

(d) *Flight Restrictions for Other Incidents or Events.* When a NOTAM has been issued for reasons not covered by paragraph (b) or (c) of this section, no person shall operate an aircraft within the designated area unless:

(1) That aircraft is participating in activities connected with the incident or event under the direction of the responsible agency specified in the NOTAM;

(2) That aircraft is being operated directly to or from an airport located within the area, and is operated so as not to hamper or endanger other authorized activities;

(3) That flight is specifically authorized under a clearance from ATC;

(4) Enroute operation is conducted through the area because VFR flight around or above the area is impracticable because of weather, terrain, or other considerations, and prior notice has been given to the ATC facility specified in the NOTAM; or

(5) That aircraft is carrying properly accredited news media representatives, or persons officially concerned with the incident or event which generated the NOTAM, the flight is conducted in accordance with the minimum safe altitudes in § 91.121 and above the altitudes being used by aircraft directly involved in the incident or event unless otherwise authorized by the responsible agency, and the operator has filed with the ATC facility specified in the NOTAM a flight plan which includes at least:

(i) The aircraft identification, type and color;

(ii) Radio communication frequencies to be used;

(iii) Proposed time of entry and departure from the designated area;

(iv) Name of the news media or purpose of the flight;

(v) Any other perinent information requested by ATC.

Origin: FAR 91.91, 91.102 and 91.104
Changes:

1. Three related sections have been combined into one.
2. In proposed § 91.145(d)(3), the allowance for operations in flight restricted areas if on an IFR clearance (present § 91.91(b)(3)) is changed to allow any flight authorized under an ATC clearance.
3. Changes in language with no substantive changes intended.

Subpart C—Instrument Flight Rules

NOTE.—This Subpart incorporates all of the regulations relating to instrument flight (including Category II operations) which are scattered throughout present Part 91.

§ 91.201 Applicability.

This Subpart prescribes rules, in addition to the rules in Subparts A and B, for persons operating aircraft in less than VFR weather conditions or on an IFR flight plan with an appropriate ATC clearance.

Origin: NEW

§ 91.203 ATC clearance and flight plan required.

No person shall operate an aircraft in controlled airspace under IFR unless:

(a) He has filed an IFR flight plan; and

(b) He has received an appropriate ATC clearance.

Origin: § 91.115
Comment: This section is not a restatement of proposed § 91.201. Proposed § 91.201 states that a person must abide by Subpart C when operating on an IFR flight plan and an appropriate ATC clearance. This section sets forth the requirement for a flight plan and clearance to operate under IFR in controlled airspace.
Changes: None

§ 91.205 Equipment requirements.

No person shall operate a powered civil aircraft with a standard category U.S. airworthiness certificate under IFR unless it contains, in addition to the instruments and equipment required by § 91.15, the following operable instruments and equipment:

(a) A two-way radio communication system appropriate to the ATC facilities with which contact must be maintained;

(b) Radio navigation equipment appropriate to the radio navigational facilities to be used;

(c) Gyroscopic rate-of-turn indicator, except on the following aircraft:

(1) Large airplanes with a third attitude instrument system usable through flight attitudes of 360 degrees of pitch and roll and installed in accordance with § 121.305(j) of this Chapter; and

(2) Rotorcraft, type cetificated under Part 29 of this Chapter, with a third attitude instrument system usable through flight attitudes of †80 degrees of pitch and ¢†120 degrees of roll and installed in accordance with section 29.1303(g) of this Chapter.

(d) A slip-skid indicator;

(e) A sensitive altimeter adjustable for barometric pressure;

(f) A digital clock with hour, minute, and second displays, or a clock with a sweep-second hand;

(g) A generator or alternator of adequate capacity;

(h) A gyroscopic attitude indicator (artificial horizon);

(i) A gyroscopic direction indicator (Directional gyro or equivalent); and

(j) If VOR navigational equipment is required under paragraph (b) of this section, aircraft operating within the 50 states or the District of Columbia, at or above 24,000 feet MSL, must be equipped with an approved distance measuring equipment (DME). When DME required by this paragraph fails at and above 24,000 feet MSL, the pilot in command of the aircraft shall notify ATC immediately, and may then continue operations at and above 24,000 feet MSL to the next airport of intended landing at which repairs or replacement of the equipment can be made.

Origin: § 91.33(d) and (e)
Changes:

1. The IFR instrument and equipment listing has been separated from the basic equipment listing in Subpart A.
2. The communications radio and navigational radio requirements have been separated.
3. The term "bank and pitch indicator" has been changed to "attitude indicator."
4. The acceptability of an alternator in lieu of a generator is incorporated.

§ 91.207 VOR equipment check for IFR operations.

(a) No person shall operate a civil aircraft under IFR using the VOR system of radio navigation unless the VOR equipment of that aircraft—

(1) Is maintained, checked, and inspected under an approved procedure; or

(2) Has been operationally checked within 30 days before flight in accordance with one of the procedures specified in paragraphs (b) through (f) of this section and found to be within the stated permissible bearing error.

(b) If dual system VOR (units independent of each other except for the antenna) is installed in the aircraft, the person checking the equipment may check one system against the other. He shall tune both systems to the same VOR ground facility and note the indicated bearings to that station. The maximum permissible variation between the two indicated bearings is 4 degrees.

(c) An FAA operated or approved test signal or a test signal radiated by a certificated and appropriately rated radio repair station or, outside the United States, a test signal operated or approved by appropriate authority may be used to check the VOR equipment (the maximum permissible bearing error is plus or minus 4 degrees).

(d) A point on an airport surface designated as a VOR system checkpoint by the Administrator or, outside the United States, by appropriate authority may be used for the required check (the maximum permissible bearing error is plus or minus 4 degrees).

(e) An airborne checkpoint designated by the Administrator or, outside the United States, by appropriate authority may be used for the required check (the maximum permissible bearing error is plus or minus 4 degrees).

(f) The required operational check may be performed in flight in the following manner—

(1) Select a VOR radial that lies along the centerline of an established VOR airway;

(2) Select a prominent ground point along the selected radial preferably

more than 20 miles from the VOR ground facility and maneuver the aircraft directly over the point at a reasonably low altitude; and

(3) Note the VOR bearing indicated by the receiver when over the ground point (the maximum permissible variation between the published radial and the indicated bearing is 6 degrees).

(g) Each person making the VOR operational check shall enter the date, place, bearing error, and his signature in the aircraft log or other permanent record. In addition, if a test signal radiated by a repair station, as specified in paragraph (c) of this section, is used, an entry must be made in the aircraft log or other permanent record by the repair station certificate holder or his representative certifying to the bearing transmitted by the repair station for the check and the date of transmission.

Origin: § 91.25
Changes:
1. The requirement for checking VOR equipment accuracy is extended from ten days to 30 days, with the checks within the preceding ten hours of flight time deleted. This change is justified for the following reasons: (1) The quality of VOR equipment has improved considerably since this regulation was adopted (many sets now meet or exceed TSOs); (2) Most aircraft operated under IFR are, a good part of the time, in a radar environment wherein ATC can advise the pilot of deviations indicative of dangerous bearing errors in VOR equipment; and (3) Pilots routinely check VOR equipment accuracy on a flight-by-flight basis without even thinking about it.
2. The listing on a priority basis of acceptable methods for making the required check under present paragraph 91.25(b) has been eliminated. Under proposed section 91.207, each method is equally acceptable.

§ 91.209 Fuel requirements.

No person shall operate a civil aircraft in IFR conditions unless it carries enough fuel (considering weather reports and forecasts, and weather conditions observed by the pilot in command) to—

(a) Complete the flight to the first airport of intended landing;

(b) Fly from that airport to the alternate airport, if an alternate airport is required by § 91.211; and

(c) Fly thereafter for 45 minutes at normal cruising speed.

Origin: § 91.23
Changes:
1. The provision relieving a pilot from carrying fuel to allow cruising to the alternate if certain weather minimums exist at the original destination has been placed in proposed § 91.211, Alternate Airport. Paragraph (b) above carries out this change.
2. Minor changes in language with no substantive change intended.

§ 91.211 Alternate airport.

(a) *Alternate Airport Requirement.* An alternate airport must be specified in an IFR flight plan unless:

(1) FAR Part 97 prescribes a standard instrument approach for the airport of first intended landing; and

(2) The weather conditions at that airport from two hours before until two hours after the estimated time of arrival are forecast to be—

(i) Ceiling at least 3,000 feet; and

(ii) Visibility at least three miles, or two miles more than the lowest authorized landing minimum visibility, whichever is greater.

(b) *Alternate Airport Weather Minimums.* Unless otherwise authorized by the Administrator, an airport may not be specified as an alternate airport in an IFR flight plan unless current weather forecasts indicate that, at the estimated time of arrival at that airport, the ceiling and visibility at that airport will be at or above the following:

(1) If an instrument approach procedure has been published in FAR Part 97 for that airport, the alternate airport minimums specified in that procedure shall apply. If none are so specified, the following shall apply:

(i) For a precision approach—ceiling 600 feet and visibility 2 statute miles; and

(ii) For a non-precision approach—ceiling 800 feet and visibility 2 statute miles.

(2) If no instrument approach procedure has been published in FAR Part 97 for that airport, the ceiling and visibility minimums are those allowing descent from the MEA, approach, and landing under basic VFR.

Origin: § 91.83(a)(9), (b) and (c)
Changes:
1. The alternate airport rules have been separated from the flight plan section, and brough to this new section.
2. The weather conditions which must prevail in order not to need an alternate airport have been simplified. By changing from a ceiling of at least 1,000 feet above the lowest MEA, MOCA, or altitude prescribed for the initial approach segment to a ceiling of at least 3,000 feet, the new regulation may require a little better weather in a few cases and permit a little worse in a few others, but it is much easier to understand.

§ 91.213 Minimum altitudes.

Except as necessary for takeoff and landing, or unless otherwise authorized by the Administrator, no person shall operate an aircraft under IFR below:

(a) The applicable minimum altitude prescribed in FAR Parts 95 and 97. However, if both a MEA and a MOCA are prescribed for a route or route segment, a pilot may operate an aircraft below the MEA down to, but not below, the MOCA when within 25 statute miles of the VOR concerned (based on the pilot's reasonable estimate of that distance).

(b) If no applicable minimum altitude is prescribed in those Parts—

(1) In the case of operations over an area designated as a mountainous area in FAR 95, an altitude of 2,000 feet above the highest obstacle within a horizontal distance of 5 statute miles from the course to be flown; or

(2) In any other case, an altitude of 1,000 feet above the highest obstacle within a horizontal distance of five statute miles from the course to be flown.

Origin: § 91.119(a)
Changes:
1. Minor changes in language and organization with no substantive changes intended.

§ 91.215 Cruising altitude or flight level

Origin: § 91.121
Changes: None

§ 91.217 Course to be flown.

Unless otherwise authorized by ATC, no person shall operate an aircraft within controlled airspace, under IFR, except as follows:

(a) On a Federal airway, along the centerline of that airway.

(b) On any other route, along the direct course between the navigational aids or fixes defining that route.

However, this section does not prohibit maneuvering the aircraft to pass well clear of other air traffic or the maneuvering of the aircraft, in VFR conditions, to clear the intended flight path both before and during climb or descent.

Origin: § 91.123
Changes: None

§ 91.219 Climb enroute.

Climb to a higher minimum IFR altitude shall begin immediately after passing the point beyond which that minimum altitude applies, except that, when ground obstructions intervene, the point beyond which the higher minimum altitude applies shall be crossed at or above the MCA.

Origin: § 91.119(b)
Changes: None

§ 91.221 Instrument approach procedures for civil airports (Not applicable to Category II operations.)

(a) *Standard Instrument Approaches.* When an instrument letdown to an airport is necessary, each person operating an aircraft under IFR shall use a standard instrument approach procedure perscribed for that airport by FAR Part 97, ulness otherwise authorized by the Administrator (including ATC).

(b) *Use of Radar and Operation on Unpublished Routes.* (1) A pilot is authorized to use radar (where it is approved for ATC purposes) not only for surveillance and precision radar approaches, but also for instrument approaches predicated on other types of

radio navigational aids. Radar vectors may be authorized to provide course guidance through the segments of an approach procedure to the final approach fix or position.

(2) When an approach clearance is received, a pilot operating on an unpublished route or being radar vectored shall, in addition to complying with the minimum altitudes in § 91.213, maintain his last assigned altitude unless a different altitude is assigned by ATC or until the aircraft is established on a segment of an instrument approach procedure or published route. After the aircraft is so established, published altitudes apply to descent within each succeeding route or approach segment unless a different altitude is assigned by ATC. Upon reaching the final approach fix or position, the pilot may either complete his instrument approach in accordance with the procedure approved for the facility, or may continue a surveillance or precision radar approach to a landing.

(c) *ILS Approaches with Inoperative or Unused Components.* A pilot is authorized by FAR Part 97 to make an ILS approach when a certain component or components of the ILS system is inoperative, unusable, or not utlized. When an approcah is made under these circumstances, the straight-in minimums shall be raised in accordance with the appropriate table in Part 97. If more than one component or aid is not utilized, each prescribed minimum is raised to the highest minimum specified for the absence of any one of the aids not utilized.

(d) *Limitations on Procedure Turns.* In the case of a radar initial approach to a final approach fix or position, or a timed approach from a holding fix, or where the procedure specifies "NOPT" or "FINAL," no pilot may make a procedure turn unless, when he received his final approach clearance, he so advises ATC.

Origin: § 91.116(a), (f), (g) and (h); § 91.117(a) and (c).

Changes:

1. The conversion tables describing changes in landing minimums if ILS ground components are inoperative or unused have been deleted. We recommend these tables be placed in Part 97 and made available in other published material, as is done presently for helicopters.

2. Reference to use of radio ranges for ADF procedures is deleted.

3. Some changes in language with no substantive changes intended.

§ 91.223 Descent below minimum descent altitude (MDA) and decision height (DH); and IFR landing minimums at civil airports (Not applicable to Category II operations).

(a) Unless otherwise authorized by the Administrator, no person shall operate an aircraft using an instrument approach procedure prescribed in FAR Part 97 below the minimum descent altitude or continue an approach below the decision height unless:

(1) The aircraft is in a position from which a normal approach to the runway of intended landing can be made; and

(2) The approach threshold of that runway, or approach lights or other markings identifiable with the approach end of the runway are clearly visible to the pilot.

If, upon arrival at the missed approach point or decision height, or at any time thereafter, any of the above requirements are not met, the pilot shall immediately execute the prescribed missed approach procedure.

(b) No person operating an aircraft (except a military aircraft of the United States) in accordance with a standard instrument approach procedure prescribed in FAR Part 97 shall land that aircraft unless the flight visibility is at or above the landing minimum prescribed in that Part for the procedure used, unless otherwise authorized by the Administrator.

(c) *Comparable Values of RVR and Ground Visibility.* If RVR minimums are prescribed in an instrument approach procedure, but RVR is not reported for the runway of intended operation, the RVR minimum shall be converted to flight visibility using published tables, and observed as the applicable minimum visibility for landing.

Origin: §§ 91.116 (b) and (e), 91.117 (a) and (b)

Changes:

1. The adjective "flight" has been added to the visibility requirements. A pilot cannot legally land unless the *flight* visibility is at or above the landing minimum prescribed, and if RVR minimums are prescribed but RVR is not reported for the runway of intended operation, the RVR minimum is converted to *flight* visibility "in accordance with published tables and observed as the applicable visibility minimum . . .". Except in the case of converting RVR minimums, specifying flight visibility is not a significant change because decisions in several enforcement cases indicate that flight visibility, rather than ground visibility, is intended in the present regulations. In the case of converting RVR minimums, the regulation is specific in stating that it shall be converted to *ground* visibility. Changing this to flight visibility is a significant change.

2. Reference to landing minimums stated in terms of ceiling and visibility is deleted.

3. The conversion chart from RVR to miles has been omitted, with the recommendation that it be inserted in FAR 97 and made available to pilots in other printed material.

4. Some changes in language with no substantive changes intended.

§ 91.225 Military airports: takeoff and landing under IFR.

Unless otherwise prescribed by the Administrator, each person operating a civil aircraft under IFR into, or out of, a military airport shall comply with the instrument approach procedures and the takeoff and landing minimums prescribed by the military authority having jurisdiction on that airport.

Origin: § 91.116(d)
Changes: None

§ 91.227 Radio communications.

The pilot in command of each aircraft operated under IFR in controlled airspace shall have a continuous watch maintained on the appropriate frequency and shall report by radio as soon as possible.

(a) The time and altitude of passing each designated reporting point, or the reporting points specified by ATC, except that while the aircraft is under radar control, only the passing of those reporting points specifically requested by ATC need be reported;

(b) Any unforecast weather conditions encountered; and

(c) Any other information relating to the safety of flight.

Origin: § 91.125
Changes: None

§ 91.229 Two-way radio communications failure.

Each pilot who experiences a two-way radio communications failure while in flight under IFR shall comply with the rules of this section.

(a) *VFR Conditions.* If the failure occurs in VFR conditions, or if VFR conditions are encountered after the failure, the pilot shall continue flight under VFR and land as soon as is practicable.

(b) *IFR Conditions.* If the failure occurs in IFR conditions, or if paragraph (a) of this section cannot be complied with, the pilot shall continue flight according to the following:

(1) *Route.* (i) By the route assigned in the last ATC clearance received and acknowledged;

(ii) If being radar vectored, by the direct route from the point of radio failure to the fix, route, or airway specified in the vector clearance;

(iii) In the absence of an assigned route, by the route that ATC has advised may be expected in a further clearance; or

(iv) In the absence of an assigned rout or route which ATC has advised may be expected, by the route filed in the flight plan.

(2) *Altitude.* At the highest of the following altitudes or flight levels for the route segment being flown:

(i) The altitude or flight level assigned in the last ATC clearance received and acknowledge;

(ii) The minimum altitude as prescribed in § 91.211 for IFR operations

(converted, if appropriate, to minimum flight level); or

(iii) The altitude or flight level ATC has advised may be expected in a further clearance.

(3) *Leaving a Holding Fix.* If holding instructions have been received, the pilot shall leave that holding fix at the expect-further-clearance time received, or, if an expected approach clearance time has been received he shall leave the holding fix in time to arrive over the fix from which the approach begins as close as possible to the expected approach clearance time.

(4) *Descent for Approach.* The pilot shall begin descent from the enroute altitude or flight level upon reaching the fix from which the approach begins, but not before:

(i) The expect-approach-clearance time (if received); or

(ii) If no expect-approach-clearance time has been received, at the estimated time of arrival shown on the flight plan, as amended by ATC.

Origin: § 91.127
Changes:
1. Minor changes in language with no substantive change intended.

§ 91.231 Radio malfunction reports.

(a) The pilot in command of each aircraft operated in controlled airspace under IFR shall report immediately to ATC any of the following malfunctions of equipment occurring in flight:

(1) The loss of VOR, TACAN, ADF, RNAV equipment, or low frequency navigation receiver capability.

(2) Complete or partial loss of ILS receiver capability.

(3) Impairment of air/ground communications capability.

(b) In each report required by paragraph (a) of this section, the pilot in command shall include the—

(1) Aircraft identification;

(2) Equipment affected;

(3) Degree to which the capability of the pilot to operate under IFR in the ATC system is impaired; and

(4) Nature and extent of assistance he desires from ATC.

Origin: § 91.129
Changes:
1. RNAV has been added to reportable equipment.

§ 91.233 Category II operations.

(a) *General Operating Rules*

(1) No person shall operate a civil aircraft in a Category II operation unless:

(i) The pilot flight crew of the aircraft consists of a pilot in command and a second in command who hold the appropriate authorization and ratings prescribed in § 61.3 of FAR Part 61;

(ii) Each flight crew member has adequate knowledge of and familiarity with the aircraft and the procedures to be used by him; and

(iii) The instrument panel in front of the pilot who is controlling the aircraft has appropriate instrumentation for the type of flight control guidance system which is used.

(2) No person shall conduct a Category II operation in a civil aircraft unless each ground component required for that operation and the related airborne equipment is installed and operating, unless otherwise authorized by the Administrator. The ground components are localizer, glide slope, outer marker, middle marker, inner marker, approach lights, high intensity runway lights, touchdown zone lights, centerline lighting and marking, and a runway visual range system for the touchdown zone. A compass locator or precision radar may be substituted for the outer or middle marker. The inner marker is not required if the height above touchdown (HAT) is to be 150 feet or greater, or if the airplane has an approved radio altimeter as provided in Appendix A or this Part.

(3) No person may operate an aircraft in a Category II operation below the authorized decision height unless:

(i) The aircraft is in a position from which a normal approach to the runway of intended landing can be made; and

(ii) The approach threshold of that runway, or the approach lights or other markings identifiable with the approach end of the runway are clearly visible to the pilot.

If upon arrival at the authorized decision height, or at any time thereafter, any of the above requirements are not met, the pilot shall immediately execute the appropriate missed approach procedure. For the purposes of this paragraph, the authorized decision height is the decision height prescribed for the approach, authorized for the pilot in command, or for which the aircraft is equipped, whichever is higher.

(4) No person shall operate a civil aircraft in a Category II operation conducted by the holder of a certificate issued under FAR Part 121 unless the operation is conducted in accordance with that certificate holder's operations specifications.

(b) *Category II Manual.* (1) No person shall operate a civil aircraft of United States registry in a Category II operation unless:

(i) There is available in the aircraft a current approved Category II manual for that aircraft which meets the requirements in Appendix A of this Part; (ii) The operation is conducted in accordance with the procedures, instructions, and limitations in that manual; and

(iii) The instruments and equipment listed in the manual which are required for particular Category II operation have been inspected and maintained in accordance with the maintenance program contained in that manual.

(2) Each operator shall keep a current copy of the approved manual at its principal base of operations, and shall make it available for inspection upon request of the Administrator.

(c) *Category II Instruments and Equipment.* For Category II operations, the instruments and equipment specified in § 91.205 and Appendix A of this Part are required.

(d) *Authorization of Certain Category II Operations.* The Administrator may issue a certificate of authorization permitting deviations from the requirements of paragraphs (a), (b) and (c) of this section for the operation of small airplanes, identified as Category A aircraft in FAR part 97 (§97.3), in Category II operations, if he finds that the proposed operation can be safely conducted under the terms of that certificate. Such authorization does not permit the operation of aircraft carrying persons or property for compensation or hire.

(e) Except for paragraph (a)(4), this section does not apply to operations conducted by the holder of a certificate issued under FAR Part 121.

Origin: §§ 91.2, 91.6, 91.33 (*f*), *and* 91.34
Changes:
1. In proposed 91.233(a)(2) [present §91.6(b)], the term "height above touchdown (HAT)", is used instead of "decision height."
2. Minor changes in language with no substantive changes intended.

Subpart D—Special Flight Operations

NOTE.—This is a new Subpart D, not to be confused with present Subpart D, Operations of Large and Turbine-Powered Multi-Engine Airplanes.

Proposed Subpart D incorporates regulations in present Part 91 governing operations which go beyond the common, everyday kind of aircraft use. Aerobatic flight; aircraft flight test; flight instruction, simulated instrument flight, and certain pilot flight tests; towing gliders; and towing other than gliders are included in this Subpart.

§91.301 Applicability.

This Subpart prescribes rules in addition to those in Subparts A and B of this part for certain kinds of flight operations.

Origin: New

§ 91.303 Aerobatic flight.

(a) No person shall operate an aircraft in aerobatic flight—

(1) Over any congested area of a city, town or settlement;

(2) Over any open air assembly of persons;

(3) Within a control zone or a Federal Airway, except as specifically authorized by the Administrator;

(4) Below an altitude of 1,500 feet above the surface; or

(5) When the flight visibility is less than three miles.

(b) No person shall operate an aircraft carrying any person (other than a crew member) in aerobatic flight unless each occupant is wearing an approved parachute.

(c) Paragraph (b) does not apply to:

(1) Flight tests for pilot certificates or ratings; or

(2) Spins, or other flight maneuvers required by the regulations for any pilot certificate or rating, when given by—

(i) A certificated flight instructor, or

(ii) An airline transport pilot instructing in accordance with FAR 61.169.

(d) For the purposes of this section, "approved parachute" means—

(1) A parachute manufactured under a type certificate or a technical standard order (C-23 series); or

(2) A personnel-carrying military parachute identified by a military designation or specification number.

Origin: § 91.15(c), (d) and (e); § 91.71
Changes:

1. The word "acrobatic" is changed to "aerobatic".

2. The rules covering aerobatic flight in §§ 91.15 and 91.71 have been combined in one section.

3. The two (different) definitions of aerobatic flight in present §§ 91.15 and 91.71 have been omitted, with the recommendation that the definition is present § 91.15(c) be inserted in FAR Part 1 as the more specific of the two.

§ 91.305 Aircraft flight test areas.

No person shall flight test an aircraft except over open water or sparsely populated areas having light air traffic.

Origin: § 91.93
Changes: None

§ 91.307 Flight instruction, simulated instrument flight, and certain pilot flight tests.

(a) *Dual Controls.* No person shall operate a civil aircraft for flight instruction unless that aircraft is equipped with functioning dual flight controls, unless the person receiving instruction holds at least a Private Pilot Certificate with category, class, and, if appropriate, type ratings for that aircraft.

(b) *Simulated Instrument Flight.* No person shall operate a civil aircraft in simulated instrument flight unless:

(1) An appropriately rated pilot occupies the other control seat as safety pilot;

(2) The safety pilot has adequate vision forward and to each side, or a competent observer in the aircraft adequately supplements the vision of the safety pilot; and

(3) That aircraft is equipped with functioning dual controls, unless the pilot manipulating the controls is fully qualified to act as pilot in command of that aircraft.

(c) *Lighter-than-air Aircraft.* The dual control requirement in paragraphs (a) and (b), above, do not apply to airships and free balloons.

(d) *Airline Transport Pilot Tests and Instruction.* No person shall operate a civil aircraft for a flight test for an Airline Transport Pilot certificate or class or type rating, or an FAR Part 121 proficiency flight check unless the pilot sitting at the controls, other than the pilot being tested, is fully qualified to act as pilot in command of that aircraft.

Origin: § 91.21
Changes:

1. Dual controls would not be needed if the person receiving instruction holds at least a private pilot certificate with category and class (type, if appropriate) ratings appropriate to the aircraft being used.

2. Dual controls would not be needed for simulated instrument flight if the person operating the aircraft is qualified to act as pilot in command of the aircraft being used.

§ 91.309 Parachuting.

(a) *Parachute Jumps.* Except in an emergency, no pilot in command shall allow, and no person shall make a parachute jump from an aircraft within the United States, except in accordance with FAR Part 105.

(b) *Parachutes.* No pilot of a civil aircraft may allow a parachute that is available for emergency use to be carried in that aircraft unless it is an approved type and—

(1) If a chair type (canopy in back), it has been packed by a certificated and appropriately rated parachute rigger within the preceding 120 days; or

(2) If any other type, it has been packed by a certificated and appropriately rated parachute rigger—

(i) Within the preceding 120 days, if its canopy, shrouds, and harness are composed exclusively of nylon, rayon, or other similar synthetic fiber or materials that are substantially resistant to damage from mold, mildew, or other fungi and other rotting agents propagated in a moist environment; or

(ii) Within the preceding 60 days, if any part of the parachute is composed of silk, pongee, or other natural fiber, or materials not specified in subdivision (i) of this paragraph.

Origin: § 91.15 (a) and (b)
Changes:

1. The regulation is amended to require that a parachute available for emergency use be "certified" by the packer who has repacked it within 60 days. This is common practice, and is important to the condition of the chute.

2. The provision for longer packing periods for chair-type chutes is continued, although we are skeptical that any have been installed in airplanes for the past 30 years.

§ 91.311 Towing: Gliders.

Origin: § 91.17
Changes: None

§ 91.313 Towing: Other than gliders.

(a) No pilot of a civil aircraft shall tow anything with that aircraft (other than under § 91.311) except in accordance with the terms of a certificate of waiver issued by the Administrator.

(b) An application for a certificate of waiver under this section is made on a form and in a manner prescribed by the Administrator, and must be submitted to the FAA Flight Standards District Office having jurisdiction over the area where the towing operation will take place.

Origin: § 91.18
Changes:

1. The application for a waiver is submitted to the FAA office having jurisdiction over the area where the towing operation will take place, rather than the "nearest" office as in present § 91.18. It is unclear in the present regulation what the FAA office must be "nearest" to.

Subpart E—Special Regulations for Commerical Operations

NOTE.—This is a new Subpart E, not to be confused with present Subpart E, Operating Noise Limits.

This Subpart incorporates several regulations in present Part 91 with very few changes. The regulations in this Subpart are retained in Part 91 because some commerical operations are not covered by other parts of the regulations, for example, local sight-seeing flights. Therefore, the regulations regarding emergency exits, over-water operations, and landing lights for aircraft carrying passengers for hire must remain in Part 91. Also, air carrier aircraft occasionally engage in Part 91 operations, so the requirement for flight and cockpit voice recorders belongs in this Part rather than in Part 121.

§ 91.401 Applicability.

This Subpart prescribes regulations in addition to other applicable regulations of this Part and Parts 121, 123, 127 and 135 for holders of air carrier or commerical operator certificates, and for other person operating aircraft in passenger-carrying operations for hire.

Origin: New

§ 91.403 Emergency exits for airplanes carrying passengers for hire.

Origin: § 91.47
Changes: None

§ 91.405 Flight recorders and cockpit voice recorders.

Origin: § 91.35
Changes: None

§ 91.407 Over-water operations.

Except as necessary for takeoff and landing, no one shall operate a powered civil aircraft with a standard category U.S. airworthiness certificate for hire over water beyond poweroff gliding distance from shore without approved flotation gear readily available to each occupant, and at least one pyrotechnic signalling device.

Origin: § 91.33 (a) and (b)(11)
Changes:
1. An exception is inserted for airports where takeoffs and landings over water are a necessity on some runways.

§ 91.409 Night operations.

No person shall operate a powered civil aircraft with a standard category U.S. airworthiness certificate at night for hire unless it has installed at least one electric landing light.

Origin: § 91.33 (a) and (c)(4)
Changes: None
Comment: This is an excellent example of an archaic rule left over from the 1920's, when an electric landing light was really something, and there were few lighted airports. Maybe it is the sort of thing which should be pulled out on "zero-based" rulemaking, even though electric landing lights are nice. They are rather common today, and it would be very unusual to buy a new or recently manufactured airplane (which is to be used to carry persons for hire) without at least one.

§ 91.411 Formation flights with passengers for hire.

No person shall operate an aircraft, carrying passengers for hire, in formation flight.

Origin: § 91.65(c)
Comments: While this is a worthwhile regulation, a clarification is needed of what constitutes "formation flight." It is not uncommon for two or more aircraft carrying a large charter group to cruise in sight of each other.
Changes: None

Subpart F—Operation of Certain Aircraft

NOTE.—This Subpart incorporates the regulations in present Part 91 which relate only to the operation of some kinds of aircraft which the "average" pilot isn't concerned with. Unfortunately, or mabye unavoidably, reorganizing Part 91 with respect to the regulations placed in this Subpart is somewhat lacking in consistancy. For instance, the regualtion regarding operations of aircraft on water might logically be included in this Subpart, but it is in Subpart A. Also, all regulations relating specifically to helicopters might be included in this Subpart, but they aren't.

§ 91.501 Applicability.

This Subpart prescribes rules in addition to other rules of this Part for operators of non-standard category aircraft, transport category aircraft, turbo-jet powered airplanes, and certain other civil aircraft.

Origin: New

§ 91.503 Experimental aircraft.

Origin: § 91.42
Changes: None

§ 91.505 Limited category aircraft.

No person shall operate a limited category civil aircraft carrying persons or property for compensation or hire.

Origin: § 91.40
Changes: None

§ 91.507 Provisionally certificated civil aircraft.

Origin: § 91.41
Changes: None

§ 91.509 Restricted category civil aircraft.

Origin: § 91.39
Changes: None, except the date in present § 91.39(f) should be deleted.

§ 91.511 Transport category civil airplanes: weight limitations.

Origin: § 91.37
Changes: None

§ 91.513 Transport category airplanes: aural speed warning device.

No person shall operate a transport category airplane in air commerce unless it is equipped with an aural speed warning device which complies with FAR 25.1303(c)(1).

Origin: § 91.49
Changes:
1. Minor changes in the heading and language with no substantive change intended.

§ 91.515 Transport category airplanes: pilot heat indication system.

Origin: § 91.50
Changes: None

§ 91.517 Turbojet-powered civil airplanes: altitiude alerting system or device.

Origin: § 91.51
Changes: None

§ 91.519 Turbojet-powered civil airplanes: use of flaps.

Except when necessary for training or certification, the pilot in command of a civil turbojet-powered airplane shall use, as a final flap setting, the minimum certificated landing flap setting set forth in the approved performance information in the Airplane Flight manual for the applicable conditions. However, each pilot in command has the final authority and responsibility for the safe operation of his airplane, and he may use a different flap setting approved for that airplane if he determines that it is necessary in the interest of safety.

Origin: § 91.85(c)
Changes:
1. Deletion of an expired deadline date.

§ 91.521 Authorization for ferry with one engine inoperative.

(a) *General.* An air carrier, commercial operator of large aircraft, or a person operating a large aircraft under Subpart D of this Part [This references Subpart D of present Part 91, not proposed Subpart D] may conduct a ferry flight of a four-engine airplane, or a turbine engine powered airplane equipped with three engines, with one engine inoperative to a base for the purpose of repairing that engine subject to the following:

(The rest is the same as present § 91.45 beginning with § 91.45(a)(1).)

Origin: § 91.45
Changes:
1. Those operators governed by present Subpart D are included in this privilege.

§ 91.523 Sonic boom.

Origin: § 91.55
Changes: None

§ 91.525 Increased maximum certificated weights for certain airplanes operated in Alaska.

Origin: § 91.38
Changes: None

Subpart G—Aircraft Maintenance, Inspections, Preventive Maintenance, Alterations, and Equipment Tests

NOTE.—This Subpart incorporates all of the regulations in present Subpart C without substantive changes. The order has been rearranged a little. Also, the provision in present Part 43 that the holder of a private pilot certificate may perform preventive maintenance has been put in this Subpart.

§ 91.601 Applicability.

(a) This Subpart prescribes rules governing specific equipment tests, and the maintenance, inspection, preventive maintenance, and alteration of United States registered civil aircraft operating anywhere.

(b) Sections 91.607(a), 91.609, 91.611, 91.613, 91.619, and 91.623 do not apply to an aircraft maintained in accordance with a continuous airworthiness maintenance program as provided in FAR Parts 121, 127 and 135.

Origin: § 91.161
Changes:
1. The term "inspection" is removed from the overall definition of "maintenance." Parts 1 and 43 should be amended accordingly.
2. "Equipment Tests" has been added to the title and in the text of paragraph (a).
3. Minor changes in language with no substantive changes intended.

§ 91.603 General.

The owner or operator of an aircraft has the primary responsibility for ensuring that the aircraft is maintained in an airworthy condition, including compliance with required inspections and with the Airworthiness Directives prescribed in FAR Part 39. In addi-

tion, he shall ensure that maintenance personnel make appropriate entries in the aircraft and maintenance records indicating the aircraft has been approved for return to service.

Origin: §§ 91.163(a) and 91.165
Changes:
1. Minor changes in language with no substantive changes intended.

§ 91.605 Maintenance and inspections: who may perform.

(a) No person shall perform maintenance, inspections, preventive maintenance, or alterations on an aircraft other than as prescribed in this Subpart and other applicable FAR's including Part 43.

(b) The holder of a pilot certificate issued under FAR Part 61 may perform preventive maintenance on an aircraft he owns or operates which is not used in air carrier service. The items classified as preventive maintenance are listed in Appendix —— of this Part.

Origin: § 91.163(b) and FAR 43.3(h)
Changes:
1. The authority for a pilot to perform preventive maintenance is brought to Part 91.
2. List of items classified as preventive maintenance is to be added as an appendix to Part 91.
3. Minor changes in language with no substantive changes intended.

§ 91.607 Maintenance required.

(a) *Repair, Replacement or Overhaul.* The aircraft owner or operator shall ensure that known unairworthy conditions of that aircraft (including appliances) have been corrected as prescribed in FAR Part 43 before operating, or knowingly permitting any person to operate, that aircraft.

(b) *Rotorcraft Maintenance Manual.* No person shall operate a rotorcraft for which a Rotorcraft Maintenance Manual containing an "Airworthiness Limitations" section has been issued, unless the replacement times, inspection intervals, and related procedures prescribed in that section of the manual are complied with.

Origin: §§ 91.165 and 91.163 (c)
Changes:
1. The material in paragraph (a) has been reslanted toward maintenance and repair, rather than inspections. Inspection requirements are in proposed §§ 91.603 and 91.609.

§ 91.609 Inspections required.

Origin: § 91.169
Changes: None

§ 91.611 Progressive inspections.

Origin: § 91.171
Changes: None

§ 91.613 Altimeter system tests and inspections.

Origin: § 91.170
Changes: None, except revoked paragraph (b) should be deleted and paragraph (c) designated (b).

§ 91.615 ATC transponder tests and inspections.

(a) *Tests Required.* No person shall use an ATC transponder in a United States registered civil aircraft unless, within the preceding 24 calendar months, it has been tested and inspected and found to comply with Appendix F of FAR Part 43.

(b) *Who may Test and Inspect Transponders.*

[The remainder of this section is the same as present § 91.177(b).]

Origin: § 91.177
Changes:
1. A past deadline is deleted.
2. Reference to transponders "specified in §§ 91.24(a), 121.345(c), 127.123(b) or 135.143(c)" is deleted because present § 91.24 now encompasses all transponders in U.S. registered aircraft.
3. Minor changes in language with no substantive change intended.

§ 91.617 Carrying persons after repairs or alterations.

Origin: § 91.167
Changes: None

§ 91.619 Maintenance records.

Origin: § 91.173
Changes: None

§ 91.621 Rebuilt-engine maintenance records.

Origin: § 91.175
Changes: None

§ 91.623 Transfer of maintenance records.

Origin: § 91.174
Changes: None

CROSS REFERENCE

PRESENT PART 91 TO PROPOSED PART 91

Present	Proposed
91.1(a) & (b)	91.1
91.1(c)	Deleted
91.2	91.233(d)
91.3	91.5
91.4	Deleted
91.5 (Introductory Sentence).	91.21
91.5(a) & (b)	Deleted
91.6	91.233(a)
91.7	91.103
91.8	91.25
91.9	91.7(a)
91.10	91.7(b)
91.11	91.19
91.12	Deleted
91.13	91.127
91.14	91.105
91.15(a) & (b)	91.309
91.15(c), (d) & (e)	91.303(b), (c) & (d)
91.17	91.311
91.18	91.313
91.19	91.17(b)
91.20	91.1(b)(2)
91.21	91.307
91.23	91.209
91.24(a)	Deleted
91.24(b) & (c)	91.15(d) & 91.141
91.24(b)(3)	Deleted
91.25	91.207
91.27(a)	91.9 & 91.27(a)

CROSS REFERENCE—Continued

Present	Proposed
91.27(b)	Deleted
91.28	91.27(g)
91.29	91.11
91.31(a), (b) & (e)	91.13
91.31(c) & (d)	Deleted
91.32	91.15(e)
91.33(a)	91.15(a) & (b), 91.205, 91.407 & 91.409
91.33(b) & (c)	91.15(b)
91.33(b)(11)	91.407
91.33(c)(4)	91.409
91.33(d)	91.15(b)(3) & 91.205
91.33(e)	91.205(j)
91.33(f)	91.233(c)
91.34	91.233(b)
91.35	91.405
91.36	Deleted
91.37	91.511
91.38	91.525
91.39	91.509
91.40	91.505
91.41	91.507
91.42	91.503
91.43	91.27(b), (c) & (d)
91.45	91.521
91.47	91.403
91.49	91.513
91.50	91.515
91.51	91.517
91.52	91.15(c)
91.54	Deleted
91.55	91.523
91.61	91.101
91.63	91.23
91.65(a) & (b)	91.107
91.65(c)	91.411
91.65(d)	91.129(c)
91.67	91.109
91.69	91.111
91.70	91.115
91.71	91.303
91.73	91.113
91.75	91.129
91.77	91.131
91.79	91.121
91.81	91.125
91.83(a) & (d)	91.133
91.83(b) & (c)	91.211
91.84	91.135
91.85(a)	91.137
91.85(b)	Deleted
91.85(c)	91.519
91.87[except (c)]	91.139
91.87(c)	Deleted
91.89	91.137
91.90(a) & (b)	91.141
91.90(c)	Deleted
91.91	91.145(a) & (d)
91.93	91.305
91.95	91.143(a)
91.97	91.143(b)
91.101	Deleted
91.102	91.145(b)
91.103	91.27(e)
91.104	91.145(c)
91.105	91.117
91.107	91.119
91.109	91.123
91.115	91.203
91.116(a), (f), (g) & (h)	91.221(a), (b), (d) & (e)
91.116(b) & (e)(1)	91.223(b) & (c)
91.116(c) & (e)(2)	Deleted
91.116(d)	91.225
91.117(a)	91.221 & 91.223
91.117(b)	91.223(a)
91.117(c)	91.221(c)
91.117(c)(1) through (5)	Deleted
91.119(a)	91.213
91.119(b)	91.219
91.121	91.215
91.123	91.217
91.125	91.227
91.127	91.229
91.129	91.231
91.161	91.601
91.163(a)	91.603
91.163(b)	91.605(a)
91.163(c)	91.607(b)
91.165	91.603 & 91.607(a)
91.167	91.617

CROSS REFERENCE—Continued

Present	Proposed
91.169	91.609
91.170	91.613
91.171	91.611
91.173	91.619
91.174	91.623
91.175	91.621
91.177	91.615
91.181 through 91.219 [Subpart D].	Not included in this proposal
91.301 through 91.307 [Subpart E].	Not included in this proposal

PROPOSED PART 91 TO PRESENT PART 91

Proposed	Present
91.1(a), (b)(1) & (3)	91.1(a) & (b)
91.1(b)(2)	91.20
91.3	New
91.5	91.3
91.7	91.9 & 91.10
91.9	91.27(a)
91.11	91.29 & New
91.13	91.31(a), (b) & (e)
91.15(a) & (b)	91.33(a), (b) & (c)
91.15(c)	91.52
91.15(d)	91.24
91.15(e)	91.32
91.15(f)	New
91.17	91.19 & New
91.19	91.11
91.21	91.5
91.23	91.63
91.25	91.8
91.27	91.27, 91.28, 91.43 & 91.103
91.101	91.61
91.103	91.7
91.105	91.14
91.107	91.65(a) & (b)
91.109	91.67
91.111	91.69
91.113	91.73
91.115	91.70
91.117	91.105
91.119	91.107
91.121	91.79
91.123	91.109
91.125(a)	91.81
91.125(b)	New
91.127	91.13
91.129(a), (b), (d) & (e)	91.75 & New
91.129(c)	91.65(d)
91.131	91.77
91.133	91.83(a) & (d)
91.135	91.84
91.137(a)	91.85(a)
91.137(b)	91.89
91.139	91.87
91.141	91.90(a) & (b), 91.24(b) & (c)
91.143	91.95 & 91.97
91.145	91.91, 91.102 & 91.104
91.201	New
91.203	91.115
91.205	91.33(d) & (e)
91.207	91.25
91.209	91.23
91.211	91.83(a)(9), (b)

PROPOSED PART 91 TO PRESENT PART 91—Continued

Proposed	Present
91.213	91.119(a)
91.215	91.121
91.217	91.123
91.219	91.119(b)
91.221(a), (b), (d) & (e)	91.116(a), (f), (g) & (h)
91.221(c)	91.117(a) & (c)
91.223	91.116(b) & (e)(1), & 91.117(a) & (b)
91.225	91.116(d)
91.227	91.125
91.229	91.127
91.231	91.129
91.233	91.2, 91.6, 91.33(f) & 91.34
91.301	New
91.303	91.15(c), (d) & (e), & 91.71
91.305	91.93
91.307	91.21
91.309	91.15(a) & (b)
91.311	91.17
91.313	91.18
91.401	New
91.403	91.47
91.405	91.35
91.407	91.33(a) & (b)(11)
91.409	91.33(a) & (c)(4)
91.411	91.65(c)
91.501	New
91.503	91.42
91.505	91.40
91.507	91.41
91.509	91.39
91.511	91.37
91.513	91.49
91.515	91.50
91.517	91.51
91.519	91.85(c)
91.521	91.45
91.523	91.55
91.525	91.38
91.601	91.161
91.603	91.163(a) & 91.165
91.605	91.163(b) & 43.3(h)
91.607	91.163(c) & 91.165
91.609	91.169
91.611	91.171
91.613	91.170
91.615	91.177
91.617	91.167
91.619	91.173
91.621	91.175
91.623	91.174

(Secs. 307, 313(a), 601, 602, 603, 902, 1110 and 1202, Federal Aviation Act of 1958. (49 U.S.C. 1348, 1354(a), 1421, 1422, 1423, 1472, 1510, 1522; sec. 6(c), Department of Transportation Act (49 U.S.C. 1655 (c)).)

Issued in Washington, D.C. on January 11, 1979.

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

[FR Doc. 79-1728 Filed 1-19-79; 8:45 am]

Federal Register

MONDAY, JANUARY 22, 1979
PART IV

DEPARTMENT OF DEFENSE

Engineers Corps

■

WATER RESOURCE POLICIES AND AUTHORITIES

Federal Participation in Shore, Hurricane, Tidal and Lake Flood Protection

Title 33—Navigation and Navigable Waters

CHAPTER II—CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY

[ER 1165-2-130]

PART 282—WATER RESOURCE POLICIES & AUTHORITIES FEDERAL PARTICIPATION IN SHORE, HURRICANE, TIDAL AND LAKE FLOOD PROTECTION

AGENCY: U.S. Army Corps of Engineers.

ACTION: Final Rule.

SUMMARY: This regulation provides policies to U.S. Army Corps of Engineers Offices describing the extent of Federal involvement in projects which provide shore, hurricane, tidal and lake flood protection. The regulation is needed to update previous regulations on the subject to reflect recent changes in legislation and policy.

EFFECTIVE DATE: January 15, 1979.

FOR FURTHER INFORMATION CONTACT:

Robert Kaighn, Department of the Army, Corps of Engineers, Wash., D.C. 20314, ATTN: DAEN-CWR-R (202-693-6807).

SUPPLEMENTARY INFORMATION: On January 20, 1978, there was published in the FEDERAL REGISTER (43 FR 3048) a proposed regulation prescribing the policies to be followed by the U.S. Army Corps of Engineers in determining the extent of Federal participation in shore, hurricane, and tidal and lake flood protection projects. Full and careful consideration was given to all comments received and the regulation has been revised accordingly.

Several commentors indicated that the regulation was lacking in environmental policies which guide the selection of projects to be recommended. The purpose of this regulation was not to define the requirements of the planning process or environmental legislation. However, it was revised to indicate that plans selected must best serve the public interest and consider environmental and social impacts as well as economic impacts. The regulation was also revised to indicate that project proposals must be consistent, to the maximum practicable extent, with approved State Coastal Zone Management Programs. Other comments indicated that too much emphasis was placed on intensive recreation use of beaches and on continued use of automobiles by beach users. The regulation has been revised to allow for low intensity recreational uses. In addition, it recognizes the problems associated with continued use of automobiles and allows for use of public transportation as an alternative for parking facilities for privately operated automobiles.

Dated: January 2, 1979.

THORWALD R. PETERSON,
Colonel, Corps of Engineers,
Executive Director, Engineer Staff.

33 CFR is amended by adding Part 282 to read as follows:

PART 282—WATER RESOURCE POLICIES AND AUTHORITIES: FEDERAL PARTICIPATION IN SHORE, HURRICANE, TIDAL AND LAKE FLOOD PROTECTION

Sec
282.1 Purpose.
282.2 Applicability.
282.3 References.
282.4 Definitions.
282.5 Synopsis of program legislation.
282.6 Program policies.
282.7 Federal role in project development.
282.8 Plan formulation and evaluation.
282.9 Cost sharing.
282.10 Local cooperation requirements.
282.11 Effective date.

Appendix A—Computation of federal costs for shore protection plans.
Appendix B—Example computations for cost sharing on shore protection plans.

AUTHORITY: Pub. L. 84-826, 70 Stat. 702 (33 U.S.C. 426e-426h).

§ 282.1 Purpose.

This regulation provides policies and guidelines for determining the extent of Federal participation in potential Federal projects for shore erosion control, and hurricane, abnormal tidal and lake flood protection.

§ 282.2 Applicability.

This regulation is applicable to all OCE elements and all field operating agencies having Civil Works responsibilities. The policies and guidelines set forth in this regulation are applicable to all preconstruction studies (level C and Phase I GDM) including small project studies conducted under the authority of Section 103, Pub. L. 87-874.

§ 282.3 References.

(a) Section 2, Pub. L. 71-520, 3 July 1930, as amended by § 103, Pub. L. 86-645, 14 July 1960.
(b) Pub. L. 79-727, 13 August 1946, as amended.
(c) Pub. L. 84-71, 15 June 1955.
(d) Pub. L. 84-826, 28 July 1956, as amended.
(e) Pub. L. 86-645, 14 July 1960.
(f) Pub. L. 87-874, 23 October 1962.
(g) Pub. L. 88-172, 7 November 1963.
(h) Pub. L. 88-352, 2 July 1968.
(i) Pub. L. 90-483, 13 August 1968.
(j) Pub. L. 91-611, 31 December 1970.
(k) Pub. L. 91-646, 2 January 1971.
(l) Pub. L. 93-251, 7 March 1974.
(m) Executive Order 11988, Floodplain Management, 24 March 1977.
(n) Executive Order 11990, Protection of Wetlands, 24 March 1977.
(o) ER 1105-2-50 (33 CFR 263).
(p) ER 1105-2-200 (33 CFR 290).
(q) ER 1165-2-18 (33 CFR § 209.345).
(r) EM 1160-2-101.

§ 282.4 Definitions.

As used in these regulations:
(a) "Construction costs"—the project first costs associated with initial construction or periodic nourishment (section 282.7(d)) less the cost of the lands, easements, rights-of-way and relocations, but including engineering and design and supervision and administration (E&D and S&A).
(b) "Historical shoreline"—the most seaward position of the mean high water/mean higher high water position recorded by previous surveys or interpreted from previous photographs, other historical records, or other sufficiently reliable sources to permit comparison with the present position.
(c) "Hurricane and abnormal tidal flooding"—inundation from *abnormal* rises in water levels due to hurricanes, storms and tsunami waves.
(d) "Lake flooding"—storm-induced inundation superimposed on the ordinary fluctuations of the lake level.
(e) "Periodic nourishment"—placement of sand fill at intervals of time to replenish a beach erosion control project which is eligible for Federal participation as deferred construction. (§ 282.7(d)).
(f) "Investment costs"—the total costs of intitially constructing a project including E&D and S&A, interest during construction, and the costs of lands, easements, rights-of-way, and relocations. Interest during construction is not included when benefits accrue as the project is constructed or when project construction is two years or less.
(g) "Public use"—available for use by any and all of the general public on equal terms.
(h) "Publicly owned"—ownership by a State, municipality, or other political subdivision. Federal ownership is not included within this definition.
(i) "Shore restoration and protection"—works provided to restore the shore and prevent or reduce damages caused by erosion. The terms "beach erosion control" and "shore restoration and protection" are used interchangeably. Protection of bluffs and dunes as well as beaches is included.
(j) "Public benefits"—benefits resulting from public recreational use and the prevention of damage to publicly-owned facilities such as highways, buildings, parks, boardwalks, etc.

§ 282.5 Synopsis of program legislation.

(a) *Shore Protection.*

(1) Section 2 of Pub. L. 71-520 as amended by Section 103, Pub. L. 86-645, authorized the Chief of Engineers to conduct shore erosion control studies in cooperation with appropriate agencies of various cities, counties, or States.

(2) Pub. L. 79-727 expanded the Federal role by providing for Federal aid in the construction, but not maintenance, of works for the improvement and protection of publicly-owned shores of the United States.

(3) Pub. L. 84-826, enacted in 1956, further expanded the Federal role by authorizing Federal participation in the cost of works for protection and restoration of the shores of the U.S. including private property if such protection was incidental to the protection of publicly-owned shores or if such protection would result in public benefits. It also provided for Federal assistance for periodic nourishment on the same basis as new construction, for a period to be specified by the Chief of Engineers, when it would be the most suitable and economical remedial measure. Section 156 of Pub. L. 94-587 allows the Secretary of the Army, acting through the Chief of Engineers, to extend that period to 15 years after the date of the initiation of construction if desirable.

(4) Pub. L. 87-874 increased the proportion of construction costs borne by the Federal Government and made the total cost of preauthorization studies a Federal responsiblity. In addition, it provides the Secretary of the Army, acting through the Chief of Engineers, with the authority for planning and constructing small beach erosion control projects within certain limits without specific Congressional authorization. Implementing policies and procedures for this authority may be found in ER 1105-2-50.

(5) Section 111 of Pub. L. 90-483 provides the Secretary of the Army, acting through the Chief of Engineers, the authority to study, construct, and maintain projects for the mitigation of erosion damages attributable to Federal navigation works. Projects for which the Federal cost does not exceed one million dollars do not require specific Congressional authorization. This authority applies to both public and privately-owned shores along the coastal and Great Lakes shorelines. Implementing policies and procedures for this authority may be found in ER 1105-2-50. Section 215 of Pub. L. 90-483 provides authority for the Secretary of the Army acting through the Chief of Engineers, to enter into agreements providing for reimbursement to States or political subdivisions for work to be performed by them at authorized projects. The amount of reimbursement is limited to $1,000,000. Unless specifically authorized by Congress, reimbursement for work commenced by local interests subsequent to 13 August 1969 may be made only in accordance with this authority. Implementing policies and procedures may be found in ER 1165-2-18.

(6) Section 55 of Pub. L. 93-251 authorizes the provision of *technical and engineering assistance* to non-Federal public interests in developing structural and nonstructural methods of preventing damages attributable to beach erosion.

(b) *Hurricane, Abnormal Tidal and Lake Flood Protection.* The Federal interest in projects to protect against hurricane, abnormal tidal and Great Lakes flood damage is not explicitly defined by legislation. Pub. L. 84-71 enacted 15 June 1955, authorized the Secretary of the Army, in cooperation with the Secretary of Commerce and other Federal agencies concerned with hurricanes, to make studies of the Atlantic and Gulf coasts of the United States to secure data on the behavior and frequency of hurricanes and to determine means of preventing loss of life and damages to property. It did not specify the degree of Federal cost sharing for construction of protective works. However, in authorizing projects proposed in the first three of these studies, the 1958 Flood Control Act established a precedent of limiting the Federal share of investment cost to a maximum of 70 percent. In June 1978 the President proposed that cost sharing for this type project be modified to require a cash or in-kind contribution equal to 20 percent of the project investment costs.

(c) *Multiple-Purpose Projects.* Pub. L. 87-874 introduced the multiple purpose concept in shore erosion control studies by providing for surveys of coastal areas of the United States and its possessions, including the shores of the Great Lakes, in the interest of shore erosion control, hurricane protection and related purposes. Generally, costs associated with each purpose are apportioned in accordance with applicable laws and policies. However, Section 208 of the Flood Control Act of 1970 provides discretionary authority for a Federal share up to 70 percent of the construction costs for combined hurricane protection and shore erosion control projects.

§ 282.6 Program policies.

(a) *General.* It is the policy of the Corps of Engineers to undertake projects to prevent erosion and flooding of the coastal areas when those projects best serve the public interest. Selection of the plan which best serves the public interest requires the evaluation of a wide range of alternatives. Plans will be developed, evaluated and selected in accordance with the multiobjective planning framework required by ER 1105-2-200. This framework provides that planning be directed to achieve National Economic Development (NED) and Environmental Quality (EQ) as equal national objectives. Using this planning process, the EQ objective is interpreted as being the same as the definition of environmental quality contained in the National Environmental Policy Act of 1969. Thus, plans to achieve the EQ objective shoud address the broadest scope of concerns pertaining to the natural and cultural environment. The degree of Federal participation in the selected plan will be based upon the policies and requirements given in the following paragraphs.

(b) *Geographic Applicability.* Shore erosion control, hurricane, and abnormal tidal flooding authorities are applicable to the shores of the Atlantic and Pacific Oceans, the Gulf of Mexico, the Great Lakes, estuaries, and bays directly connected therewith of each of the States, the Commonwealth of Puerto Rico, and the possessions of the United States. Authority for shore erosion control activites extend only the distance up tributary streams where it can be demonstrated that the dominant causes of erosion and damage are ocean tidal action (or Gulf of Mexico and Great Lakes water motion) and wind-generated waves. They will not address erosion at upstream locations caused by streamflows or vessels. Lake flood protection activities are generally limited to the Great Lakes.

(c) *Coastal Zone Management Plans.* Project proposals shall be consistent to the maximum practicable extent, with approved State Coastal Zone Management Programs developed under the authority of the Coastal Zone Management Act of 1972, as amended.

(d) *Beach Creation.* Existing shore erosion control authority provides for "restoration" and "protection." It does not provide for Federal cost sharing in extending a beach beyond its historic shoreline unless the extension is needed for engineering reasons to provide protection from erosion.

(e) *Shore Categories.* Five general categories of shore, based on ownership and use, and incidence and type of benefits, must be considered in determining Federal aid toward the cost of shore restoration and erosion protection. These categories, and the levels of Federal aid applicable thereto, are listed in Table 1. There are no restrictions regarding shoreline categories for hurricane, tidal, and lake flooding.

TABLE 1.—*Categories of Shore and Levels of Federal Aid*

Shore category [6]	Maximum level of Federal aid	
	Construction	Maintenance
I. Federally owned	100%	100%
II. Publicly owned parks and conservation areas [1]	[6]70%	[2]None
III. Publicly owned other than parks and conservation areas	[6]50%	[2]None
IV. Privately owned, protection will result in public benefits [3 4]	[6 7]50%	[2]None
V. Privately owned, protection will not result in public benefits susceptible of evaluation [4]	None	None

[1] See § 282.9(a)(2) below.
[2] See § 282.7(d) below, concerning periodic beach nourishment.
[3] Privately owned shores under public control, as through a sufficiently long-term lease assuring realization of public benefits throughout the economic life of the project, may be treated as Category III shores in determining Federal aid.
[4] See § 282.9(a)(6) below, concerning incidental protection of privately owned shores.
[5] Indian shores do not usually fall within categories of shore provided. The status of such lands will depend upon the particular treaty provisions pertaining to the lands under consideration and will need to be examined in each instance. Specific cases should be referred to HQDA (DAEN-CWP-E, C or W) WASH DC 20314 for guidance.
[6] Cost-sharing percentages do not apply to lands, easements and rights-of-way.
[7] Multiplied by the ratio of public benefits along Cat. IV shore to total benefits along Cat. IV shore.

(f) *Public Use.* Public use is not a condition for Federal participation in hurricane, abnormal tidal or lake flood protection projects, However, current shore erosion control law provides that "Shores other than public (i.e., privately owned) will be eligible for Federal assistance if there is a benefit such as that arising from public use. . . ." In the case of beaches used for recreation, public use means use by all on equal terms. This means that project beaches will not be limited to a segment of the public. Unless the protection of privately-owned beaches is incidental to protection of public beaches (§ 282.9(a)(6)), they must be open to all visitors regardless of origin or home area or provide protection to nearby public property to be eligible for Federal aid. Items affecting public use are discussed below.

(1) *User Fees.* A reasonable beach fee, uniformly applied to all, for use in payment of the local share of project costs is allowable. Normal charges made by concessionaires and municipalities for use of facilities such as bridges, parking areas, bathhouses and umbrellas are not construed as a charge for the use of the Federal beach project, if they are commensurate with the value of the service they provide and return only a reasonable profit. Fees for such services must be applied uniformly to all concerned and not as a prerequisite to beach use.

(2) *Parking.* Lack of sufficient parking facilities for the general public (including non-resident users) located reasonably near and accessible to the project beaches may constitute a *de facto* restriction on public access and use of such beaches, thereby precluding eligibility for Federal assistance. Generally, parking on free or reasonable terms should be available within a reasonable walking distance of the beach. Street parking is not considered acceptable in lieu of parking lots unless curbside capacity will accommodate existing and new demands. Parking should be sufficient to accommodate the lesser of the peak hour demand or the beach capacity. In some instances State and local plans may call for a reduction in automobile pollutants by encouraging public transportation. Thus, public transportation facilities may substitute for or complement parking facilities. However, reports which consider public transportation in this manner must indicate how the public transportation system would be adequate for the needs of projected beach users. In computing the public parking accommodations required, the beach users not requiring parking should be deducted from the design figure.

(3) *Access.* Reasonable public access must be provided in accordance with the recreational use objectives of the particular area.

(4) *Beach Use by Private Organizations.* Federal aid to private shores owned by beach clubs and hotels is incompatible with the intent of P.L. 84-826 if the beaches are limited to use by members or paying guests.

(5) *Public Shores With Limitations.* Publicly-owned beaches which are limited to use by residents of the community or a group of communities are not considered to be open to the general public and will be treated as private beaches (Category V, Table 1).

(g) *Improvements for Recreation.* Improvements to enhance the recreational value of shore erosion control projects such as bathhouses, access roads, toilet facilities and parking areas are a local responsibility. Provision of those facilities is not eligible for Federal aid through the Corps of Engineers programs. Costs for those facilities are considered self-liquidating and should not be included as project costs.

§ 282.7 Federal role in project development.

(a) *Preauthorization Studies.* The Corps of Engineers may undertake specific studies relating to shore erosion and hurricane, abnormal tidal and lake flood problems with the authorization of Congress, either in response to resolutions adopted by the Committee on Environment and Public Works of the United States Senate or the Committee on Public Works and Transportation of the House of Representatives, or by an Act of Congress. Studies for small projects may be initiated without specific Congressional authorization under the authority of Section 103 of Pub. L. 87-874 and Section 111 of Pub. L. 90-483. Studies are 100 percent Federally funded.

(b) *Construction.* Construction of authorized projects is a responsibility of the Corps of Engineers. However, local interests may construct portions of projects, after they are authorized by Congress, and be reimbursed by the Federal Government within a one million dollar limitation if prior approval is obtained from the Chief of Engineers (reference ER 1165-2-18 for approval of procedures and policies). If local interests desire to proceed with construction of the project, they may do so with the understanding that:

(1) Federal participation would be limited to the Federal shares of the costs of the elements constructed which are in accordance with the authorized plan,

(2) Reimbursement will be subject to future appropriation of funds applicable to the project and shall not take precedence over other pending projects of higher priority, and

(3) Local interests provide assurances that they will bear any increased costs of measures which may result from advance work, unless there are extenuating circumstances which warrant omission of this condition.

(c) *Maintenance.* Maintenance is generally a non-Federal responsibility. However, if a portion of the benefited area is in Federal ownership the Federal maintenance responsibility shall be established as the same portion as the length of Federal shoreline is to the length of total shoreline. In the case of multipurpose projects providing for navigation, particularly those which involve complex operating procedures, operation and maintenance responsibility for the entire project might best be vested in the Federal Government. In such cases, non-Federal interests should be obligated to contribute their share of costs to the

Federal Government on a scheduled basis throughout the project life or to make a cash contribution of the capitalized value of the non-Federal share of the maintenance cost. Future maintenance costs are to be capitalized using the authorized discount rate.

(d) *Periodic Nourishment.* Periodic nourishment is considered "construction" for cost-sharing purposes when in the opinion of the Chief of Engineers, such periodic nourishment is found to be a more economical erosion protection measure than retaining structures such as groins or when the nourishment is expected to be of benefit to shores beyond the project limits. Thus, projects recommending periodic nourishment should not include structures which materially reduce littoral drift from reaching downdrift shores. When sand replacement is proposed as a maintenance measure, as for example when it would serve to maintain protection accompanied by structures intended to confine the benefits of the sand within a beach compartment rather than serving as a full or partial alternative to such structures, Federal aid toward its cost should not be recommended, except to the extent warranted in § 282.7(c), above. Projects with short low-profile groins included to maintain a shore alignment, but not to materially prevent littoral drift from nourishing downdrift beaches are eligible for periodic nourishment. Federal aid for periodic nourishment may continue throughout the economic life of the project, but a specified period of time, usually the economic life of the project, must be recommended in planning reports. If there is reason to doubt the technical viability of periodic nourishment for such a period of time, a shorter period may be recommended. After that period, the project should be reexamined to determine if Federal participation in periodic nourishment is the most efficient and economic solution. Continuation of such Federal participation or other modification of the project requires additional authorization.

(e) *Work for Another Federal Agency.* Work to protect lands under the jurisdiction of another Federal agency shall be accomplished by the Corps only on a reimbursable basis, upon request from the responsible agency. Protection of Army lands used for military purposes will be accomplished with military funds, not Civil Works funds.

§ 282.8 Plan formulation and evaluation.

(a) Projects shall be formulated in accordance with policies and procedures contained in ER 1105-2-200 and related regulation describing the planning process developed to implement the principles and standards, the National Environmental Policy Act, EO 11988, EO 11990 and other requirements. Consideration shall be given to both structural and nonstructural solutions. Plan formulation should be accomplished to arrive at the best solution, considering all factors, including engineering, economic, environmental, and social.

(b) As required by ER 1105-2-200, impacts will be determined to evaluate the alternative in terms of the planning objectives. Impacts normally associated with beach erosion control and hurricane, abnormal tidal, and lake flood protection projects are:

(1) Prevention of land loss and other physical damages,

(2) Reduction in maintenance costs of existing protection works,

(3) Reduction of emergency costs to residences, businesses, and governmental entities,

(4) Increased recreational usage, and where appropriate, relief of overcrowding for existing recreational usage,

(5) Changes in maintenance costs associated with navigation projects,

(6) Employment of unemployed or underemployed labor resources,

(7) Prevention of loss of historic and scenic aspects of the environment,

(8) Changes in shore processes and equilibrium conditions,

(9) Erosion along downdrift shores,

(10) Changes in floodplain development,

(11) Changes in the extent and quantity of wetlands, and

(12) Changes in water quality and ecology in the vicinity of construction activities.

§ 282.9 Cost sharing.

(a) *Beach Erosion Control.* Federal participation in the costs of beach erosion control projects is based on shore ownership, use, type and incidence of benefits as discussed below and summarized in Table 1.

(1) *Federally-Owned Lands* are protected at Federal expense. All costs allocated to restoration and protection are to be borne fully by the Federal Government.

(2) *Publicly-Owned Shore Park and Conservation Areas* are eligible for Federal cost sharing up to 70 percent of the construction cost if *all* the following conditions are met:

(i) It is publicly owned.

(ii) It includes a zone extending landward from the mean low water line which excludes all permanent human habitation, including summer residences but not including the residences of park administrative and maintenance personnel. This zone is construed to mean any segment of the park landward of the mean low water line subject to flooding by storm tides in which destruction of natural protective features of the shore area by development is prevented, and from which development for human habitation is excluded. The purpose of this requirement is to prevent development which would be vulnerable to damage by ocean or lake waters and to eliminate hazards to human life and property.

(iii) It includes a beach suitable for recreational use.

(iv) It provides for preservation, conservation and development of the natural resources of the environment. In accordance with the overall mission or purpose of the park, the areas must be developed, operated, and maintained in a manner which preserves the desirable features and the natural resources of the locale. These resources may include areas or features in their natural condition, game preserves, natural scenic beauty, or other natural aspects which are peculiar to the environment or locale. The character of these parks may vary from extreme wilderness areas with minimum development for use by naturalists or campers to areas of intensified recreational use with full comfort, convenience, safety, and recreational facilities.

(v) It extends landward a sufficient distance to include where appropriate protective dunes, bluffs or other natural features such as swamps or lowlying areas, all of which must absorb and dissipate wave energy and flooding effects of storm tides. The landward width must be sufficient to protect development or potential development of the uplands from damage during storms of severe magnitude. Park facilities, such as roads, parking areas, bathhouses, and picnicking areas, in the park area and subjected to occasional flooding, may be permitted. The purpose of this requirement is to provide a protective buffer zone between the sea or lake and the uplands which would prevent damage of upland property and development. The buffer zone may be developed and used for recreational purposes, provided that the natural protective features of the shore area within the zone are not impaired.

(vi) It provides essentially full park facilities for appropriate public use. The meaning of essentially full park facilities would depend upon the intended conservation and recreational

mission of the area. In the case of recreational beach parks intended for mass usage, full park facilities must include suitable access and bathhouse, comfort, parking, and recreational facilities adequate to insure realization of anticipated recreational benefits. In the case of park areas intended for other types of recreational use such as hunting, fishing, picnicking, camping, or nature study, park facilities as a minimum should provide suitable access and parking. Some part of the park frontage must, however, include a recreational beach to meet the requirements of the Act.

(3) An area which meets the above criteria for one portion of the frontage, but not for the entire frontage, will be divided into separate sections for cost sharing. The Federal share will be computed separately for each portion as appropriate, and a composite percentage will finally be computed for the entire park.

(4) *Publicly-owned shores* are eligible for Federal participation up to 50 percent of the construction cost.

(5) *Privately-owned shores* may be eligible for Federal cost sharing of up to 50 percent if there would be significant public benefits arising from public use or from direct protection of nearby public facilities. Federal participation is adjusted in accordance with the ratio of public benefits to total benefits. Recreation benefits resulting from beaches not open for public use are considered to be private benefits for cost apportionment purposes.

(6) *Benefits to private shores beyond project limits* of shore protection works, if trivial in amount, may be considered as incidental and not involved in cost-sharing considerations.

(7) Any statement in a beach erosion control report as to the percentage of construction costs to be borne by local interests or the Federal Government must be qualified as tentative since the final apportionment will be based on the extent of shore in public ownership or use at the time of construction, or subsequent nourishment.

(b) *Hurricane, Tidal and Lake Flood Control.* For hurricane, tidal, and lake flood control protection projects, the Federal share of the project investment costs is limited to 80 percent. When the normal local costs of lands, easements, rights-of-way, and relocations amount to less than 20 percent of total first costs, the difference is required as a local cash contribution.

(c) *Multiple-Purpose Projects.* For multiple-purpose hurricane protection and beach erosion control projects, the Secretary of the Army acting through the Chief of Engineers, has discretionary authority to authorize a Federal share up to 70 percent of the construction costs. This discretionary authority will not be used unless normal cost allocation procedures produce inadvertent inequities in specific cases. Cases possibly warranting such adjustments are to be submitted to HQDA—(DAEN-CWP) WASH DC 20314 for consideration. If this discretionary authority is not used, the costs of the beach erosion control features required to stabilize the shore against wave action are considered to be joint costs and allocated between the hurricane and beach erosion control functions by the Separable Costs Remaining Benefits (SCRB) method (EM 1160-2-101).

§ 282.10 Local cooperation requirements.

Reporting officers must obtain a letter of intent from a public agency, authorized under State law, to fulfill the non-Federal obligations of water resource projects recommended for Federal participation. The letter will indicate that prior to construction, the sponsor will enter into a written agreement, as required by Section 221 of Pub. L. 91-611, to provide assurances of local cooperation satisfactory to the Secretary of the Army. Such assurances include the contributions computed from the policies given in § 282.9 and the following non-Federal responsibilities:

(a) Provide without cost to the United States all necessary lands, easements, rights-of-way and relocations required for construction of the project, including that required for periodic nourishment.

(b) Hold and save the United States free from claims for damages which may result from construction and subsequent maintenance of the project, except damages due to the fault or negligence of the United States or its contractors.

(c) Assure continued conditions of public ownership and use of the shore upon which the amount of Federal participation is based during the economic life of the project (normally 50 years).

(d) Assure maintenance and repair, and local share of periodic beach nourishment, where applicable, during the economic life of the project as required to serve the intended purposes.

(e) Provide and maintain necessary access roads, parking areas, and other public use facilities, open and available to all on equal terms.

(f) Specific cases may also warrant assigning other additional local responsibilities, such as providing appurtenant facilities required for realization of recreational benefits.

(g) Comply with the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91-646).

(h) Comply with Title VI of the Civil Rights Act of 1964 (Pub. L. 88-352).

(i) In the case of single-purpose hurricane, tidal, or lake flood protection projects, the requirements of local cooperation will normally consist of §§ 282.10(a), 282.10(b), 282.10(d), 282.10(f) 282.10(g) and 282.10(h) in addition to the contributions required by § 282.9.

(j) The wording given in §§ 282.10(a) through 282.10(h) should be considered standard for all recommended plans which include shore protection as a plan purpose. Deviations from such wording should not be made unless the reporting officer has justifiable circumstances warranting such action.

(k) In addition to the above, all reports to Congress proposing Federal projects will include a requirement for an additional State contribution of five percent of the construction cost. Such contribution may be in cash or an in-kind contribution. Additional guidance regarding this item will be published at a future date. In the interim, this item should be coordinated with HQDA (DAEN-CWP-E, C or W) WASH DC 20314.

§ 282.11 Effective Date.

This regulation is effective 15 January 1979.

APPENDIX A

COMPUTATION OF FEDERAL COSTS FOR SHORE PROTECTION PLANS

A-1. *Projects Benefiting Only One Category of Shore.* The Federal share of the cost of construction of a project which will benefit only one category of shore, see § 282.6(e), if any, may be computed by multiplying the cost of construction by the appropriate percentage of Federal participation from § 282.9

A-2. *Projects Benefiting Several Categories of Shore.* The Federal share of the cost of construction of a project which will benefit more than one category of shore, defined in § 282.6(e), may be computed by assigning proportionate shares of the total construction cost to each shore category involved, multiplying the costs thus assigned by the appropriate percentage of Federal participation from § 282.9 and summing the products thus obtained.

a. When the cost of construction per unit of benefited shore length is reasonably uniform for the entire project area, the total Federal cost of construction may be computed as a percentage of the total construction cost by the following formula:

Federal share of total construction cost, in percent =

$$\left\{\left[\frac{\text{Category I shore}}{\text{Total shore}}\right] + \left[\frac{\text{Category II shore}}{\text{Total shore}} \times 0.7\right] + \left[\left(\frac{\text{Category III shore}}{\text{Total shore}}\right) + \left(\frac{\text{Category IV shore}}{\text{Total shore}} \times \frac{\text{Public benefits along Category IV shore}}{\text{Total benefits along Category IV shore}}\right)\right] \times 0.5\right\} \times 100$$

b. When the cost of construction per unit of benefited shore length is not reasonably uniform for the entire project area, the project should be subdivided into compartments within which this condition is met. For each such compartment, the Federal cost of construction may be computed as a percentage of the total construction cost for the compartment by application of the formula in paragraph A-2a, using ownership figures for the compartment rather than the project as a whole. The cost of construction for individual project compartments should be developed on a physical occurence basis, insofar as possible, by first assigning costs which are specific to individual compartments and then distributing costs applicable to more than one compartment on an ownership basis. The total Federal cost of construction is obtained by adding the Federal costs computed for individual compartments.

c. When the cost of construction per unit of benefited shore length is not reasonably uniform for the entire project area, and division into relatively few substantial compartments within which this condition is met is not practicable, it will be necessary to compute the Federal share of construction cost on a section-by-section basis for all or part of the benefited shore length. When applying this method in extreme cases, it may be necessary to treat each individual parcel of benefited shore in a given category as a separate section. The net effect is the same as division of the benefited shore length into a large number of compartments and the procedure outlined in paragraph A-2b is applicable.

A-3. *Projects Including Periodic Nourishment as a Construction Measure* are discussed in § 282.7(d). Periodic beach nourishment may be recommended as a construction measure. In the case of the projects for which the costs of initial work (beach restoration or structures) and of periodic nourishment are uniformly distributed over the shore, the formula given in paragraph A-2a will be applied and the percentage of Federal participation will be the same for both initial work and periodic nourishment. In cases of nonuniform cost distribution for either the initial construction or the periodic nourishment, or both, the level of Federal participation will be computed in accordance with paragraphs A-2b and A-2c, and will not necessarily be the same for initial construction and periodic nourishment.

A-4 *Projects Providing Minor or Indefinite Incidental Benefits to Privately Owned Shores.*

a. When the cost of works designed to benefit only publicly-owned shores would equal or exceed the cost of works which would in addition, benefit adjoining privately-owned shores, the benefits to the privately-owned shores, if trivial in amount, may be considered as incidental and the Federal share of construction costs may be computed by the following formula:

Federal share of total construction cost, in percent=

$$\left\{\left[\frac{\text{Category I frontage}}{\text{Total frontage}}\right] + \left[\frac{\text{Category II frontage}}{\text{Total frontage}} \times 0.7\right] + \left[\left(\frac{\text{All other frontage}}{\text{Total frontage}}\right) \times 0.5\right]\right\} 100$$

b. When, as may occur in the case of periodic beach nourishment, private shores beyond projects limits ultimately may receive benefits of indefinite nature and amount from the project, such benefits will be classed as incidental and these benefits and the shores involved will not be considered in determining the Federal share of project costs.

A-5 *Projects Which Reduce Federal Cost of Maintaining Authorized Navigation Projects.* Federal aid may be recommended for that portion of the project cost allocated to navigation, in addition to the aid determined pursuant to paragraphs A-1 through A-4. For purposes of this computation allocations will be made on a proportionate benefit basis with benefits limited to the alternative costs. The total Federal share of costs expressed as percentage (T) for the feature which results in the navigation benefits may be computed as a percentage of the total first cost for that feature by application of the following formula:

$$T = \left[\frac{N}{N + B} \times 100\right] + \left[\frac{B}{N + B} \times T_e\right]$$

where: N=Navigation benefits of feature, limited to alternative costs of dredging;

B=Beach erosion control benefits, limited to the cost of the alternative to provide the same beach protection benefits.

T_e=Federal share of cost of the shore protection features which results in navigation benefits, in percent, computed in accordance with paragraphs A-1 through A-4.

A-6. *Multiple Purpose Projects.* In the case of multiple purpose projects, such as those for shore protection and other purposes as hurricane protection and navigation (where new navigation features are involved rather than maintenance of an existing Federal project), the procedures outlined in paragraph A-1 through A-4 will be applied only to the portion of the total construction costs allocated to shore protection. Allocation of costs between functions will normally be made by the Separable Costs-Remaining Benefits (SCRB) method (see EM 1160-2-101).

APPENDIX B

EXAMPLE COMPUTATIONS FOR COST SHARING ON SHORE PROTECTION PLANS

B-1. *Example 1.* The following is a simplified example of cost apportionment between Federal and local interests for an economically justified shore protection project where shores in both public and private ownership are involved and significant public benefits are generated through protection of private shores. It is assumed that a coordinated plan is proposed, that no section can be omitted, that the benefits to private shores are not incidental, that public benefits can be associated with only a portion of the private shores protected, and that the cost of protection per unit of benefitted shore length is reasonably uniform for the entire project area. If periodic nourishment is involved in this case, cost apportionment therefor would be on the same basis.

Item	Shore Capacity I	II	III	IV	V	Total
Length, feet	500	10,000	3,000	4,500	2,000	20,000
Ownership	Federal	Public non-Fed (Conserv Area)	Public non-Fed	Private	Private	
Benefits (av ann.$)						
Public	5,000	75,000	30,000	50,000	-	160,000
Private	-	-	-	25,000	40,000	65,000
Total	5,000	75,000	30,000	75,000	40,000	225,000
Computation of Federal share of construction cost	The formula given in paragraph A-2a is applicable The Federal share expressed as a percent of the total first cost would be					

$$\left\{\left[\frac{500}{20,000}\right] + \left[\frac{10,000}{20,000} \times 0.7\right] + \left[\left(\frac{3,000}{20,000}\right) + \left(\frac{4,500}{20,000} \times \frac{50,000}{75,000}\right)\right] \times 0.5\right\} 100 =$$

$$\{[0.025] + [0.35] + [0.15 + 0.15]\ 0.5\}\ 100 = 52.5 \text{ percent}$$

B-2. *Example 2* is substantially the same as Example 1, except that the cost of protection per unit of shore length is not reasonably uniform and division into two compartments is necessary. For simplicity, shore categories in each of these compartments have been limited to four. In actual cases shores in all five categories might be found in all compartments.

[3710-92-C]

Item	Reach of Shore					
	Compartment 1		Compartment 2		Total	
Length, feet	15,000		5,000		20,000	
Construction cost, $						
Total	750,000		625,000		1,375,000	
Per foot of shore	50.00		125.00		68.75	
Shore length by shore categories, feet:						
I	500		-		500	
II	9,000		1,000		10,000	
III	2,000		1,000		3,000	
IV	3,500		1,000		4,500	
V	-		2,000		2,000	
Total	15,000		5,000		20,000	
Benefits by shore categories, av ann. $1,000·	Public	Private	Public	Private	Public	Private
I	5	-	-	-	5	-
II	60	-	15	-	75	-
III	15	-	15	-	30	-
IV	20	10	30	15	50	25
V	-	-	-	40	-	40
Total	100	10	60	55	160	65
Computation of Federal share of construction cost	The formula given in paragraph A-2a is applicable and is applied separately for each compartment.					

Compartment 1

Federal share of construction cost for compartment, in percent =

$$\left\{\left[\frac{500}{15,000}\right] + \left[\frac{9,000}{15,000} \times 0.7\right] + \left[\left(\frac{2,000}{15,000}\right) + \left(\frac{3,500}{15,000}\right)\left(\frac{20}{30}\right) 0.5\right\} 100 = 59.7 \text{ percent}$$

Compartment 2

$$\left\{\left[\frac{1,000}{5,000} \times 0.7\right] + \left[\left(\frac{1,000}{5,000}\right) + \left(\frac{1,000}{5,000} \times \frac{30}{45}\right)\right] \times 0.5\right\} 100 = 30.7 \text{ percent}$$

Total Project

Compartment	Construction Cost, $	Federal share of Construction Cost	
		%	$
1	750,000	59.7	448,000
2	625,000	30.7	192,000
Total Project	1,375,000	46.5	640,000

B-3. *Example 3* is substantially the same as Example 1 except that it is assumed that certain features of the project involved would reduce Federal costs of maintaining an authorized Federal navigation project by $10,000 annually. This benefit is in addition to those shore protection benefits shown in Example 1. The proportionate share of shore protection benefits also accruing from those same features is assumed to be $70,000. Average annual benefits for those project features thus would be:

Shore protection	$70,000
Navigation	10,000
Total	$80,000

The Federal share of construction costs of those project features which do not contribute to the navigation benefit would be 52.5 percent, as computed in Example 1. The Federal share of construction costs for the project features contributing the navigation benefit, computed in accordance with formula given in paragraph A-5 and expressed as a percent of total construction cost for those features, would be:

$$\left(\frac{10,000}{80,000} \times 100\right) + \left(52.5 \times \frac{70,000}{80,000}\right) = 58.5 \text{ percent}$$

B-4. *Example 4* is similar to Example 2, except that the construction plan includes provision for periodic beach nourishment at an estimated average annual cost of $100,000 which would benefit the entire project frontage.

Item	Reach of Shore		
	Compartment 1	Compartment 2	Total
Length, feet	15,000	5,000	20,000
Construction cost, $			
Initial measures			
Total	545,000	455,000	1,000,000
Per feet of shore	36.33	91 00	50.00
Periodic nourishment (*)			
Total (Av Ann)	75,000	25,000	100,000
Per feet of shore (Av Ann.)	5 00	5 00	5 00
(*) Total cost of periodic nourishment distributed between compartments on a frontage basis			
Shore length by shore categories, feet.	Same as Example 2	Same as Example 2	Same as Example 2
Benefits by shore categories, Av Ann $1,000	Same as Example 2	Same as Example 2	Same as Example 2
Computation of Federal share of construction cost	The formula given in paragraph A-2a is applicable and is applied separately for each compartment The Federal aid percentages are as in Example 2		
	Compartment 1	59 7 percent	
	Compartment 2	30 7 percent	

Federal aid for the project as a whole is computed as follows

Initial Measures

Compartment	Construction Cost, $	Federal Share of Construction Cost	
		%	$
1	545,000	59 7	325,000
2	455,000	30 7	140,000
Total	1,000,000	46 5(*)	465,000

(*) This figure is the same as the result for Example 2 because the lengths and benefits by shore categories, and the relative compartment costs, are the same as for Example 2.

Periodic Nourishment

Compartment	Periodic Nourishment Cost	Federal Share of Cost for Periodic Nourishment for Period to be Specified	
	Av Ann. $	%	Av Ann. $
1	75,000	59 7	44,800
2	25,000	30 7	7,700
Total	100,000	52.5(*)	52,500

(*) Note that the Federal share of periodic nourishment costs for the project as a whole is not the same as the Federal share of other construction costs. (Paragraph A-3)

B-5. *Comment on Examples.* The foregoing examples have been simplified for purposes of illustration, particularly in regard to the matter of uniformity of cost. In typical project cases, shore categories may be extensively intermixed and there may be a wide range of unit costs of protection in each category. Choice of the method for computation of Federal costs must be made on the basis of the conditions encountered in individual cases. The principal alternatives available are between computation on the basis of the project as a whole as opposed to computation on a compartment-by-compartment or section-by-section basis. Reports should contain sufficient detail on costs, benefit occurrence, and alternative costs to support selection of the method of computation used.

[FR Doc. 79-2112 Filed 1-19-79; 8:45 am]

Federal Register

MONDAY, JANUARY 22, 1979
PART V

INTERSTATE COMMERCE COMMISSION

■

CANONS OF CONDUCT GOVERNING THE BEHAVIOR OF MEMBERS AND EMPLOYEES

[7035-01-M]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

PART 1000—THE COMMISSION

Canons of Conduct; Revision

AGENCY: Interstate Commerce Commission.

ACTION: Final Rules.

SUMMARY: The Commission has adopted revised Canons of Conduct governing the behavior of members and employees. The new Canons, which have been approved by the Civil Service Commission and become effective on publication of this notice, reflect the Commission's analysis of public response to the proposed revised Canons published for comment in the FEDERAL REGISTER on May 10, 1978 (43 FR 20208). The new rules simplify, clarify, and update the agency's previous Canons. They set forth explanatory guidelines for each Canon and add supplemental Canons that apply only to members of the Commission.

EFFECTIVE DATE: January 22, 1979.

FOR FURTHER INFORMATION CONTACT:

Frederick W. Read, III, 202-275-1857.

SUPPLEMENTARY INFORMATION: In response to the FEDERAL REGISTER notice soliciting public comment on the proposed revised Canons of Conduct, the Commission received written submissions from 23 persons, all of whom are employees of the agency. Some of the comments suggested language intended to eliminate alleged ambiguities, while others proposed substantive changes. We have carefully considered those comments in drafting the final revised Canons.

The final Canons and Guidelines differ in a number of respects from the revised Canons originally proposed. The following paragraphs describe those Canons and Guidelines which have been significantly modified and explain the reasons for the changes made. It should be noted that proposed Canon 22 has been deleted, necessitating the renumbering of Canons 23-31 as 22-30.

These revised Canons and Guidelines were approved by the Office of Personnel Management on January 4, 1979, and are effective January 22, 1979.

Canon 11: As the introductory statement to the Commission's Canons of Conduct, Canon 11 articulates the general standard of conduct by which Commission members and employees must abide. As originally proposed, Canon 11 represented no change from the "standard of conduct" statement in the Commission's former canons. We now believe, however, that the language of Canon 11 should be expanded to emphasize the special public trust and responsibility borne by those in government service. This expanded focus will enhance Canon 11's function as a statement of the "general standard of conduct" for Commission members and employees. The new language is inspired by Section 101 of Executive Order 11222 and § 735.101 of the Civil Service Commission regulations, as well as by the Commission's former "standard of conduct" statement.

Canon 13: This canon prohibits Commission members and employees from having "any direct interest in any for-hire transportation company whether or not subject to the Interstate Commerce Act." It also delineates certain forbidden indirect interests in transportation enterprises.

Some comments criticized Canon 13 as overly stringent. One comment argued that the canon should not prohibit financial interests in non-ICC regulated transportation companies. In that same vein, another comment stated that the prohibition should not apply to transportation companies having an extremely attenuated or nonexistent connection with Commission regulation. It should be recognized, however, that these criticized aspects of Canon 13 represent no change from our old canons and are merely a continuation of established Commission policy.

The prohibition of Canon 13 is, in essence, an agency-wide application of the Congressional policy reflected in 49 U.S.C. 10301(d), 10306(e), and 10344(e) (formerly Section 205(i) of the Interstate Commerce Act, 49 U.S.C. 305(i)), which provide that no Commission member, administrative law judge, employee board member, or joint board member may own securities of a carrier providing transportation by any mode.

Of course, any broad or absolute prohibition can lead to absurd results in isolated instances. For example, one comment observed that the Canon 13 proscription would reach interests in a local taxi service, a bush airline in Canada, or a jitney in Manila. But we are not aware of any significant problems caused by the agency-wide application of this prohibition in the past. The guidelines accompanying Canon 13 contain a provision permitting the Ethics Counselor to grant waivers in exceptional cases "based on serious financial hardships." In order to avoid the possibility of absurd results under the absolute prohibition of the canon, we have now added a "remoteness of interest" factor to the guidelines for the Ethics Counselor to consider in determining whether to grant a waiver.

One comment was critical of the two percent limitation in Canon 13(b)(2). The thrust of the comment was that it is unreasonable to expect members or employees to keep track of the various interests and holdings of conglomerates, especially when the conglomerates themselves are not required to report individual investments that account for less than 10 percent of their assets or income.

While this aspect of Canon 13 may ultimately need further refinement, we have not altered the proposed canon at this time. An assessment of where workable lines should be drawn can be made as we gain experience under this canon. In any event, the two-part nature of the test in Canon 13(b) should limit the applicability of the two percent standard.

Canon 13(c) prohibits the holding of any interest in a mutual fund or other enterprise which has "more than ten percent of its assets invested in or derives more than ten percent of its income from any for-hire transportation *company* * * *." The use of "company" in the singular may suggest that a mutual fund, to be covered by the prohibition, must have more than 10 percent of its assets invested in a *single* for-hire transportation company. In other words, it could be contended that an employee could own a mutual fund that has as much as 50 percent of its assets invested in transportation companies, so long as no more than 10 percent is invested in any single company. We intend, however, to reach all mutual funds or other enterprises that have more than 10 percent of their assets cumulatively invested in transportation entities. Accordingly, we have changed "company" to the plural "companies."

One comment suggested that Canon 13's prohibitions should be extended to include financial interests in private carriers. Of course, Commission decisions can in some instances affect companies that operate private fleets. But the same can be said of *any* company that uses transportation services, whether private or for-hire. Following such logic would effectively foreclose Commission personnel from holding a financial interest in almost *any* enterprise.

We do not believe that such a harsh result is either necessary or desirable. The for-hire/private distinction was also in the old canons, and we are not aware that it has led to any problems or abuse. Since the prohibition of Canon 13 applies to all for-hire transportation companies, the canon encompasses every firm regulated by this agency plus some not subject to our regulation. This provision thus goes

further than similar rules of other agencies.

Defining the scope of financial ownership prohibitions necessarily entails some difficult line-drawing. Certain limitations are inherent in the process. One can easily argue that, in a specific factual setting, the prohibition is too broad or too narrow. Nonetheless, we believe that Canon 13 draws the line in the right place. To the extent that the prohibition goes too far, the waiver mechanism may serve to mitigate its effects. Where the prohibition does not reach a possible conflict, other provisions of the canons, including Canon 14 (disqualifying interests) and Canon 15(b) (the catch-all provision), furnish adequate safeguards against abuse.

Subparts (b) and (c) of Canon 13 prohibit certain types of indirect ownership in transportation companies. The guidelines provide that, in determining the propriety of their financial holdings, "members and employees may rely on the most recent financial statement issued by the enterprise."

One comment noted that this language could be construed to require employees to be aware of financial statements that ordinarily are unavailable to security holders. For example, critical information might be contained in documents filed with federal or state regulatory bodies and not easily accessible to security holders.

We do not intend to hold employees accountable for information in financial statements that are ordinarily unavailable to them. Consequently, for the sake of clarity, we have added the phrase "to security holders" after the word "enterprises" in the above-quoted language from the guidelines.

Canon 14: Members and employees may not participate in any matter in which they have a substantial pecuniary interest or in which their impartiality could be questioned. The guidelines indicate that this canon also applies to the interests and business relationships of parents, spouses, or children of Commission members and employees.

One comment urged that the guidelines be expanded by including the financial interests and relationships of grandparents, siblings, grandchildren, and in-laws of Commission members and employees. We have not adopted this suggestion. It is doubtful that a relative outside the immediate family or household would be in any better position to influence a member's or employee's participation in a proceeding than a close friend. To require disqualification in all cases that in some way might affect a relative outside the immediate family or household would be overly broad and impractical. The number of such relatives could be large, and they might be geographically despersed. This could make it extremely difficult for a member or employee to stay informed of the current financial interests and business relationships of these relatives.

However, we have added "other relatives (including in-laws) residing in the immediate household" to the class of relatives described in the guidelines. This change tightens the canons by covering additional situations in which there may be a potential conflict or an appearance of a conflict. The revision should not pose an unwarranted burden, because a member or employee should be able to keep track of the financial interests and business relationships of relatives residing within his or her immediate household. Moreover, such an approach corresponds to the practice of the Civil Service Commission, which, in interpreting an analogous provision of its own rules, has extended the class of relatives whose financial interests must be *reported* (see discussion of Canon 26, *infra*) to include in-laws residing in the employee's immediate household.

Canon 15: As originally proposed, Canon 15 (like former Canon 14) prohibited members and employees from soliciting or accepting any gift, entertainment, or favor "which might reasonably be interpreted as being of such a nature that it could affect their impartiality." The quoted clause has been criticized on the ground that it could be used as a loophole to justify acceptance of improper gifts or entertainment. Specifically, a person might argue that his or her acceptance of excessive gifts should be excused because they could not reasonably be interpreted as affecting his or her impartiality. We believe this criticism has merit and accordingly have deleted the phrase.

On the other hand, we have added an exception to proposed Canon 15(a) to make it clear that the prohibition against acceptance of things of monetary value does not preclude a member or employee from accepting a loan from a financial institution on customary terms. The new language is taken from the Civil Service Commission's rules.

The third paragraph of the proposed guidelines to Canon 15 specified that regulated entities, associations of same, or firms who represent regulated entities to a substantial extent are included among the entities from whom gifts may not be accepted. We have now added the word "individuals" before "firms" in the guidelines to make it clear that persons who represent regulated entities are also covered by the prohibition.

Several comments criticized exception (ii) of Canon 15(a), which permits "acceptance of food or refreshments of *nominal value* on *infrequent* occasions in the course of a luncheon, dinner, or other meeting or an inspection tour where a member or employee may properly be in attendance." They contended that the underlined terms were subject to varying interpretations and did not give employees a clear standard to follow. For example, one employee wondered whether six or eight lunches per year would be considered "infrequent" and whether numerous lunches worth only a few dollars each and received from different regulated entities would be viewed cumulatively and thus as of more than "nominal value."

Although the language in question is taken verbatim from Executive Order 11222 and Civil Service Commission regulations, we agree that additional clarification is appropriate. Therefore, we have amplified the guidelines by adding three paragraphs dealing with the scope of exception (ii).

In addition, a number of employees requested clarification concerning what types of industry-related events they may properly attend. We have modified the first sentence of paragraph 3 under section (4) of the guidelines to Canon 15 to clarify this matter by drawing a distinction between working sessions and primarily social events. Bureau and Office heads are responsible for approving attendance at working sessions but approval by the Chairman or the Ethics Counselor is needed where primarily social events are involved.

A related question raised by the comments is whether Commission personnel authorized to attend a working industry-related meeting—for example, to address a luncheon meeting of an industry association or to participate in a seminar sponsored by such an association—may properly attend a social hour or dinner connected with the authorized event but preceding or following the actual working session. For example, an association will commonly sponsor a dinner or cocktail party the evening before or the evening after a seminar or conference. Such dinners or parties are frequently complimentary (paid for by the sponsor) or included in the cost of registration.

We believe that valuable business-related discussions may take place at these kinds of events and that attendance at them may further the very purposes sought to be served by the employee's participation in the working portion of the conference by allowing the employee to hear in an informal setting the views of a segment of the public affected by the Commission's regulatory activity. However, some limitations on attendance at such events are necessary in order to avoid an appearance of impropriety. The guidelines have been revised to in-

dicate that such attendance will be considered proper if the event is not at a time significantly removed from the business meeting and is not of a lavish nature.

A collateral issue suggested by the comments is whether an employee's spouse may properly attend events that the employee is authorized to attend. For example, when an employee is addressing a luncheon meeting, may his or her spouse attend and accept the lunch?

Although the issue is not easy to resolve, we believe that a spouse should be allowed to accompany an employee to an authorized event (and accept any food or refreshments the employee may accept), if the circumstances suggest that spouses are expected to attend and if the couple pays any travel and lodging expenses that may be occasioned by the spouse's attendance.

Several comments objected to the provision in the proposed guidelines under Canon 15 that the Chairman had to approve any annual leave taken to extend an out-of-town business trip for personal purposes. We are now convinced that a better way to ensure proper use of official travel is to monitor it closely at the immediate supervisory level. If the employee's supervisor determines that he or she can be spared for a further period on annual leave, there is no good reason why this should be forbidden. The purpose of the official portions of trips and their benefit to the Commission should be the relevant factors used to determine whether approval is justified. The revised guideline implements this approach.

The second paragraph of section (1) of the Canon 15 guidelines explains that free transportation is included within the phrase "gift, gratuity, entertainment, favor, loan, or any other thing of monetary value," as used in the canon. This canon prohibits acceptance of valuable free trips, such as intercity air, bus, or rail travel, but is not intended to prohibit acceptance of free incidental ground transportation except when it is feasible to identify the employee's fare for the transportation. For example, it would be proper for an employee to accept a ride in a host organization's courtesy bus or the private automobile of an officer of the organization; it would not be appropriate, however, to accept reimbursement from an organization for the cost of a taxi or airport bus.

Site inspections performed by Commission staff may involve travel between various sites in vehicles operated by regulated entities. We believe that such transportation may properly be accepted because it is for a valid business purpose and not of any personal benefit to the employee or of significant monetary value. An employee should not accept such transportation, however, if it would involve significant expense to the regulated entity. Doubts should be resolved by contacting the Ethics Counselor or a Deputy Ethics Counselor.

Acceptance by employees of unsolicited advertising or promotional material of nominal value, such as pens, note pads, and calendars, is allowed primarily to avoid burdening employees with a duty to return such unsolicited items. However, we do not encourage the use or display of such items in Commission offices and the guidelines have been expanded to remind employees to exercise discretion so that an appearance of impropriety is not created.

Section (2) of the proposed guidelines for Canon 15 would have required members and employees to pay their own travel and subsistence expenses in connection with their consideration of proposals for future employment with any person or group in the proscribed category. Various comments argued that such a guideline would be more restrictive than the general practice in private industry and government, would work an unnecessary hardship on Commission employees, and would effectively reduce employment opportunities in cities other than where an employee currently works. We were urged instead to permit an employee to accept reimbursement for reasonable travel and living expenses if the employment negotiations are undertaken in good faith.

We generally agree with that suggestion. Reimbursement for travel expenses incurred in connection with out-of-town employment interviews is a common and accepted practice in many professions. Even the government provides such reimbursement in certain circumstances to persons being considered for employment. The evil addressed by the guideline is that a regulated carrier (or its representative) might seek to influence an employee by providing free travel and living expenses under the guise of negotiations for future employment. That is, of course, a valid concern, and the proposed guideline would have largely eliminated the possibility of such a ruse. However, it would also have barred reimbursement even where there is a genuine prospect of future employment. This could prove to be a rather severe restriction on Commission employees who seek jobs in the private sector.

Civil Service Commission regulations expressly permit acceptance of reimbursement for reasonable travel and living expenses in connection with good faith employment negotiations. They provide that the prohibition against accepting gifts and entertainment does not preclude "an employee from receipt of *bona fide* reimbursement, unless prohibited by law, for expenses of travel and such other necessary subsistence as is compatible with this part for which no Government payment or reimbursement is made." 5 CFR 735.202(f). The regulation makes clear, however, that this should not be interpreted to permit an employee to receive payment for "excessive personal living expenses, gifts, entertainment, or other personal benefits."

In our judgment, there is no compelling reason to depart substantially from the policy reflected in this Civil Service Commission regulation. Reimbursement for reasonable travel and subsistence expenses incurred during employment negotiations with a regulated entity or its representative should not ordinarily create an appearance of a conflict of interest so long as the negotiations are in good faith and the employee refrains from participating in any matter in which the prospective employer is involved (see Canon 18). An employee accepting such reimbursement receives no real financial gain, because it merely covers reasonable expenses actually incurred. Although the employee benefits from the opportunity to discuss prospective employment, it is equally for the convenience of the prospective employer that the expenses are incurred. Viewed in this light, it seems appropriate to permit reimbursement for reasonable expenses. Of course, reimbursement for lavish or excessive outlays will not be permitted.

We recognize, however, that there may be potential for abuse in a system that does not provide any monitoring of such reimbursement. And there is always the possibility that an employee will feel, or appear to feel, a subtle gratitude to a company that paid his or her way to travel for an out-of-town interview. To alleviate these concerns, we have adopted the following approach.

First, to insure that there is a mechanism for monitoring such reimbursement for possible abuse, we have instituted a confidential reporting requirement. Reimbursement may be accepted only if relevant details are reported promptly to the Director of Personnel who will treat the reports as strictly confidential. Some employees may be reluctant to tell persons within the Commission that they are considering employment elsewhere. But since the reports will be maintained in confidence, we believe that limited disclosure is a reasonable price to pay for the freedom to accept travel reimbursement.

Second, to minimize any possibility of an appearance of impropriety, we have amended Canon 18, which re-

quires an employee to avoid participating in any matter involving a regulated entity (or its representative) with which he or she is negotiating for employment, by extending the disqualification for a period of six months following the termination of such negotiations. This change will provide a reasonable cooling-off period. The prohibition will apply regardless of whether the employee receives any reimbursement.

Canon 16: One comment focused on the provision in the guidelines to Canon 16 that allows the Chairman to authorize disclosure of confidential or official information prior to the official release date. The writer of the comment interpreted the guidelines to permit the Chairman to release the information prematurely to selected parties and suggested that such a practice would amount to a denial of due process.

We agree that release of confidential or official information to only selected parties is improper. However, the guideline does not contemplate such a practice. Rather, it should be interpreted as permitting the Chairman to authorize advance release in appropriate cases only if all parties receive the information at the same time. Early release can be desirable when Congress, the courts, or other government agencies need speedy notification of a particular Commission action. Early release is most likely to be appropriate with respect to actions of a broad public interest nature such as car service orders, enforcement actions against carriers or shippers, policy statements, or directed railroad service. In such cases, the procedures are often informal and there are no "parties" as such.

Canon 17: One comment criticized as vague and overly broad the language of Canon 17(a)(3), which bars any outside activity that might "bring discredit upon, or cause unfavorable criticism of, the Commission."

We agree with the comment and have deleted subsection (a)(3). The stricken language is similar to that of the old Canon 22 ("immoral or notoriously disgraceful conduct"), which has been completely revised in the new Canon 23. We believe that new Canon 23 serves the same purpose as subsection (a)(3) and is distinctly better worded. Since subsection (a)(3) is superfluous, we have eliminated it.

Another comment suggested that advance authorization to engage in outside employment or activities should not be required and that, in any event, the particular section chief rather than the Director of Personnel should be the authorizing official.

We disagree and have made no change in proposed Canon 17 or the accompanying guidelines. Advance authorization is clearly required if the agency is to maintain any check on outside activities. In order to assure a uniform policy on outside activities, the Director of Personnel should make the final decision after considering the recommendations of the employee's supervisors.

It was further suggested that our Canons should incorporate an Executive Order provision that prohibits any Presidential appointee from accepting compensation for any consultation, lecture, writing, or appearance that involves subject matter within the responsibility of that appointee's agency or that draws substantially upon data or ideas that have not become part of the body of public information. See 5 CFR 735.203(c).

We have adopted this proposal by adding a new subsection (c) to Canon 17. The provision applies, of course, only to members of the Commission and will simply serve to remind them of the limitation in question.

Canon 18: For the reasons discussed under Canon 15, we have amended Canon 18 by extending the disqualification for a period of six months following the termination of employment negotiations.

Canon 21: One comment suggested that Canon 21 should be revised to refer specifically to drugs. Although we intended to include drugs under the term "intoxicants" in the Canon as originally proposed, we have reworded Canon 21 in accordance with this suggestion to remove any possible ambiguity.

We emphasize that this canon does not condone the use of *illegal* drugs even if such use does *not* impair an employee's ability to function on the job. Any use of such substances is clearly barred by proposed Canon 23 (now renumbered Canon 22).

Proposed Canon 22: We have eliminated this canon, which dealt with employee indebtedness and was opposed by a number of comments as an unwarranted invasion of personal privacy. Although this provision was contained in our previous Canons and based on Civil Service Commission regulations, existing personnel procedures are adequate to deal with any problems posed by employee indebtedness. We see no reason to touch on this matter in the Canons. Accordingly, we have eliminated this canon and renumbered the remaining canons.

Canon 25: We have substantially expanded Appendix II, referred to in Canon 25, to give a more complete description of statutory ethical provisions applicable to all government employees. We believe that the previous descriptions were too brief to give employees useful information regarding the statutory provisions.

Because Congress may change these statutory provisions from time to time and the summaries provided are necessarily abbreviated, employees are cautioned not to rely solely on the descriptions in Appendix II but to consult the statutes or seek the advice of the Ethics Counselor to resolve particular questions.

Canon 26: The proposed guidelines explained that an employee's financial statement should include the interests of a spouse, minor child, or any "blood relation" living in the employee's immediate household. The Civil Service Commission's current view is that "blood relation" should include in-laws. In order to remove any ambiguity, we have changed the guideline to refer to "any relative (including in-laws)" residing in the employee's immediate household. This change does not require an employee to report the interests of relatives such as grandparents, siblings, and grandchildren who do not live in the employee's immediate household, because a general reporting requirement with respect to the financial interests of such persons would be too burdensome. It would be unduly onerous to require employees to keep informed of the financial holdings of relatives residing elsewhere. See the discussion under Canon 14, *supra*.

Several comments focused on the positions to be included in Appendix I, which lists those positions whose incumbents must file confidential financial statements. The comments disagreed on which positions are sensitive enough to warrant requiring the incumbents to file a statement. Rather than delay adoption of these Canons while we review which positions should be included, we will address this matter more fully at a later time. Meanwhile, we point out that Canon 26 establishes procedures by which employees may request a review if they believe their positions have been improperly designated as requiring submission of a financial statement.

The proposed Canon and guidelines omitted any reference to employees serving in an "acting" status in the positions listed in Appendix I. We believe that an employee serving in an "acting" status for more than 30 days should file a financial statement, and we have added a provision to that effect to the guidelines.

To simplify changes to the list of positions requiring submission of financial statements, Appendix I contains a prefatory statement that the list is subject to change by the Chairman without FEDERAL REGISTER notice. This will also make it unnecessary to obtain Civil Service Commission approval for routine changes in the list. With respect to changes in position titles, the "Chairman" means the Director of

Personnel under delegation of authority.

We have made no effort in connection with Canon 26 to take account of the new financial disclosure provisions of the Ethics in Government Act of 1978, Pub. L. 95-521. We will make any appropriate changes at the proper time in light of Civil Service Commission guidance.

Canon 27: One comment suggested that the Chief Administrative Law Judge review the financial statements of all ALJ's to avoid potential conflicts of interest in the assignment of cases. This suggestion is based on a recent recommendation by the Comptroller General that the agencies institute such a procedure. We agree with this proposal and, accordingly, have added a new subsection (c) to Cannon 27 incorporating the suggested provision.

Canon 28: Some modification of the proposed canon, which deals with employment disclosure requirements for employee relatives, is appropriate. Specifically, we adopt the approach followed in Canons 14 and 26 and have added "any relatives (including in-laws) residing in the immediate household" to the class of persons subject to the employment disclosure requirements. Including relatives living within the same household should encompass those having interests in common and having the opportunity to engage in communications which may result in premature disclosure of agency information. A reporting requirement limited to those within the same household should not cause an undue burden.

Canon 28 imposes a new reporting requirement and takes effect 30 days after publication of the revised Cannons. At that time Commission members and employees must be in compliance with this family employment disclosure provision.

Canon 30: One comment suggested that the guidelines should contain, at least in general terms, an enumeration of the disciplinary or remedial actions that might be taken for specific offenses.

We have not adopted this suggestion. It is impractical to formulate a schedule of offenses and corresponding punishments. Determining appropriate punishments is a delicate matter, requiring the utmost flexibility. Each case must depend on its own facts and circumstances. A "scorecard" approach is simply not appropriate.

Additional Canons of Conduct for Members: In the course of our evaluation of the proposed canons, we have also scrutinized the additional canons that apply to Commission members only. Generally, we believe that they should be adopted as proposed. However, certain modifications of proposed Canon 3(a) are in order.

Several aspects of the proposed canon could cause confusion. Although the second sentence of proposed Canon 3(a) prohibits *ex parte* communications with respect to adjudicatory proceedings, the third sentence states that, in the context of rulemaking, members "have a duty to solicit the views of interested persons." The juxtaposition of these two statements, and the language used, could, contrary to our intention, be read as encouraging "off-the-record" contacts in rulemaking proceedings.

The unintended thrust of this language could conflict with the prohibition against *ex parte* contacts in formal rulemaking (see 5 U.S.C. 557(d)), and the caution required of an agency in informal rulemakings in light of *Home Box Office* v. *FCC*, 567 F. 2d 9 (D.C. Cir. 1977). Consequently, we have deleted the second and third sentences of proposed Canon 3(a). The Commission already has rules governing *ex parte* communications (see 49 CFR Part 1100, App. C), and deletion of these two sentences should eliminate possible confusion and resulting legal problems. Moreover, the policy underlying the third sentence, *i.e.*, the need for members to communicate with those affected by regulation, is addressed in the last sentence of Canon 3(a). Additionally, we have deleted as superfluous the phrase "rulemaking and administrative" in the last sentence.

We have also deleted "unreasonable hospitality" from the last sentence of Canon 3(a). The implication that "reasonable hospitality" is proper could have run counter, in certain circumstances, to the strictures of Canon 15 of the general canons. Since Canon 1 of Subpart C commits the members to observing "the standards of personal conduct in the Canons of Conduct for Members and Employees," Canon 15 governs the acceptance by members of gifts, entertainment, and favors (*i.e.*, hospitality). Therefore, the "unreasonable hospitality" language of Canon 3(a) served no useful purpose and might have been misleading in some instances.

Miscellaneous: The revised Canons and guidelines impose several new reporting or disclosure requirements. As with the new reporting requirement under Canon 28, these will take effect 30 days after publication of the revised Canons. The Ethics Counselor is authorized to extend the effective date for a reasonable time for good cause upon request of an individual employee.

In addition to the changes discussed above, we have made several minor technical changes in the Canons and guidelines that do not require discussion.

Subpart B—Canons of Conduct

Sec.
1000.735-11 General standard of conduct.
1000.735-12 Interpretation and advisory service.
1000.735-13 Prohibited financial interests.
1000.735-14 Disqualifying interests.
1000.735-15 Gifts, entertainment, and favors.
1000.735-16 Disclosure and misuse of information.
1000.735-17 Outside employment and other activity.
1000.735-18 Future employment.
1000.735-19 Ex parte communication.
1000.735-20 Use of Federal property.
1000.735-21 Use of intoxicants.
1000.735-22 Prohibited conduct.
1000.735-23 Intermediaries.
1000.735-24 Gambling, betting, and lotteries.
1000.735-25 Miscellaneous statutory provisions.
1000.735-26 Statements of employment and financial interests.
1000.735-27 Review of statements of employment and financial interests.
1000.735-28 Disclosure of employment of parent, spouse, child, or other relative.
1000.735-29 Specific provisions governing special Government employees.
1000.735-30 Disciplinary and other remedial action.

AUTHORITY: Sec. 6, 36 Stat. 915, as amended, secs. 12, 20, 24 Stat. 383, as amended, 386 as amended, sec. 25, 41 Stat. 498, as amended, sec 220, 49 Stat. 563 as amended, sec. 313, 54 Stat. 944, as amended, sec. 412, 56 Stat. 294, as amended; 45 U.S.C. 29, 49 U.S.C. 12, 20, 26, 320, 913, 1012, 5 CFR Part 735.

Subpart B—Canons of Conduct

§ 1000.735-11 General standard of conduct.

Members and employees of the Commission hold a public trust. To honor that trust, they must maintain unusually high standards of honesty, integrity, and impartiality in all aspects of their official conduct. They shall perform their duties fairly and expeditiously and with a view to carrying out the national transportation policy. They shall be courteous and prompt in serving the public.

§ 1000.735-12 Interpretation and advisory service.

(a) The Commission's General Counsel shall be the Ethics Counselor. The Director of Personnel shall be the principal Deputy Ethics Counselor. The Ethics Counselor, with the approval of the Chairman, shall designate additional Deputy Ethics Counselors as he or she deems necessary or appropriate to carry out his or her responsibilities under these Canons.

(b) On January 1 and June 30 of each year, the Ethics Counselor shall report to the Commission on the operation of the Canons and guidelines with any recommendations the Ethics Counselor deems advisable.

(c) The Director of Personnel shall furnish copies of the Canons of Conduct and guidelines to each new member and new employee upon his or her entrance on duty. The Ethics Counselor shall annually, or as circumstances may warrant, bring to the attention of each member or employee the Canons of Conduct and guidelines. The Ethics Counselor shall inform all members and employees of the names of the Deputy Ethics Counselors and of the procedures for seeking advice concerning the interpretation and application of these Canons.

§ 1000.735–13 Prohibited financial interests.

Members and employees shall not be employed by, or hold any official relation to, or own any securities of, or be in any manner pecuniarily interested in carriers to the extent prohibited by the Interstate Commerce Act. This Canon prohibits (a) any direct interest in any for-hire transportation company whether or not subject to the Interstate Commerce Act, (b) any interest in any company that (1) owns or controls and (2) has more than two percent of its assets invested in or derives more than two percent of its income from a for-hire transportation company whether or not subject to the Interstate Commerce Act, and (c) any interest in any company, mutual fund, or other enterprise which in turn has an interest of more than ten percent of its assets invested in or derives more than ten percent of its income from for-hire transportation companies whether or not subject to the Interstate Commerce Act.

GUIDELINES

The two-percent and ten-percent limitations of (b) and (c) should be interpreted as applying only to direct holdings of a company, mutual fund, or other enterprise, and not to indirect holdings. In determining whether these limitations are applicable, members and employees may rely on the most recent financial statement issued by the enterprise to security holders.

Where a previously-proper holding of a member or employee becomes prohibited because of the enterprise's acquisition of an interest in a for-hire transportation company, the holding must be disposed of within nine months.

The financial interests prohibited by this section are absolute unless a waiver, based on serious financial hardship or remoteness of interest, is obtained from the Ethics Counselor.

§ 1000.735–14 Disqualifying interests.

(a) Members and employees shall not participate in any matter in which they have a substantial pecuniary interest or in which their impartiality might reasonably be questioned.

(b) Once members or employees have been disqualified from participating in any matter, they shall not engage in any discussion or be present during any action relating to the matter.

GUIDELINES

Members and employees should disqualify themselves whenever, in their own judgment, a disqualifying interest exists. If an employee's disqualification to participate in a matter is questioned by someone else and the employee declines to disqualify himself or herself, the final determination as to whether the employee should be disqualified will be made by the Chairman. A member is the sole judge of his or her own disqualification.

A "substantial pecuniary interest" should be interpreted to include any situation in which members or employees, or their parents, spouses, children, or other relatives (including in-laws) residing in the same household, have a direct or indirect financial interest that could be materially affected.

Matters in which members or employees' "impartiality might reasonably be questioned" should be interpreted to include, among other things, any matter in which they or their parents, spouses, children, or other relatives (including in-laws) residing in the same household have a past or present association with a party or a representative of a party affected by the matter which reasonably appears to affect their decision.

§ 1000.735–15 Gifts, entertainment, and favors.

(a) Members and employees of the Commission shall not solicit or accept, directly or indirectly, any gift, gratuity, entertainment, favor, loan, or any other thing of monetary value, from any person, association, or group, that (1) has, or is seeking to obtain, contractual or other business or financial relationships with the Commission; or (2) conducts operations or activities that are subject to regulation by the Commission; or (3) has interests which may be substantially affected by the member's or employee's performance or nonperformance of his or her official duty; or (4) is in any way attempting to affect the member's or employee's official actions. The requirements of this subparagraph do not apply to (i) obvious family or personal relationships when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors; (ii) acceptance of food or refreshments of nominal value on infrequent occasions in the course of a luncheon, dinner, or other meeting or an inspection tour where a member or employee may properly be in attendance; (iii) acceptance of unsolicited advertising or promotional material of nominal intrinsic value, such as pens, pencils, note pads, calendars, and other similar items; or (iv) acceptance of loans from banks or other financial institutions on customary terms of finance for proper and usual activities of members or employees, such as home mortgage loans.

(b) Members and employees shall avoid any action, whether or not specifically prohibited, which might result in, or create the appearance of: (1) Using public office for private gain; (2) giving preferential treatment to any person; (3) impeding Commission efficiency or economy; (4) losing complete independence or impartiality; (5) making a Commission decision outside official channels; or (6) affecting adversely the confidence of the public in the integrity of the Commission.

(c) Members and employees shall not solicit a contribution from any other member or employee, or make a donation for a gift to a member or employee in a superior official position, or accept gifts from members or employees receiving less salary than themselves. This subparagraph does not prohibit a voluntary gift or donation of nominal value made on a special occasion such as marriage, illness, or retirement.

(d) Members and employees shall not accept a gift, present, decoration, or other thing from a foreign government unless authorized by Congress as provided by the Constitution and in 5 U.S.C. 7342.

GUIDELINES

(1) This canon is designed to prohibit conduct which gives the appearance of or creates an actual conflict of interest for members or employees.

The term "gift, gratuity, entertainment, favor, loan, or any other thing of monetary value" includes such things as invitations to lunches, dinners, parties, or other social events; tickets to cultural or sporting events; free use of facilities such as hotels or other accommodations; free transportation; free use of club privileges or similar facilities.

The persons, associations, and groups from whom gifts and other things of value may not be accepted include, but are not limited to, regulated entities, associations of regulated entities, and individuals or firms whose work involves to a substantial extent the representation of regulated entities.

A policy favoring the prohibitions of this canon rather than stretching the exceptions is intended.

(2) Members and employees considering possible proposals for future employment with persons, associations, or groups described in the canon and these guidelines may accept reimbursement for reasonable travel and subsistence expenses actually incurred during employment negotiations provided they promptly report the relevant details concerning the reimbursement to the Director of Personnel, who shall treat the reports as strictly confidential. At a minimum, the following information should be reported: name and address of prospective employer; dates of any travel and hotel accommodations; statement of amount reimbursed, itemized to show travel, lodging, and meals. These reports will be kept strictly confidential and will not be considered in any personnel actions affecting the persons filing them, unless they show evidence of improper conduct.

While this guideline permits members and employees to accept reimbursement for reasonable expenses related to *bona fide* employment negotiations, it should not under any circumstances be interpreted to permit reimbursement for lavish or excessive personal expenses. Members and employees are also reminded of the requirements of Canon 18 governing withdrawal from participation in matters affecting a prospective employer both during and after negotiations.

(3) The "obvious family or personal relationship" exception permits the exchange of gifts and entertainment where it is clear that the offering is prompted by the personal or family relationship. If the donor's business interests might be the motivating factor behind the gift or entertainment, the member or employee should carefully consider the circumstances surrounding the offer before accepting. The purpose of this exception is to avoid interfering with a member's or employee's personal relationships which unrelated to his or her job.

A gift or entertainment from a relative is mormally permissible, unless it appears that it is motivated by the relative's business interests. In the case of personal friends who would otherwise be forbidden donors, members and employees should carefully consider the circumstances surrounding gifts and entertainment and should take reasonable steps to avoid the appearance of a conflict of interest. For example, members and employees are free to meet such personal friends for lunch or dinner but to avoid the appearance of a conflict of interest should pay their own checks. Similarly, members and employees may accept gifts from such personal friends on a special occasion, such as a birthday, wedding, or Christmas, if such gifts are normally exchanged by them. But members and employees should consider whether the donor would have offered the item of value if he or she were in a different business and if the recipient were not a Commission employee. If there is doubt concerning the application of the exception, the gift should not be accepted.

(4) Exception (ii) applies to those events at which members and employees may properly be in attendance.

Members may attend any event which in their own opinion will benefit the Commission and assist in performing their official duties, as long as attendance will not reflect adversely on their impartiality. In deciding whether to attend an event members should carefully consider (1) the identity of the sponsor, (2) the location, (3) the duration, (4) the purpose, and (5) the persons expected to attend.

Employees may properly attend events sponsored by a person or entity subject to Commission regulation if the event can reasonably be classified as a business meeting involving a formal program designed to be informative or educational. Attendance at events of this nature is subject to approval by the head of the Bureau or Office involved. Where an event is primarily social in character, employees may attend only where their attendance is ruled to be proper by the Chairman or the Ethics Counselor. Attendance will be authorized only if it will further the interests of and provide benefits to the Commission, in light of the employee's job duties and level of responsibility.

Attendance at primarily social events sponsored by a broadly-based group with members from many different organizations or companies, such as the ICC Practitioners, and attended by large numbers of persons in addition to Commission members or employees, will normally be authorized, unless the circumstances create an appearance of impropriety. Attendance at events sponsored by one or a few companies, or by other narrowly-based groups, or at events to which only Commission members and employees are invited, will be closely scrutinized; attendance will be authorized only if there is a clear benefit to the Commission and the public interest.

When authorizing an employee to attend an event which is sponsored by a person or entity subject to Commission regulation and which is to last more than one day, the approving official will designate the period of time the employee may be in attendance, based on his or her judgment as to which segments of the event are relevant to the employee's responsibilities. An employee authorized to attend an out-of-town event may remain at the event for a longer period only upon the express approval of his or her Bureau or Office head. An employee's time away from the office beyond that spent attending that portion of an event which is relevant to the employee's responsibilities will be charged to annual leave.

When attending a meeting or other event, members and employees may accept a plaque or similar memento in honor of their appearance and any item of nominal value given to all participants.

(5) The phrase "luncheon, dinner, or other meeting," as used in exception (ii), refers primarily to working sessions that are integrated with a lunch, dinner, or refreshments. For example, an employee in attendance at a day-long seminar that includes a luncheon or dinner as part of the program, or an employee speaking to a luncheon or dinner gathering, may accept the accompanying meal.

The exception also extends to a social hour or dinner event connected with an authorized working session if the social hour or meal is not significantly removed in time from the working session and would not be considered lavish entertainment. For example, an employee scheduled to address a convention meeting or to participate in a panel discussion ordinarily may attend a related social hour sponsored by the host organization on the evening before or the evening after the working meeting, if it is reasonable to expect that attendance may lead to business-related discussions that will further the purposes sought to be served by the employee's participation in the working portion of the conference.

Employees may not otherwise accept invitations to primarily social gatherings sponsored by entities within the class identified in the canon unless authorized to do so by the Chairman or the Ethics Counselor.

The phrase "nominal value," as used in exception (ii), does not lend itself to precise quantification. It may have a different meaning in different situations. In some circumstances, food and refreshments served as part of a working lunch may properly be viewed as of nominal value if the cost is less than ten dollars. The nominal value limitation in that context is designed to preclude lavish meals or entertainment. In connection with an inspection tour, by contrast, only refreshments worth about one dollar or less—the equivalent, for example, of coffee and a doughnut—may ordinarily be viewed as of nominal value. The purpose of the nominal value limitation in the inspection tour context is to allow an employee to accept normal social courtesies but not to accept more substantial food or refreshment that is unwarranted in light of the circumstances.

(6) The "advertising or promotional material" exception is intended to include only inexpensive items that businesses commonly distribute to large numbers of persons. While acceptance of such items is permitted, their display in Commission offices is not encouraged, and discretion should be exercised so that an appearance of impropriety is not created. Candy, fruit, alcoholic beverages, and similar items do not ordinarily fall within this exception.

(7) Although the canon allows members and employees to accept some gifts, it does not *require* acceptance of anything. Members and employees may always decline gifts that the canon permits them to accept.

(8) Subsection (c) does not prohibit the voluntary exchange of inexpensive gifts on occasions such as birthdays or holidays.

§ 1000.735-16 Disclosure and misuse of information.

Members and employees of the Commission shall not use for personal gain or disclose to unauthorized persons confidential information not available to the general public. They shall not disclose or release official information prior to the time authorized for its release.

GUIDELINES

"Confidential information not available to the general public" includes proprietary information submitted to the Commission with the reasonable expectation that it will be treated confidentially. "Official information" includes decisional orders and other agency actions that have not yet been served or otherwise officially released to the public.

This canon prohibits disclosure or release of information in either category to persons not employed by the Commission or employees whose official responsibilities do not require access to the information. The Chairman of the Commission may authorize disclosure or release of confidential information or official information prior to the official release date if he or she determines, in individual cases or in an appropriate class of cases, that such disclosure or release would further important interests of the Commission or the public and would neither significantly compromise the rights of any person nor allow any person improperly to use such information for private financial gain.

§ 1000.735-17 Outside employment and other activity.

(a) Members and employees shall not engage in any outside employment or other outside activity, including teaching, lecturing, writing, consultation, discussion, or appearance, with or without compensation, in circumstances which might (1) reasonably result in a conflict of interest or an apparent conflict of interest between their private interests and their official Government duties and responsibilities, or (2) interfere with the effi-

cient performance of their official duties.

(b) Advance authorization for employees to engage in outside employment or other outside activity described in paragraph (a) of this section shall, in any event, be obtained from the Director of Personnel, via supervising channels. See Manual—Administration 22-781 and 24-311.

(c) Members shall not receive compensation or anything of monetary value for any consultation, lecture, discussion, writing, or appearance the subject matter of which is devoted substantially to the responsibilities, programs, or operations of the Commission, or which draws substantially on official data or ideas that have not become part of the body of public information.

GUIDELINES

Outside employment will not be authorized unless it is confined strictly to nonworking hours and will not interfere with employees' performance of their official duties.

§ 1000.735-18 Future employment.

If a member or employee of the Commission entertains a proposal for future employment by any entity subject to regulation by the Commission or by associations or representatives of such entities, the member or employee must refrain from participating in the decision or disposition of any matter in which the person, association, or representative is known to have a direct or substantial interest both during such negotiations and for a period of six months after termination of negotiations. If employment is accepted, the member or employee must continue to refrain from participating in such matters until he or she severs the connection with the Commission.

§ 1000.735-19 Ex parte communication.

Members and employees of the Commission must conform to the standards adopted by the Commission reprinted in Appendix C of the Rules of Practice of the Commission (Part 1100 of this chapter).

§ 1000.735-20 Use of Federal property.

Members and employees of the Commission shall not directly or indirectly use, or allow the use of, Federal property of any kind, including property leased to the Government, for other than officially approved activities. They also have a positive duty and responsibility to protect and conserve all Federal property, which is entrusted or issued to them.

§ 1000.735-21 Use of intoxicants.

Members and employees of the Commission shall not use alcohol, drugs, or other intoxicants so as to impede the discharge of their official duties.

§ 1000.735-22 Prohibited conduct.

Members and employees shall not engage in criminal or dishonest conduct, conduct that significantly interferes with their effective performance of official responsibilities, or conduct that is materially incompatible with their official position.

GUIDELINES

This canon is intended to prohibit unlawful or dishonest conduct. It will not be construed to prohibit legitimate private conduct or to prevent members or employees from exercising rights guaranteed by the laws and Constitution of the United States.

§ 1000.735-23 Intermediaries.

Members and employees of the Commission shall not recommend or suggest the use of any nongovernment intermediary (individual, firm, corporation, or other entity) offering any service as consultant, agency representative, attorney, expeditor, or specialist for the purpose of assisting in any negotiations, transactions, or other business with or before this Commission. However, making available general reference lists of non-governmental intermediaries, the use of which is authorized by the Secretary of the Commission, will not be deemed to violate this section.

GUIDELINES

"General reference lists" refers only to such lists of licensed attorneys and registered practitioners as may be compiled and maintained by a state or local bar association, the ICC Practitioners Association, the Motor Carrier Lawyers Association, and similar organizations. Lists compiled by employees on the basis of their own knowledge or experience are not "general reference lists" within the meaning of the Canon.

§ 1000.735-24 Gambling, betting, and lotteries.

Members and employees shall not participate, while on federally owned or leased property or while on duty for the Commission, in any gambling activity including the operation of a gambling device, in conducting a lottery or pool, in a game for money or property, or in selling or purchasing a numbers slip, ticket, chance, voice, share, or any similar item.

§ 1000.735-25 Miscellaneous statutory provisions.

Members and employees shall acquaint themselves with the statutory provisions described in Appendix II to this subpart, which relate to ethical and other conduct as a member and employee of the Commission and the Government.

§ 1000.735-26 Statements of employment and financial interests.

(a) All employees in the positions specified in Appendix I to this subpart shall submit to the Director of Personnel within 30 days after their entrance on duty a confidential statement of employment and financial interests on ICC Form No. 1164. Pursuant to the grievance procedures enumerated in the Manual-Administration 22-725, employees so specified may file and have reviewed a complaint that the positions have been improperly designated as requiring the submission of a statement of employment and financial interests.

(b) Any changes in, or additions to, the information contained in an employee's statement of employment and financial interests shall be reported in a supplementary statement as of June 30 each year. Where no changes or additions occur, a negative report is required.

GUIDELINES

The financial statements required by this section are in addition to, and not in substitution for, or in derogation of, any similar requirement imposed by law, order, or regulation. The submission of financial statements by employees does not permit them or any other person to participate in matters in which participation is prohibited by law, order, or regulation. Notwithstanding the filing of these statement, employees shall at all times avoid acquiring financial interests or taking other actions that would result in a violation of the conflict-of-interest provisions of 18 U.S.C. 208 or these Canons of Conduct.

In the event that any required information, including holdings placed in trust, is not known to the employee but is known to another person, the employee should request that other person to submit the information on his or her behalf and should report the request in Part IV of ICC Form 1164.

The interest, if any, of a spouse, minor child, or any relative (including in-laws) residing in an employee's immediate household shall be reported as his or her interest. If that information is to be supplied by others, this should be indicated in Part IV of ICC Form 1164. Information will not be required if the reporting individual certifies that he or she has no knowledge of the required information, has made every reasonable effort to obtain it, and neither derives nor expects to derive any benefit from the financial interests involved.

Employees are not required to submit any information relating to their connection with, or interest in, a professional society or a charitable, religious, social, fraternal, recreational, public service, civil, or political organization or any similar organization not conducted as a business enterprise or engaged in the ownership or operation of a business enterprise. Educational and other institutions doing research and development or related work involving grants of money from contracts with the Government are deemed "business enterprises" for reporting purposes and should be included.

Any person designated to serve in an "acting" status in one of the positions listed

in Appendix I shall file a financial statement in accordance with this canon within 30 days after serving in an "acting" capacity for 30 days.

§ 1000.735-27 Review of statements of employment and financial interests.

(a) The Director of Personnel shall review employees' annual statements and supplementary statements of employment and financial interests to ascertain conflicts of interest or the appearance of conflicts of interest.

(b) Financial statements shall be kept confidential. The Director of Personnel is responsible for maintaining the statements in confidence and shall not allow access to, or allow information to be disclosed from, these statements except as provided by law or regulation.

(c) The Chief Administrative Law Judge shall review the financial statements of all Administrative Law Judges to avoid conflicts of interest in the assignment of cases. This review shall be in addition to the review by the Director of Personnel.

GUIDELINES

Whenever, following review of the annual and supplementary statements of employment and financial interests, a conflict of interest may exist or appear to exist, the Director of Personnel shall notify the employee concerned, who shall promptly submit an explanation to the Director of Personnel regarding the existence or the appearance of a conflict of interest.

If, after reviewing the employee's explanation and after consulting with the Ethics Counselor, the Director of Personnel concludes that the conflict or appearance of a conflict of interest does exist, the Director of Personnel shall advise the employee of the steps necessary to remedy the situation.

§ 1000.735-28 Disclosure of employment of parent, spouse, child, or other relative.

Each employee whose parent, spouse, or child, or any other relative (including in-laws) residing in the immediate household, is employed by an entity subject to regulation by the Commission shall promptly notify the Director of Personnel of the relative's employment and furnish a detailed statement of the relative's job duties and responsibilities. The employee shall promptly notify the Director of Personnel of any change in the relative's employment, including a change in job duties or responsibilities.

GUIDELINES

The term "employed by an entity subject to regulation by the Commission" includes those who represent and perform a majority of their services for such an entity, as well as those directly employed by such an entity.

Each notification furnished under subparagraph (a) will be reviewed by the Director of Personnel to determine whether the situation presents a conflict of interest or appearance of a conflict of interest.

Whenever, in the opinion of the Director of Personnel, the situation may present a conflict of interest or appearance of a conflict of interest, the Director of Personnel shall notify the employee, who shall promptly submit an explanation regarding the existence or the appearance of a conflict of interest, together with any additional information requested by the Director of Personnel.

If, after reviewing the submitted explanation and information and after consulting with the Ethics Counselor, the Director of Personnel concludes that the situation does present a conflict of interest or an appearance of a conflict of interest, the Director of Personnel shall advise the employee of the necessary steps to remedy the situation. The Director of Personnel may, after consulting with the employee and the employee's Bureau or Office Head, take any personnel action that may be appropriate to eliminate the conflict of interest or appearance of a conflict of interest.

§ 1000.735-29 Specific provisions governing special Government employees.

(a) Special Government employees, as defined in 18 U.S.C. 202, shall not use (1) their Government employment for a purpose that is, or gives the appearance of being, motivated by a desire for private gain for themselves or another person, particularly one with whom they have family, business, or financial ties; (2) any inside information obtained as a result of Government employment for private gain for themselves or another person either by direct action on their part or by counsel, recommendation, or suggestion to another person, particularly one with whom they have family, business, or financial ties; (3) the Government to coerce, or give the appearance of coercing, a person to provide financial benefit to themselves, or another person, particularly one with whom they have family, business, or financial ties.

(b) Special Government employees shall adhere to all Canons of Conduct specified in this subpart except §§ 1000.735-17(b) and 1000.735-26. In lieu thereof, each special Government employee shall submit a statement of his or her employment and financial interest on ICC Form No. 1163 to the Director of Personnel at the time of his or her employment and shall keep the statement current throughout employment by submitting supplementary statements whenever any change in or addition to the information contained in the statement occurs.

§ 1000.735-30 Disciplinary and other remedial action.

Any violation of these Canons of Conduct by an employee shall be cause for appropriate disciplinary or other remedial action as provided in the Manual—Administration 22-751, which may be in addition to any penalty prescribed by law.

APPENDIX I—EMPLOYEES REQUIRED TO SUBMIT PERIODIC DISCLOSURE STATEMENTS (49 CFR 1000.735-26)

The following list of positions required to file financial statements is subject to change by the Chairman without publication in the FEDERAL REGISTER. The Commission's Director of Personnel maintains at all times a current list of such positions.

OFFICE OF THE CHAIRMAN

1. Attorneys (or other professional staff).
2. Confidential Assistant to the Chairman.
3. Writer Editor (Assistant to the Chairman).
4. Public Information Officer.
5. Director, Policy Review Office.
6. Small Business Assistance Officer.
7. Congressional Relations Officer.
8. Deputy Congressional Relations Officer.
9. Chief, Clearance Unit.

COMMISSIONERS' OFFICES

1. Attorneys (or other professional staff).
2. Confidential Assistants to the Commissioners.

OFFICE OF THE MANAGING DIRECTOR

1. Managing Director.
2. Assistant Managing Director.
3. Assistant Managing Director (Operations and Assessment).
4. Assistant to the Managing Director (Field Operations).
5. Attorney-Adviser (General).
6. Director of Personnel.
7. Chief, Budget and Fiscal Office.
8. Assistant Chief, Budget and Fiscal Office.
9. Section Chiefs.
10. Chief, Procurement and Property Management Branch, Section of Administrative Services.

OFFICE OF THE REGIONAL MANAGING DIRECTORS (FIELD)

1. Regional Managing Directors.
2. Assistant Regional Managing Directors.
3. Regional Auditors.
4. Assistant Regional Auditors.
5. Regional Counsels.
6. Assistant Regional Counsels.
7. Regional Operations Directors.
8. Assistant Regional Operations Directors.
9. Chief Special Agents.
10. Officers in Charge, all offices.

OFFICE OF THE SECRETARY

1. Secretary.
2. Assistant Secretary.
3. Chief, Section of Dockets and Service.

OFFICE OF THE GENERAL COUNSEL

1. General Counsel.
2. Deputy General Counsel.
3. Associate General Counsels.

RAIL SERVICES PLANNING OFFICE

1. Director.
2. Section Chiefs.
3. Branch Chiefs.

OFFICE OF HEARINGS

1. Chief Administrative Law Judge.
2. Assistant Chief Administrative Law Judges.
3. Administrative Law Judges.

OFFICE OF PROCEEDINGS

1. Director.
2. Associate Director.
3. Deputy Directors.
4. Assistant Deputy Directors.
5. Chief, Section of Case Control and Information.
6. Chief, Section of Energy and Environment.
7. Branch Chiefs, Section of Finance.
8. Branch Chiefs, Section of Rates.
9. Branch Chiefs, Section of Operating Rights.
10. Chairmen and Members of Employee Boards.

BUREAU OF ACCOUNTS

1. Director.
2. Assistant Director.
3. Assistant to the Director.
4. Section Chiefs.
5. Assistant Section Chiefs.
6. Branch Chiefs.

BUREAU OF ECONOMICS

1. Director.
2. Assistant Director.
3. Assistant to the Director.
4. Section Chiefs.

BUREAU OF INVESTIGATIONS AND ENFORCEMENT

1. Director.
2. Assistant Director.
3. Assistant to the Director.
4. Section Chiefs.

BUREAU OF OPERATIONS

1. Director.
2. Assistant Director.
3. Assistant to the Director.
4. Section Chiefs.
5. Assistant Section Chiefs.
6. Branch Chiefs.
7. Chairmen and Members of Employee Boards.

BUREAU OF TRAFFIC

1. Director.
2. Assistant Director.
3. Section Chiefs.
4. Branch Chiefs.
5. Chairmen and Members of Employee Boards.

APPENDIX II—MISCELLANEOUS STATUTORY PROVISIONS

Members and employees have an affirmative duty to acquaint themselves with all statutory provisions relating to the lawfulness and propriety of their official conduct. The following provisions, most of which apply to federal employees and officials in general, are presented in summary form. The actual text should be consulted for the particulars of prohibited conduct, as well as for specific exceptions and exemptions.

1. *Code of Ethics for Government Service*

All members and employees shall observe those fundamental principles of conduct in public service declared in House Concurrent Resolution 175, Code of Ethics for Government Service, which states in general terms those concepts of high obligations and responsibilities, as well as rights and privileges, attendant upon service for our Government. (72 Stat. B 12).

2. *Compensation to public officials for claims, contracts, etc.* (18 U.S.C. 203)

No public official shall directly or indirectly receive or solicit compensation for services rendered by himself or herself, or another, in relation to any application, contract, claim, controversy, or other matter in which the United States has a direct and substantial interest.

No person shall knowingly directly or indirectly give, promise, or offer any compensation to a public official for services rendered.

Violation of these prohibitions is punishable by a maximum fine of $10,000, or imprisonment for not more than two years, or both; and removal.

3. *Prosecution of claims against and other matters affecting the Government by officers and employees* (18 U.S.C. 205)

No officer or employee of the United States shall act as agent or attorney, or receive any gratuity, for the prosecution or assistance in the prosecution of any claim against the United States.

No officer or employee of the United States shall act as agent or attorney for anyone in connection with any proceeding, application, contract, controversy or other matter in which the United States has a direct and substantial interest.

Violation of these prohibitions is punishable by a maximum fine of $10,000, or imprisonment for not more than two years, or both.

4. *Post employment conflict of interest* (18 U.S.C. 207)

No officer or employee of the United States Government, after his or her employment has ceased, shall knowingly act as attorney, or otherwise represent any other person, or make any written oral communication with the intent to influence, on behalf of any other person, in connection with any judicial or other proceeding, application, contract, claim, controversy, charge, or other matter in which the United States has a direct and substantial interest and in which he or she participated personally and substantially as an officer or employee.

No Government officer or employee, within two years after his or her employment has ceased, shall knowingly act as attorney or otherwise represent any other person in connection with any judicial or other proceeding, application, contract, claim, controversy, charge or other matter in which the United States has a direct and substantial interest and which was actually pending under his or her official responsibility within a period of one year prior to the termination of such responsibility, and in which he or she participated personally and substantially as an officer or employee.

No officer or employee who has been employed in a position for which the basic rate of pay is GS-17 or greater and who has had significant decision-making or supervisory responsibility, within one year after such employment has ceased, shall knowingly act as attorney, or otherwise represent anyone other than the United States, or make any oral or written communication with the intent to influence, to the agency in which he or she served as an officer or employee, in connection with any judicial or other proceeding, application, contract, claim, controversy, charge, or other matter, which is pending before such agency or in which such agency has a direct and substantial interest.

Violation of these prohibitions is punishable by a maximum fine of $10,000, or imprisonment for not more than two years, or both.

No partner of an officer or employee of the United States Government shall act as agent or attorney for anyone other than the United States in connection with any judicial or other proceeding, application, contract, claim, controversy, charge, or other matter in which the United States has a direct and substantial interest, and in which such officer or employee has personally and substantially participated.

Violation of this prohibition is punishable by a maximum fine of $5,000, or imprisonment for not more than one year, or both.

5. *Annual public financial disclosure requirements* (Sections 201-211 of the Ethics in Government Act of 1978)

Each Government officer or employee, whose position is classified at GS-16 or above, shall file with the designated agency official at the agency by which he or she is employed, on or before May 15 of each year, a report containing the following information concerning the preceding calendar year:

(1) The source, type, and amount of earned income from any source other than current employment by the United States Government;

(2) The source, date, and amount of honoraria earned, aggregating $100 or more in value;

(3) The source and type of unearned income received exceeding $100 in amount or value, that amount or value to be listed by category, for example, "not more than $1,000";

(4) The source and a brief description of any gifts of transportation, lodging, food, or entertainment, aggregating $250 or more in value received from any source other than a relative. Items received as personal hospitality or with a fair market value of $35 or less need not be aggregated;

(5) The source and brief description of all other gifts aggregating $100 or more in value. Gifts received from a relative or with a fair market value of $35 or less need not be aggregated;

(6) The source and a brief description of reimbursements received from any source aggregating $250 or more in value;

(7) The identity and category of value of any interest in property held in a business, or for investment or the production of income, which has a fair market value exceeding $1,000;

(8) The identity and category of value of the total liabilities owed to any creditor, other than a relative, which exceeds $10,000 at any time during the preceding year, excluding any mortgage secured by the reporting individual's personal residence, or motor vehicle loan;

(9) The date, category of value, and a brief description of any purchase, sale, or exchange in real property (other than a personal residence), stocks, bonds, and other forms of securities, which exceeds $1,000;

(10) The identity of all positions held with any business enterprise, non-profit organization, labor organization, and educational or other institution. Positions held with any religious, social, or political entity, or of an honorary nature need not be reported;

(11) A description of the date, parties, and terms of any agreement with respect to future employment, leave of absence, continuation of payments by a former employer, and continuing participation in an employee benefit plan;

(12) Required information described in numbers 1 through 9 of this provision shall be included in each report with respect to the spouse and dependent children of the

reporting individual, with certain modifications;

(13) A description of holdings of an income from a trust or other financial arrangement. Holdings of or the source of income from any qualified blind trust, as defined in this section, need not be reported, but the individual shall report the category of the amount of income received;

Any report filed under this provision will be available to the public upon request.

Any individual who knowingly and willfully falsifies or fails to file or report required information shall be liable to a maximum civil penalty of $5,000, and personnel or other action in accordance with applicable law or regulation.

6. *Acts affecting a personal financial interest* (18 U.S.C. 208)

No officer or employee of the United States shall participate personally and substantially, through decision, in relation to any judicial or other proceeding, application, contract, claim, controversy, or other matter in which he or she has a direct or indirect financial interest.

Prior full disclosure of financial interest and written determination that such interest is not substantial may permit such participation.

Violation of this prohibition is punishable by a maximum fine of $10,000, or imprisonment for not more than two years, or both.

7. *Unathorized use of documents relating to claims* (18 U.S.C. 285)

No one, without authority, shall remove or use any document prepared, or intended to be used, to procure the payment of any claim against the United States.

Violation of this prohibitions is punishable by a maximum fine of $5,000, or imprisonment for not more than five years, or both.

8. *Salary of government officials and employees payable only by United States* (18 U.S.C. 209)

No official or employee of the United States shall receive compensation for services as an officer or employee of the Government from any source other than the Government of the United States.

No individual or entity shall pay or supplement the salary of any such officer or employee for services as an officer or employee of the United States.

Violation of these prohibition is punishable by a maximum fine of $5,000, or imprisonment for more than one year, or both.

9. *Bribery of public officials* (18 U.S.C. 201)

No person or entity shall directly or indirectly give, offer, or promise anything of value to a public official with intent to: (a) Influence any official act, (b) influence such public official to commit or allow the commission of any fraud on the United States, or (c) induce such public official to act in violation of his or her lawful duty.

No public official shall directly or indirectly solicit, accept, or agree to receive anything of value for himself or herself, or another, in return for: (a) Being influenced in the performance of any official act, (b) being influenced to commit or allow the commission of any fraud on the United States, or (c) being induced to act in violation of his or her official duty.

Violation of these prohibitions is punishable by a fine of not more than $20,000 or three times the monetary equivalent of the thing of value, whichever is greater, or a maximum of 15 years' imprisonment, or both; and removal.

10. *Acceptance or solicitation to obtain appointive public office* (18 U.S.C. 211)

No one shall solicit or receive money or anything of value in consideration for assistance in obtaining for any person appointive office or employment with the United States.

Violation of this prohibition is punishable by a maximum fine of $1,000, or imprisonment for not more than one year, or both.

11. *Gifts to superior* (5 U.S.C. 7351)

No employee shall (a) solicit a contribution from another employee for a gift to a superior, (b) make a donation as a gift to a superior, or (c) accept a gift from one to whom he or she is an official superior.

Violation of these prohibitions is punishable by a maximum penalty of removal.

12. *Lobbying with appropriated funds* (18 U.S.C. 1913)

No officer or employee of the United States, in the absence of express authorization by Congress, shall use, directly or indirectly, money appropriated by Congress to pay for any personal service, written matter, or other device intended to influence a Member of Congress to favor or oppose any legislation or appropriation by Congress.

Violation of this prohibition is punishable by a maximum fine of $500, or imprisonment for not more than one year, or both; and removal.

13. *Disclosure of confidential information* (18 U.S.C. 1905)

No officer or employee of the United States shall publish, disclose, or make known in any manner or to any extent not authorized by law, any confidential information made known to him or her in the course of his or her employment or official duties.

Violation of this prohibition is punishable by a maximum fine of $1,000, or imprisonment for not more than one year, or both; and removal.

14. *Disclosure of classified information* (18 U.S.C. 798)

No one shall knowingly and willfully communicate or otherwise make available to an unauthorized person, or publish or use in any manner prejudicial to the interest of the United States, any classified information.

Violation of this prohibition is punishable by a maximum fine of $10,000, or imprisonment for not more than ten years, or both.

15. *Excessive and habitual use of intoxicants* (5 U.S.C. 7352)

No individual shall habitually use intoxicating beverages to excess.

Violation of this prohibition is punishable by removal.

16. *Misuse of franking privilege* (18 U.S.C. 1719)

No one shall make use of any official envelope, label, or endorsement authorized by law, to avoid the payment of postage on private letters, packages, or other matters in the mail.

Violation of this prohibition is punishable by a maximum fine of $300.

17. *Interference with Civil Service Examinations* (18 U.S.C. 1917)

No member or employee of the United States Civil Service Commission or an individual in the public service shall willfully and corruptly obstruct an individual in respect of his or her right of examination for competitive service, or falsely grade or report on the examination or proper standing of an individual examined; or make a false representation concerning the examination grade or proper standing of an individual examined; or furnish to an individual any special information for the purpose of improving or harming the prospects of an individual examined, being employed, or promoted.

Violation of these prohibitions is punishable, for each offense, by a maximum fine of $1,000, or imprisonment for not more than one year, or both.

18. *Fraud and false statements* (18 U.S.C. 1001)

No one, concerning any matter within the jurisdiction of the United States, shall knowingly and willfully falsify or conceal a material fact, or make any false, fictitious, or fraudulent statements, or make or use any document knowing such document to contain any false, fictitious, or fraudulent statement.

Violation of these prohibitions is punishable by a maximum fine of $10,000, or imprisonment for not more than five years, or both.

19. *Concealment, mutilation, or destruction of Government documents* (18 U.S.C. 2071)

No one shall willfully and unlawfully conceal, remove, mutilate, falsify, destroy, or intentionally carry away any Government document.

Violation of this prohibition is punishable by a maximum fine of $2,000, or imprisonment for not more than three years, or both. Violation by one having custody of such document shall result in the custodian's removal from office.

20. *Forgery of Government transportation requests* (18 U.S.C. 508)

No one shall forge or counterfeit, knowingly alter, use, or sell any form or request provided by the Government for transportation by common carrier.

Violation of this prohibition is punishable by a maximum fine of $5,000, or imprisonment for not more than ten years, or both.

21. *Misuse of Government vehicles* (31 U.S.C. 638a(c))

No officer or employee of the Government shall willfully use or authorize the use of any Government-owned or leased passenger motor vehicle or aircraft for other than official purposes.

Violation of this prohibition is punishable by a maximum penalty of removal.

22. *Accounting for public money* (18 U.S.C. 643)

An officer or employee of the United States who receives public money which he or she is not authorized to retain as salary must render an account of such money as provided by law.

An officer or employee who fails to render such an account is guilty of embezzlement, and shall be fined a sum equal to the amount of money embezzled, or imprisoned for not more than ten years, or both.

23. *Theft of Government money or property* (18 U.S.C. 641)

No one shall embezzle, steal, or knowingly convert, or, without authority, sell or convey documents, money, or things of value of the United States.

No one shall receive or retain such items knowing them to be embezzled, stolen or converted.

Violation of these prohibitions is punishable by a maximum fine of $10,000, and imprisonment for not more than ten years, or both.

24. *Wrongful conversion of property of another* (18 U.S.C. 654)

No officer or employee of the United States shall embezzle or wrongfully convert to his or her own use money or property of another which comes into his or her control in the execution of such employment of office.

Violation of this prohibition is punishable by a fine of not more than the value of the money or property thus converted, or imprisonment for not more than ten years, or both.

25. *Restrictions on political activities* (5 U.S.C. 7321-7327)

No federal employee shall use his or her official authority or influence for the purpose of interfering with or affecting the result of an election; or shall take an active part in political management, or in political campaigns (5 U.S.C. 7324).

Violation of these prohibitions is punishable by a maximum penalty of removal.

26. *Solicitation of political contributions* (18 U.S.C. 602)

No public official or employee of the United States shall directly or indirectly solicit or receive contributions for any political purpose whatever from any other such officer or employee.

Violation of this prohibition is punishable by a maximum fine of $5,000, or imprisonment for not more than three years, or both.

27. *Solicitation of political contributions in federal buildings* (18 U.S.C. 603)

No one shall solicit or receive any contribution of money or other thing of value for any political purpose in any Federal building.

Violation of this prohibition is punishable by a maximum fine of $5,000, or imprisonment for not more than three years, or both.

28. *Pecuniary interest in regulated carrier* (49 U.S.C. 10301(d), 10306(e), and 10344(e))

No Commission member, administrative law judge, employee board member, or joint board member may have a pecuniary interest in, hold an official relation to, or own stock in or bonds of, a carrier providing transportation by any mode.

29. *Members' outside employment* (49 U.S.C. 10301(d))

A member of the Commission may not engage in another business, vocation, or employment.

30. *Officers and employees acting as agents of foreign principals* (18 U.S.C. 219)

No officer or employee of the United States shall act as an agent of a foreign principal registered under the Foreign Agents Registration Act of 1938, as amended. (22 U.S.C. 611 *et seq.*)

Violation of this prohibition is punishable by a maximum fine of $10,000, or imprisonment for not more than two years, or both.

31. *Striking against the Government* (15 U.S.C. 7311(3), 18 U.S.C. 1918(3))

An individual shall not accept or hold a position in the Government of the United States, if he or she participates in a strike against the Government.

Violation of this prohibition is punishable by a maximum fine of $1,000, or imprisonment for not more than one year and a day, or both.

Subpart C—Additional Canons of Conduct for Members

Sec.
1000.736-1 General policy.
1000.736-2 Maintaining independence.
1000.736-3 Official duties.
1000.736-4 Extra-official activities.
1000.736-5 Qualification to participate.

AUTHORITY: Sec. 6, 36 Stat. 915, as amended, secs. 12, 20, 24 Stat. 383, as amended, 386, as amended, sec. 25, 41 Stat. 498, as amended, sec. 220, 49 Stat. 563 as amended, sec. 313, 54 Stat. 944, as amended, sec. 412, 56 Stat. 294, as amended; 45 U.S.C. 29, 49 U.S.C. 12, 20, 26, 320, 913, 1012, 5 CFR Part 735.

§ 1000.736-1 General policy.

Members of the Interstate Commerce Commission should participate in establishing, maintaining, and enforcing, and should themselves observe, high standards of conduct so that the integrity and independence of the Commission may be preserved. The provisions of these canons should be construed and applied to further that objective. Members of the Commission shall observe the standards of personal conduct in the Canons of Conduct for Members and Employees as set forth in Subpart B of this part.

§ 1000.736-2 Maintaining independence.

Members should not allow their family, social, or other relationships to influence their official conduct or judgment. They should not lend the prestige of their office to advance the private interests of others; nor should members convey the impression that they are subject to influence by others. Members should not change or tailor their views to appease any particular interest or group.

§ 1000.736-3 Official duties.

(a) Official duties, both administative and adjudicative, should be carried out diligently and impartially. Insofar as it is consistent with the dignity and responsibilities of their official positions, members should maintain contact with the persons outside the agency who may be affected by their functions.

(b) Members have the obligation to urge the Congress, whenever necessary, to amend, modify, or repeal particular parts of the statutes they administer.

(c) The members' decision to investigate should be based only on the facts known to them and the reasonable inferences from those facts. A member should never suggest, vote for, or participate in an investigation for reasons of animus, prejudice, or vindictiveness.

(d) Members have the obligation to adopt rules necessary to carry out the national transportation policy. The rules should not be burdensome; on the other hand, necessary rules should be adopted, modified, or repealed as changing requirements demand.

§ 1000.736-4 Extra-official activities.

Members must not engage in any business, employment, or vocation while in office, nor may they use the power of their offices or the influence of their names to promote the business interests of others. Members may participate in nonbusiness endeavors, such as civic and charitable activities, that do not reflect adversely upon their impartiality or interfere with the performance of official duties.

§ 1000.736-5 Qualification to participate.

Members should disqualify themselves in any matter in which their impartiality might reasonably be questioned. They should weigh carefully the question of their qualification in any matter where they or their relatives or former business associates or clients are involved. If an interested person suggests that a member should disqualify himself or herself in a particular matter because of bias or prejudice, the member shall be the sole judge of his or her own qualification.

* * * * *

Decided December 20, 1978.

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

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-2113 Filed 1-19-79; 8:45 am]

Federal Register

MONDAY, JANUARY 22, 1979
PART VI

DEPARTMENT OF AGRICULTURE

Office of the Secretary

■

NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

[3410-01-M]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[7 CFR Part 15b]

PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

Nondiscrimination on the Basis of Handicap

AGENCY: Department of Agriculture.

ACTION: Proposed rules.

SUMMARY: The Department of Agriculture proposes to add a new Part 15b to its rules and regulations contained in Title 7 of the Code of Federal Regulations. These rules are intended to implement section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 706, which provides that "no otherwise qualified individual * * * shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program receiving Federal financial assistance". The regulation defines and forbids acts of discrimination against qualified handicapped persons in employment and in operation of programs and activities receiving assistance from the Department. This rule is issued in accordance with the procedures, standards and guidelines, 45 CFR Part 85, effective January 13, 1978, implementing Executive Order 11914, "Nondiscrimination with Respect to the Handicapped in Federally Assisted Programs".

DATES: Comments must be received on or before April 23, 1979.

ADDRESS: Comments must be submitted to James Frazier, Director, Office of Equal Opportunity, U.S. Department of Agriculture, Washington, D.C. 20250, Phone: 202-447-4256.

Comments are available for public inspection in the Office of Equal Opportunity, Civil Rights Division, Room 4119, Auditor's Building, 201 14th Street, SW., Washington, D.C. 20250, Monday-Friday, 8:30 a.m. to 5:00 p.m.

FOR FURTHER INFORMATION CONTACT:

William C. Payne, Jr., Civil Rights Division, Office of Equal Opportunity, Washington, D.C. 20250, Phone: 202-447-7328 (Teletypewriter available).

SUPPLEMENTARY INFORMATION: Section 504 of the Rehabilitation Act of 1973 provides that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. On April 26, 1976, the president issued Executive Order 11914, under which the Department of Health, Education, and Welfare is required to coordinated governmentwide enforcement of section 504. As lead agency, HEW published its final regulation implementing section 504 on May 4, 1977. See 45 CFR Part 84. In acccordance with Executive Order 11914, HEW issued on January 13, 1978, final standards, procedures and guidelines to be followed by each Federal agency in issuing section 504 regulations. See 45 CFR Part 85.

The rules proposed by this Department are intended to be consistent with the HEW standards and guidelines. Because the Department has many common recipients of Federal financial assistance with HEW, the proposed rules incorporate most of the HEW section 504 regulations.

The differences between the HEW regulations and the proposed rules are minor. The definition for "Secretary" and "Department" have been changed to reflect the Department of Agriculture. Throughout the rules, "Secretary" has been substituted for "Director".

The definition of "section 504," § 15b.3(c), the definition of "handicapped person," § 15d.3(k), and the sections on discrimination prohibited, § 15b.4(b)(iii), § 15b.4(b) and § 15b.4(e) reflect wording found in the more recent HEW guidelines. See 45 CFR Part 85.

Section 15b.6(C)(2) requires all recipients to keep records of their self-evaluation. the HEW regulations, on the other hand, require only recipients with 15 or more employees to keep such records. Since all recipients are required to complete a self-evaluation, we believe that all recipients should be required to maintain such records.

Consistent with the HEW regulations, on the other hand, require only recipients with 15 or more employees to keep such records. Since all recipients are required to complete a self-evaluation, we believe that all recipients should be required to maintain such records.

Consistent with the HEW guidelines, § 15b.8 impose a notification requirement on all recipients, § 15b.10 requires coordination of sections 502 and 503 of the Act and § 15b.11 requires interagency cooperation.

Except to the extent noted above, these regulations follow the language in HEW's regulations at 45 CFR Part 84.

A draft impact analysis which addresses regulatory options for implementing Section 504 of the Rehabilitation Act of 1973 is available upon request.

Copies of the regulations are also available on tape or in braille and will be provided upon request.

In consideration of the above, it is proposed that Part 15b be added to Title 7 of the Code of Federal Regulations to read as set forth below.

Dated: January 16, 1979.

BOB BERGLAND
Secretary.

PART 15b—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

Subpart A—General Provisions

Sec.

15b.1 Purpose.
15b.2 Application.
15b.3 Definitions.
15b.4 Discrimination prohibited.
15b.5 Assurances required.
15b.6 Remedial action, voluntary action, and self-evaluation.
15b.7 Designation of responsible employees and adoption of grievance procedures.
15b.8 Notice.
15b.9 Administrative requirements for small recipients.
15b.10 Coordination with sections 502 and 503.
15b.11 Interagency cooperation.
15b.12 Effect of State or local law or other requirements and effect of employment opportunities.

Subpart B—Employment Practices

15b.13 Discrimination prohibited.
15b.14 Reasonable accomodation.
15b.15 Employment criteria.
15b.16 Preemployment inquiries.

Subpart C—Program Accessibility

15b.17 Discrimination prohibited.
15b.18 Existing facilities.
15b.19 New construction.

Subpart D—Preschool, Elementary, and Secondary Education

15b.20 Application of this subpart.
15b.21 Location and notification.
15b.22 Free appropriate public education.
15b.23 Educational setting.
15b.24 Evaluation and placement.
15b.25 Procedural safeguards.
15b.26 Nonacademic services.
15b.27 Preschool and adult education programs.
15b.28 Private education programs.

Subpart E—Postsecondary Education

15b.29 Application of this subpart.
15b.30 Admissions and recruitment.
15b.31 Treatment of students; general.
15b.32 Academic adjustments.
15b.33 Housing.
15b.34 Financial and employment assistance to students.
15b.35 Nonacademic services.

Subpart F—Health, Welfare, Social and Other Services

15b.36 Application of this subpart.
15b.37 Health, welfare, social and other services.
15b.38 Drug and alcohol addicts.
15b.39 Education of institutionalized persons.

Subpart G—Procedures

15b.40 Procedures.

Subpart A—General Provisions

§ 15b.1 Purpose.

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

§ 15b.2 Application.

This part applies to each recipient of Federal financial assistance from the Department of Agriculture and to each program or activity that receives or benefits from such assistance.

§ 15b.3 Definitions.

As used in this part, the term:

(a) "Executive Order" means Executive Order 11914, titled "Nondiscrimination with Respect to the Handicapped in Federally Assisted Programs," issued on April 28, 1976.

(b) "The Act" means the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794.

(c) "Section 504" means section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 29 U.S.C. 794.

(d) "Education of the Handicapped Act" means that statute as amended by the Education for all Handicapped Children Act of 1975, Pub. L. 94-142, 20 U.S.C. 1401 et seq.

(e) "Department" means the Department of Agriculture and includes each of its operating agencies and other organizational units.

(f) "Secretary" means the Secretary of Agriculture or any officer or employee of the Department to whom the Secretary has heretofore delegated, or to whom the Secretary may hereafter delegate, the authority to act under the regulations in this part.

(g) "Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(h) "Applicant for assistance" means one who submits an application, request, or plan required to be approved by a Department offical or by a recipient as a condition of becoming a recipient.

(i) "Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), cooperative agreement, or any other arrangement by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

(j) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(k) "Handicapped Person." (1) "Handicapped persons" means any person who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

(2) As used in paragraph (k)(1) of this section, the phrase:

(i) "Physical or mental impairment" means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive, digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness and drug addiction and alcoholism.

(ii) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(iii) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) "Is regarded as having an impairment" means (A) has a physical or mental impairment that does not substantially limit major life activities but that is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairments, or (C) has none of the impairments defined in paragraph (k)(2)(i) of this section but is treated by a recipient as having such an impairment.

(l) "Qualified handicapped person" means:

(1) With respect to employment, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job in question;

(2) With respect to public preschool, elementary, secondary, or adult educational services, a handicapped person, (i) of an age during which nonhandicapped persons are provided such services, (ii) of any age during which it is mandatory under State law to provide such services to handicapped persons, or (iii) to whom a State is required to provide a free appropriate public education under section 612 of the Education of the Handicapped Act; and

(3) With respect to postsecondary and vocational education services, a handicapped person who meets the academic and technical standard requisite to admission or participation in the recipient's education program or activity;

(4) With respect to other services, a handicapped person who meets the essential eligibility requirements for the recipient of such services.

(m) "Handicap" means any condition or characteristic that renders a person a handicapped person as defined in paragraph (k) of this section.

§ 15b.4 Discrimination prohibited.

(a) General. No qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity which receives or benefits from Federal financial assistance.

(b) Discriminatory actions prohibited. (1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provides a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain

the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped person unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipients program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for handicapped and nonhandicapped persons, but must afford handicapped persons equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement, in the most integrated setting appropriate to the person's needs.

(3) Despite the existence of separate or different programs or activities provided in accordance with this part, a recipient may not deny a qualified handicapped person the opportunity to participate in such programs or activities that are not separate or different.

(4) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same State.

(5) In determining the site or location of a facility, an applicant for assistance or a recipient may not make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(6) As used in this section, the aid, benefit, or service provided under a program or activity receiving or benefiting from Federal financial assistance includes any aid, benefit, or service provided in or through a facility that has been constructed, expanded, altered, leased or rented, or otherwise acquired, in whole or in part, with Federal financial assistance.

(c) Programs limited by Federal law. The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by Federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

(d) Recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

(e) Recipients shall take appropriate steps to ensure communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

§ 15b.5 Assurances required.

(a) *Assurances.* An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance, on a form specified by the Secretary, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent applications to the Department.

(b) *Duration of obligation.* (1) In the case of Federal financial assistance extended in the form of real property or to provide real property or structures on the property, the assurance will obligate the recipient or, in the case of a subsequent transfer, the transferee, for the period during which the real property or structures are used for the purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) In the case of Federal financial assistance extended to provide personal property, the assurance will obligate the recipient for the period during which it retains ownership or possession of the property.

(3) In all other cases, the assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(c) *Covenants.* (1) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the instrument effecting or recording this transfer shall contain a covenant running with the land to assure nondiscrimination for the period during which the real property is used for purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits.

(2) Where no transfer of property is involved but property is purchased or improved with Federal financial assistance, the recipient shall agree to include the covenant described in paragraph (b)(2) of this section in the instrument effecting or recording any subsequent transfer of the property.

(3) Where Federal financial assistance is provided in the form of real property or interest in the property from the Department, the covenant shall also include a condition coupled with a right to be reserved by the Department to revert title to the property in the event of a breach of the covenant. If a transferee of real property proposes to mortgage or otherwise encumber the real property as security for financing construction of new, or improvement of existing, facilities on the property for the purposes for which the property was transferred, the Secretary may, upon request of the transferee and if necessary to accomplish such financing and upon such conditions as the Secretary deems appropriate, agree to forebear the exercise of such right to revert title for so long as the lien of such mortgage or other encumbrance remains effective.

§ 15b.6 Remedial action, voluntary action, and self-evaluation.

(a) *Remedial action.* (1) If the Secretary finds that a recipient has discriminated against persons on the basis of handicap in violation of section 504 of this part, the recipient shall take such remedial action as the Secretary deems necessary to overcome the effects of the discrimination.

(2) Where a recipient is found to have discriminated against persons on the basis of handicap in violation of section 504 or this part and where another recipient exercises control over the recipient that has discriminated, the Secretary, where appropriate, may require either or both recipients to take remedial action.

(3) The Secretary may, where necessary to overcome the effects of discrimination in violation of section 504 or this part, require a recipient to take remedial action (i) with respect to handicapped persons who are no longer participants in the recipient's program but who were participants in

the program when such discrimination occurred or (ii) with respect to handicapped persons who would have been participants in the program had the discrimination not occurred.

(b) *Voluntary action.* A recipient may take steps, in addition to any action that is required by this part, to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity by qualified handicapped persons.

(c) *Self-evaluation.* (1) A recipient shall, within one year of the effective date of this part:

(i) Evaluate, with the assistance of interested persons, including handicapped or organizations representing handicapped persons, its current policies and practices and the effects thereof that do not or may not meet the requirements of this part;

(ii) Modify, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, any policies and practices that do not meet the requirements of this part; and

(iii) Take, after consultation with interested persons, including handicapped persons or organizations representing handicapped persons, appropriate remedial steps to eliminate the effects of any discrimination that resulted from adherence to these policies and practices.

(2) A recipient shall, for at least three years following completion of the evaluation required under paragraph (c)(1) of this section, maintain on file, make available for public inspection, and provide to the Secretary upon request: (i) A list of the interested persons consulted, (ii) a description of areas examined and any problems identified, and (iii) a description of any modifications made and of any remedial steps taken.

§ 15b.7 Designation of responsible employee and adoption of grievance procedures.

(a) *Designation of responsible employee.* A recipient that employs fifteen or more persons shall designate at least one person to coordinate its efforts to comply with this part.

(b) *Adoption of grievance procedures.* A recipient that employs fifteen or more persons shall adopt grievance procedures that incorporate appropriate due process for the prompt and equitable resolution of complaints alleging any action prohibited by this part. Such procedures need not be established with respect to complaints from applicants for employment or from applicants for admission to postsecondary educational institutions.

§ 15b.8 Notice.

(a) A recipient shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, and unions or professional organizations holding collective bargaining or professional agreements with the recipient that it does not discriminate on the basis of handicap in violation of section 504 or this part. The notification shall state, where appropriate, that the recipient does not discriminate in admission or access to, or treatment or employment in, its programs and activities. The notification shall also include an identification of the responsible employee designated pursuant to § 15b.7(a). A recipient shall make the initial notification required by this paragraph within 90 days of the effective date of this part. Methods of initial and continuing notification may include but are not limited to the posting of notices, publication in newspapers and magazines, placement of notices in recipients' publications, and distribution of memoranda or other written communications.

(b) If a recipient publishes or uses recruitment materials or publications containing general information that it makes available to participants, beneficiaries, applicants or employees, it shall include in those materials or publications a statement of the policy described in paragraph (a) of this section. A recipient may meet the requirement of the paragraph either by including appropriate inserts in existing materials and publications or by revising and reprinting the materials and publications.

§ 15b.9 Administrative requirements for small recipients.

The Secretary may require any recipient with fewer than fifteen employees, or any class of such recipients, to comply with § 15b.7, in whole or in part, when the Secretary finds a violation of this part or finds that such compliance will not significantly impair the ability of the recipient or class of recipients to provide benefits or services.

§ 15b.10 Coordination with sections 502 and 503.

(a) Agencies and other organizational units within the Department shall consult with Architectural and Transportation Barriers Compliance Board in developing requirements for the accessibility of new facilities and alterations, as required in § 15b.19, and in enforcing such requirements with respect to facilities that are subject to section 502 of the Rehabilitation Act of 1973, as amended, as well as section 504.

(b) Agencies and other organizational units within the Department shall consult and coordinate with the Department of Labor in enforcing requirements concerning employment discrimination with respect to recipients that are also Federal contractors subject to section 503 of the Rehabilitation Act of 1973, as amended.

§ 15b.11 Interagency cooperation.

(a) Where each of a substantial number of recipients is receiving assistance for similar or related purposes from two or more agencies or where two or more agencies cooperate in administering assistance for a given class of recipients, the agencies shall (1) coordinate compliance with section 504 and (2) designate one of the agencies as the primary agency for section 504 compliance purposes.

(b) Any agency conducting a compliance review or investigating a complaint of an alleged section 504 violation shall notify any other affected agency upon discovery of its jurisdiction and shall inform it of the findings made. Reviews or investigations may be made on a joint basis.

§ 15b.12 Effect of State or local law or other requirements and effect of employment opportunities.

(a) The obligation to comply with this part is not obviated or alleviated by the existence of any State or local law or other requirement that, on the basis of handicap, imposes prohibitions or limits upon the eligibility of qualified handicapped persons to receive services or to practice any occupation or profession.

(b) The obligation to comply with this part is not obviated or alleviated because employment opportunities in any occupation or profession are or may be more limited for handicapped persons than for nonhandicapped persons.

Subpart B—Employment Practices

§ 15b.13 Discrimination prohibited.

(a) General.

(1) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity receiving Federal financial assistance.

(2) A recipient that receives assistance under the Education of the Handicapped Act shall take positive steps to employ and advance in employment qualified handicapped persons in programs assisted under that Act.

(3) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that ad-

versely affects their opportunities or status because of handicap.

(4) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. This includes relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

(b) Specific activities. The provisions of this subpart apply to:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right to return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other condition, or privilege of employment.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

§ 15b.14 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include: (1) Making facilities used by employees readily accessible to and usable by handicapped persons, and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physcial or mental limitations of the employee or applicant.

§ 15b.15 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless:

(1) The test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and (2) alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Secretary to be available.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that when administered to an aplicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

§ 15b.16 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section. A recipient may not conduct a preemployment medical examination or may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to person job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 15b.6(a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 15b.6(b), or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped *Provided,* That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this part.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty. *Provided,* That: (1) All entering employees are subjected to such an examination regardless of handicap, and (2) the results of such an examination are used only in acccordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodation;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

Subpart C—Program Accessibility

§ 15b.17 Discrimination prohibited.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this part applies.

§ 15b.18 Existing facilities.

(a) *Program accessibility.* A recipient shall operate each program or activity to which this part applies so that the program or activity when viewed in its entirety is readily accessible to and usable by handicapped per-

sons. This paragraph does not necessarily require a recipient to make each of its existing facilities or every part of an existing facility accessible to and usable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirement of paragraph (a) of this section through such means as redesign of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of health, welfare, or other social services at alternate accessible sites, alteration of existing facilities and construction of new facilities in conformance with the requirement of § 15b.19, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that offer programs and activities to handicapped persons in the most integrated setting appropriate.

(c) *Small health, welfare, or other social service providers.* If a recipient with fewer than fifteen employees that provides health, welfare, or other social services finds, after consultation with a handicapped person seeking its services, that there is no method of complying with paragraph (a) of this section other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible.

(d) *Time period.* A recipient shall comply with the requirement of paragraph (a) of this section within sixty days of the effective date of this part except that where structural changes in facilities are necessary, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(e) *Transition plan.* In the event that structural changes to facilities are necessary to meet the requirement of paragraph (a) of this section, a recipient shall develop, within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The plan shall be developed with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. A copy of the transition plan shall be made available for public inspection. The plan shall, at a minimum:

(1) Identify physical obstacles in the recipient's facilities that limit the accessibility of its program or activity to handicapped persons;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve full program accessibility and, if the time period of the transition plan is longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the person responsible for implementation of the plan.

(f) *Notice.* The recipient shall adopt and implement procedures to ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of services, activities, and facilities that are accessible to and usable by handicapped persons.

§ 15b.19 New construction.

(a) *Design and construction.* Each facility or part of the facility constructed by, on behalf of, or for the use of a recipient shall be designed and constructed in such manner that the facility or part of the facility is readily accessible to and usable by handicapped persons, if the construction was commenced after the effective date of this part.

(b) *Alteration.* Each facility or part of a facility which is altered by, on behalf of, or for the use of a recipient after the effective date of this part in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by handicapped persons.

(c) *American National Standards Institute accessibility standards.* Design, construction, or alteration of facilities in conformance with the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by, the Physically Handicapped," published by the American National Standards Institute, Inc. (ANSI A117.1-1961)(R1971)),[1] which is incorporated by reference in this part, shall constitute compliance with paragraphs (a) and (b) of this section. Departures from particular requirements of those standards by the use of other methods shall be permitted when it is clearly evident that equivalent access to the facility or part of the facility is thereby provided.

Subpart D—Preschool, Elementary, and Secondary Education

§ 15b.20 Application of this subpart.

This subpart applies to preschool, elementary, secondary, and adult education programs and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

§ 15b.21 Location and notification.

A recipient that operates a public elementary or secondary education program shall annually:

(a) Undertake to identify and locate every qualified handicapped person residing in the recipient's jurisdiction who is not receiving a public education; and

(b) Take appropriate steps to notify handicapped persons and their parents or guardians of the recipient's duty under this subpart.

§ 15b.22 Free appropriate public education.

(a) General. A recipient that operates a public elementary or secondary education program shall provide a free appropriate public education to each qualified handicapped person who is in the recipient's jurisdiction, regardless of the nature or severity of the persons's handicap.

(b) Appropriate education. (1) For the purpose of this subpart, the provision of an appropriate education is the provision of regular or special education and related aids and services that (i) are designed to meet individual educational needs of handicapped persons as adequately as the needs of nonhandicapped persons are met and (ii) are based upon adherence to procedures that satisfy the requirements of § 15b.23, § 15b.24, and § 15b.25.

(2) Implementation of an individualized education program developed in accordance with the Education of the Handicapped Act is one means of meeting the standard established in paragraph (b)(1)(i) of this section.

(3) A recipient may place a handicapped person in or refer such person to a program other than the one that it operates as its means of carrying out the requirements of this subpart. If so, the recipient remains responsible for ensuring that the requirements of this subpart are met with respect to any handicapped person so placed or referred.

(c) *Free education*—(1) *General.* For the purpose of this section, the provision of a free education is the provision of educational and related services without cost to handicapped persons or their parents or guardians, except for those fees that are imposed on nonhandicapped persons or their parents or guardians. It may consist either of the provision of free services or, if a recipient places a handicapped person in or refers such person to a program not operated by the recipient as its means of carrying out the re-

[1] Copies obtainable from American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.

quirements of this subpart, or payment of the costs of the program. Funds available from any public or private agency may be used to meet the requirements of this subpart. Nothing in this section shall be construed to relieve an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped person.

(2) *Transportation.* If a recipient places handicapped persons in or refers such persons to a program not operated by the recipient as its means of carrying out the requirements of this subpart, the recipient shall ensure that adequate transportation to and from the program is provided at no greater cost than would be incurred by the persons or their parents or guardians if the persons were placed in the program operated by the recipient.

(3) *Residential placement.* If placement in a public or private residential program is necessary to provide a free appropriate public education to handicapped persons because of their handicap, the program, including nonmedical care and room and board, shall be provided at no cost to the persons or their parents or guardians.

(4) *Placement of handicapped persons by parents.* If a recipient has made available in conformance with the requirements of this section and § 15b.23, a free appropriate public education to a handicapped person and the person's parents or guardian choose to place the person in a private school, the recipient is not required to pay for the person's education in the private school. Disagreements between a parent or guardian and a recipient regarding whether the recipient has made such a program available or otherwise regarding the question of financial responsibility are subject to the due process procedures of § 15b.25

(d) *Compliance.* A recipient may not exclude any qualified handicapped person from a public elementary or secondary education after the effective date of this part.

§ 15b.23 Educational setting.

(a) *Academic setting.* A recipient to which this subpart applies shall educate, or shall provide for the education of each qualified handicapped person in its juruisdiction with persons who are not handicapped to the maximum extent appropriate to the needs of the handicapped person. A recipient shall place a handicapped person in the regular educational environment operated by the recipient unless it is demonstrated by the recipient that the education of the person in the regular environment with the use of supplementary aids and services cannot be achieved satisfactorily. Whenever a recipient places a person in a setting other than the regular educational environment pursuant to this paragraph, it shall take into account the proximity of the alternate setting to the person's home.

(b) *Nonacademic setting.* In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and the services and activities set forth in § 15b.26(a)(2), a recipient shall ensure that handicapped persons participate with nonhandicapped persons in such activities and services to the maximum extent appropriate to the needs of the handicapped person in question.

(c) *Comparable facilities.* If a recipient, in compliance with paragraph (a) of this section, operates a facility that is identifiable as being for handicapped persons, the recipient shall ensure that the facility and the services and activities provided therein are comparable to the other facilities, services, and activities of the recipient.

§ 15b.24 Evaluation and placement.

(a) *Placement evaluation.* A recipient that operates a public elementary or secondary education program shall conduct an evaluation in accordance with the requirements of paragraph (b) of this seciton of any person who, because of handicap, needs or is believed to need special education or related services before taking any action with respect to the initial placement of the person in a regular or special education program and any subsequent significant change in placement.

(b) *Evaluation procedures.* A recipient to which this subpart applies shall establish standards and procedures for the evaluations and placement of persons who, because of handicap, need or are believed to need special education or related services which ensure that:

(1) Tests and other evaluation materials have been validated for the specific purpose for which they are used and are administered by trained personnel in conformance with the instructions provided by their producer;

(2) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; and

(3) Tests are selected and administered so as best to ensure that, when a test is administered to a student with impaired sensory, manual, or speaking skills, the test results accurately reflect the student's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(c) *Placement procedures.* In interpreting evaluation data and in making placement decisions, a recipient shall (1) draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior, (2) establish procedures to ensure that information obtained from all such sources is documented and carefully considered, (3) ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options, and (4) ensure that the placement decision is made in conformity with § 15b.23.

(d) *Reevaluation.* A recipient to which this section applies shall establish procedures, in accordance with paragraph (b) of this section, for periodic reevaluation of students who have been provided special education and related services. A reevaluation procedure consistent with the Educaton for the Handicapped Act is one means of meeting this requirement.

§ 15b.25 Procedural safeguards.

A recipient that operates a public elementary or secondary education program shall establish and implement, with respect to actions regarding the identification, evaluation, or educational placement of persons who, because of handicap, need or are believed to need special instruction or related services, a system of procedural safeguards that includes notice, an opportunity for the parents or guardian of the person to examine relevant records, an impartial hearing with opportunity for participation by the person's parents or guardian and representation by counsel, and a review procedure. Compliance with the procedural safeguards of seciton 615 of the Education of the Handicapped Act is one means of meeting this requirement.

§ 15b.26 Nonacademic services.

(a) *General.* (1) A recipient to which this subpart applies shall provide nonacademic and extracurricular services and activities in such manner as is necessary to afford handicapped students an equal opportunity for participation in such services and activities.

(2) Nonacademic and extracurricular services and activities may include counseling services, physical recreational athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the recipient, referrals to agencies which provide assistance to handicapped persons, and employment of students, including both employ-

ment by the recipient and assistance in making available outside employment.

(b) *Counseling services.* A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities.

(c) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors interscholastic, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different from those offered to nonhandicapped students only if separation of differentiation is consistent with the requirements of § 15b.23 and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate of different.

§ 15b.27 Preschool and adult education programs.

A recipient to which this subpart applies that operates a preschool education or day care program or activity or an adult education program or activity may not, on the basis of handicap, exclude qualified handicapped persons from the program or activity and shall take into account the needs of such persons in determining the aid, benefits, or services to be provided under the program or activity.

§ 15b.28 Private education programs.

(a) A recipient that operates a private elementary or secondary education program may not, on the basis of handicap, exclude a qualified handicapped person from such program if the person can, with minor adjustments, be provided an appropriate education, as defined in § 15b.22(b)(1), within the recipient's program.

(b) A recipient to which this section applies may not charge more for the provision of an appropriate education to handicapped persons than to nonhandicapped persons except to the extent that any additional charge is justified by a substantial increase in cost to the recipient.

(c) A recipient to which this section applies that operates special education programs shall operate such programs in accordance with the provisions of § 15b.24 and § 15b.25. Each recipient to which this section applies is subject to the provisions of §§ 15b.23, 15b.26 and 15b.27.

Subpart E—Postsecondary Education

§ 15b.29 Application of this subpart.

This Subpart E applies to postsecondary education programs and activities, including postsecondary vocational education programs and activities, that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of, such programs or activities.

§ 15b.30 Admissions and recruitment.

(a) *General.* Qualified handicapped persons may not, on the basis of handicap, be denied admission or be subjected to discrimination in admission or recruitment by a recipient to which this subpart applies.

(b) *Admissions.* In administering its admission policies, a recipient to which this subpart applies:

(1) May not apply limitations upon the number or proportion of handicapped persons who may be admitted;

(2) May not make use of any test or criterion for admission that has a disproportionate, adverse effect on handicapped persons or any class of handicapped persons unless (i) the test or criterion, as used by the recipient, has been validated as a predictor of success in the education program or activity in question and (ii) alternate tests or criteria that have a less disproportionate, adverse effect are not shown by the Secretary to be available;

(3) Shall assure itself that (i) admissions tests are selected and administered so as best to ensure that, when a test is administered to an applicant who has a handicap that impairs sensory, manual, or speaking skills, the test results accurately reflect the applicant's aptitude or achievement level or whatever other factor the test purports to measure, rather than reflecting the applicant's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure); (ii) admissions tests that are designed for persons with impaired sensory, manual, or speaking skills are offered as often and in as timely a manner as are other admissions tests; and (iii) admissions tests are administered in facilities that, on the whole, are accessible to handicapped persons; and

(4) Except as provided in paragraph (c) of this section, may not make preadmission inquiry as to whether an applicant for admission is a handicapped person but, after admission, may make inquiries on a confidential basis as to handicaps that may require accommodation.

(c) *Preadmission inquiry exception.* When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 15b.6(a) or when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 15b.6(b), the recipient may invite applicants for admissions to indicate whether and to what extent they are handicapped; *Provided,* That:

(1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary action efforts; and

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential, that refusal to provide it will not subject the applicant to any adverse treatment, and that it will be used only in accordance with this part.

(d) *Validity studies.* For the purpose of paragraph (c)(2) of this section, a recipient may base prediction equations on first year grades, but shall conduct periodic validity studies against the criterion of overall success in the education program or activity in question in order to monitor the general validity of the test scores.

§ 15b.31 Treatment of students; general.

(a) No qualified handicapped student shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any academic, research, occupational training, housing, health, insurance, counseling, financial aid, physical education, athletics, recreation, transportation, other extracurricular, or other postsecondary education program or activity to which this subpart applies.

(b) A recipient to which this subpart applies that considers participation by students in education program or activities not operated wholly by the recipient as part of, or equivalent to, an education program or activity operated by the recipient shall assure itself that the other education program or activity, as a whole, provides an equal opportunity for the participation of qualified handicapped persons.

(c) A recipient to which this subpart applies may not, on the basis of handicap, exclude any qualified handi-

capped student from any course of study, or other part of its education program or activity.

(d) A recipient to which this subpart applies shall operate its programs and activities in the most integrated setting appropriate.

§ 15b.32 Academic adjustments.

(a) *Academic requirements.* A recipient to which this subpart applies shall make such modifications to its academic requirements as are necessary to ensure that such requirements do not discriminate or have the effect of discriminating, on the basis of handicap, against a qualified handicapped applicant or student. Academic requirements that the recipient can demonstrate are essential to the program of instruction being pursued by such student or to any directly related licensing requirement will not be regarded as discriminatory within the meaning of this section. Modifications may include changes in the length of time permitted for the completion of degree requirements, substitution of specific courses required for the completion of degree requirements, and adaptation of the manner in which specific courses are conducted.

(b) *Other rules.* A recipient to which this subpart applies may not impose upon handicapped students other rules, such as the prohibition of tape recorders in classrooms or of dog guides in campus buildings, that have the effect of limiting the participation of handicapped students in the recipient's education program or activity.

(c) *Course examinations.* In its examinations or other procedures for evaluating students' academic achievement in its program, a recipient to which this subpart applies shall provide such methods for evaluating the achievement of students who have a handicap that impairs sensory, manual, or speaking skills as will best ensure that the results of the evaluation represents the student's achievement in the course, rather than reflecting the student's impaired sensory, manual, or speaking skills (except where such skills are the factors that the test purports to measure).

(d) *Auxiliary aids.* (1) A recipient to which this subpart applies shall take such steps as are necessary to ensure that no handicapped student is denied the benefits of, excluded from participation in, or otherwise subjected to discrimination under the education program or activity operated by the recipient because of the absence of educational auxiliary aids for students with impaired sensory, manual, or speaking skills.

(2) Auxiliary aids may include taped texts, interpreters or other effective methods of making orally delivered materials available to students with hearing impairments, readers in libraries for students with visual impairments, classroom equipment adapted by use by students with manual impairments, and other similar services and actions. Recipients need not provide attendants, individually prescribed devices, readers for personal use or study, or other devices or services of a personal nature.

§ 15b.33 Housing.

(a) Housing providing by the recipient. A recipient that provides housing to its nonhandicapped students shall provide comparable, convenient, and accessible housing to handicapped students at the same cost as to others. At the end of the transition period provided for in Subpart C of this part, such housing shall be available in sufficient quantity and variety so that the scope of handicapped students' choice of living accommodation is, as a whole, comparable to that of nonhandicapped students.

(b) *Other housing.* A recipient that assists any agency, organization, or person in making housing available to any of its students shall take such action as may be necessary to assure itself that such housing is, as a whole, made available in a manner that does not result in discrimination on the basis of handicap.

§ 15b.34 Financial and employment assistance to students.

(a) *Provision of financial assistance.* (1) In providing financial assistance of qualified handicapped persons, a recipient to which this subpart applies may not (i), on the basis of handicap, provide less assistance than is provided to nonhandicapped persons, limit eligibility for assistance, or otherwise discriminate or (ii) assist any entity or person that provides assistance to any of the recipient's students in a manner that discriminates against qualified handicapped persons on the basis of handicap.

(2) A recipient may administer or assist in the administration of scholarships, fellowships, or other forms of financial assistance established under wills, trusts, bequests, or similar legal instruments that require awards to be made on the basis of factors that discriminate or have the effect of discriminating on the basis of handicap only if the overall effect of the award of scholarships, fellowships, and other forms of financial assistance is not discriminatory on the basis of handicap.

(b) *Assistance in making available outside employment.* A recipient that assists any agency, organization, or person in providing employment opportunities to any of its students shall assure itself that such employment opportunities, as a whole, are made available in a manner that would not violate Subpart B if they were provided by the recipient.

(c) *Employment of students by recipients.* A recipient that employs any of its students may not do so in a manner that violates Subpart B.

§ 15b.35 Nonacademic services.

(a) *Physical education and athletics.* (1) In providing physical education courses and athletics and similar programs and activities to any of its students, a recipient to which this subpart applies may not discriminate on the basis of handicap. A recipient that offers physical education courses or that operates or sponsors intercollegiate, club, or intramural athletics shall provide to qualified handicapped students an equal opportunity for participation in these activities.

(2) A recipient may offer to handicapped students physical education and athletic activities that are separate or different only if separation or diffferentiation is consistent with the requirements of § 15b.31(d) and only if no qualified handicapped student is denied the opportunity to compete for teams or to participate in courses that are not separate or different.

(b) *Counseling and placement services.* A recipient to which this subpart applies that provides personal, academic, or vocational counseling, guidance, or placement services to its students shall provide these services without discrimination on the basis of handicap. The recipient shall ensure that qualified handicapped students are not counseled toward more restrictive career objectives than are nonhandicapped students with similar interests and abilities. This requirement does not preclude a recipient from providing factual information about licensing and certification requirements that may present obstacles to handicapped persons in their pursuit of particular careers.

(c) *Social organizations.* A recipient that provides significant assistance to fraternities, sororities, or similar organizations shall assure itself that the membership practices of such organizations do not permit discrimination otherwise prohibited by this subpart.

Subpart F—Health, Welfare, Social and Other Services

§ 15b.36 Application of this subpart.

This Subpart F applies to health, welfare, social and other programs and activities that receive or benefit from Federal financial assistance and to recipients that operate, or that receive or benefit from Federal financial assistance for the operation of such programs or activities.

§ 15b.37 Health, Welfare, Social and Other Services.

(a) *General.* In providing health, welfare, social and other services or benefits, a recipient may not, on the basis of handicap:

(1) Deny a qualified handicapped person these benefits or services;

(2) Afford a qualified handicapped person an opportunity to receive benefits or services that is not equal to that offered nonhandicapped persons;

(3) Provide a qualified handicapped person with benefits or services that are not as effective (as defined in § 15b.4(b)) as the benefits or services provided to others;

(4) Provide benefits or services in a manner that limits or has the effect of limiting the participation of qualified handicapped persons; or

(5) Provide different or separate benefits or services to handicapped persons except where necessary to provide qualified handicapped persons with benefits and services that are as effective as those provided to others.

(b) *Notice.* A recipient that provides notice concerning benefits or services or written material concerning waivers of rights or consent to treatment shall take such steps as are necessary to ensure that qualified handicapped persons, including those with impaired sensory or speaking skills, are not denied effective notice because of their handicap.

(c) *Emergency treatment for the hearing impaired.* A recipient hospital that provides health services or benefits shall establish a procedure for effective communication with persons with impaired hearing for the purpose of providing emergency health care.

(d) *Auxiliary aids.* (1) A recipient to which this subpart applies that employs fifteen or more persons shall provide appropriate auxiliary aids to persons with impaired sensory, manual, or speaking skills, where necessary to afford such persons an equal opportunity to benefit from the service in question.

(2) The Secretary may require recipients with fewer than fifteen employees to provide auxiliary aids where the provision of aids would not significantly impair the ability of the recipient to provide its benefits or services.

(3) For the purpose of this paragraph, auxiliary aids may include brailled and taped material, interpreters, and other aids for persons with impaired hearing or vision.

§ 15b.38 Drug and alcohol addicts.

A recipient to which this subpart applies that operates a general hospital or outpatient facility may not discriminate in admission or treatment against a drug or alcohol abuser or alcoholic who is suffering from a medical condition, because of the person's drug or alcohol abuse or alcoholism.

§ 15b.39 Education of institutionalized persons.

A recipient to which this subpart applies and that operates or supervises a program or activity for persons who are institutionalized because of handicap shall ensure that each qualified handicapped person, as defined in § 15b.3(k)(2), in its program, or activity is provided an appropriate education, as defined in § 15b.22(b). Nothing in this section shall be interpreted as altering in any way the obligations of recipients under Subpart D of this part.

Subpart G—Procedures

§ 15b.40 Procedures.

The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in 7 CFR 15.5—15.11 and 7 CFR 15.60 et seq.

[FR Doc. 79-2158 Filed 1-19-79; 8:45 am]

Federal Register

MONDAY, JANUARY 22, 1979
PART VII

DEPARTMENT OF ENERGY

Office of Energy Research

UNIVERSITY COAL RESEARCH LABORATORIES PROGRAM

Proposed Rulemaking and Public Hearing Regarding Policies and Procedures

[6450-01-M]

DEPARTMENT OF ENERGY

Office of Energy Research

[10 CFR Part 320]

UNIVERSITY COAL RESEARCH LABORATORIES PROGRAM

Proposed Rulemaking and Public Hearing Regarding Policies and Procedures for the University Coal Research Laboratories Program

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Department of Energy proposes to establish the policies and procedures to be followed in the selection and designation of thirteen university coal research laboratories as authorized by Title VIII of Pub. L. 95-87, the Surface Mining Control and Reclamation Act of 1977, as amended by Title VI, Section 604 of Pub. L. 95-617, the Public Utilities Regulatory Policies Act of 1978. The university coal research laboratories are established for the purpose of carrying out advanced research and training related to one or more problems of coal energy resources and conversion. At least one of the coal laboratories so designated must be located within each of the major coal provinces of the United States, including Alaska, but no more than one per state. Ten of the thirteen laboratories authorized must be located in states with abundant coal reserves and all the laboratories must be administered by institutions of higher education with experience and expertise in coal research and with the capacity to establish and operate the coal laboratory. The proposed regulation includes definitions and interpretations of terms included in the authorizing legislation, discussion of proposed eligibility, selection, and evaluation criteria, funding and administrative information necessary for the preparation and submission of proposals for grants for the establishment of university coal research laboratories.

DATES: Comments must be received by March 19, 1979, 5:00 p.m., E.S.T.; The proposed effective date of the regulation would be 30 days after publication of the final regulation. The national hearing shall be held on February 23, 1979, 9:30 a.m., E.S.T., in Room 3000A, Federal Building, 12th and Pensylvania Avenue, N.W. Washington, D.C.

ADDRESSES: Send comments and requests to speak to the University Coal Research Laboratories Program, Office of Field Operations Management, Office of Energy Research, Department of Energy, 400 First Street, N.W., Room 501, Washington, D.C. 20545.

FOR FURTHER INFORMATION CONTACT:

Richard E. Stephens, Director, Division of Institutional Programs, Office of Field Operations Management, Office of Energy Research, Department of Energy, 400 First Street, N.W., Room 501, Washington, D.C. 20545, 202-376-9387 or 376-9188.

SUPPLEMENTARY INFORMATION:

I. Introduction

This regulation proposes to add a new part 320 to Subchapter B, Chapter II of Title 10 of the Code of Federal Regulations.

Title VIII of the Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87, as amended by Section 604 of the Public Utilities Regulatory Policies Act of 1978, Pub. L. 95-617, (hereafter referred to as the Act) authorizes the Administrator of the Energy Research and Development Administration (ERDA) to designate thirteen institutions of higher education at which university coal research laboratories will be established and operated. Section 301 of the Department of Energy Organization Act, Pub. L. 95-91 transferred to the Secretary of Energy all functions of the Administrator of ERDA with respect to the University Coal Research Laboratories Program.

The Congress in passing Title VIII of Pub. L. 95-87 recognized that the increased utilization of coal as an alternative energy source to petroleum and natural gas was to be of critical importance in assuring adequate future energy supplies for the Nation. The increase in coal utilization is dependent in part on increased scientific and technical understanding of various problems associated with the mining, processing and conversion of coal for energy purposes and the related need to assure an adequate supply of highly trained professional manpower for future energy-related programs in the public and private sectors. The Congress determined that these could be met in part through the increased participation and involvement of institutions of higher education in coal-related research and manpower development.

The University Coal Research Laboratories Program, as authorized in the Act, is designed to expand opportunities for coal research at institutions of higher education and through participation in such research, to develop new professional manpower for future energy-related programs.

In order to carry out these purposes, thirteen institutions of higher education are to be designated by the Department of Energy (DOE) as locations for the establishment and operation of university coal research laboratories. These laboratories are to conduct advanced research on selected problems in the extraction and utilization of coal resources. This research may involve the combined efforts of specialists from different academic disciplines and expertise and be directed at one or more specific coal research problems. Each designated laboratory is to be responsible for developing close and productive relationships with the private sector, other academic institutions, state and local government, and public groups to insure the exchange of information on the results of their laboratory research. Test facilities for the characterization of coal are also to be established at each laboratory to work in close cooperation with private industry. In addition, each laboratory is to develop programs for the training of students engaged in advanced study in disciplines related to coal as a source of energy.

II. General Comments

In implementing the provisions of this legislation, DOE has considered the potential roles of the university coal research laboratories in relation to other ongoing coal research supported by DOE with academic institutions, the DOE laboratories and private industry. DOE's extensive current coal research program is focused on numerous scientific and technical problems related to coal utilization. Recognizing that full public participation in the preliminary planning for the university coal research laboratories program will improve the ultimate quality and substance of this program, the DOE has consulted extensively with university scientists and administrators, representatives of the coal producing and user industry, and others interested in the proposed program. Five public meetings were held across the country in FY 1978 at which numerous suggestions and recommendations were made on the future development of this program. These recommendations have been carefully considered in the preparation of these proposed regulations.

In addition, DOE has received significant assistance in preparing these proposed regulations from the National Academy of Engineering. At the request of DOE, the Academy established a special committee of coal research experts from universities, industry and other Federal agencies to advise DOE on the prospective role of the university coal research laboratories and the criteria to be used by DOE in the selection and designation of these laboratories. The preliminary deliberations from this Academy Committee have been useful to DOE in the

preparation of the proposed regulations and the final report of the Committee will provide further guidance to DOE in the implementation of the UCL Program.

Development of the University Coal Research Laboratories Program has involved the planning and preparation of program regulations governing the designation of the university coal research laboratories and the ultimate awarding of grants to implement these laboratory activities. Appropriations for the Program were not requested in FY 1979 since the time required for orderly development of the regulations would preclude grant awards before FY 1980. The next key milestones in the futher development of the program will include the issuance of the final regulations after receiving public comments and the publication of a Program Announcement to solicit proposals from institutions of higher education interested in and capable of operating coal research laboratories. Following the review and evaluation of these proposals, DOE will designate thirteen institutions of higher education at which University coal research laboratories will be established and operated. DOE funding of the designated laboratories will be subject to the availability of appropriations to the program in the FY 1980 budget and in subsequent years.

III. The Proposed Regulation

The proposed regulation describes the purpose and scope of the University Coal Research Laboratories Program, the eligibility requirements, proposed evaluation and selection criteria, the contents of and review procedures for proposals, and plans for continuing operation of the program.

Section 320.2 provides definitions for key terms in the University Coal Research Laboratories Program. Particular attention should be paid to the definitions of abundant coal reserves, major coal provinces, and institutions of higher education. For further reference and guidance, it is also suggested that interested parties consult the following technical references:

Demonstrate Coal Reserve Base of the United States on January 1, 1976. Table 2, U.S. Bureau of Mines, Division of Coal, August 1977.

PACER—Data Entry, Retrieval and Update for the National Coal Resource Data System, Phase I, Figure 2, Coal Provinces of the Coterminous United States, U.S. Geological Survey Professional Paper 978, 1978.

The eligibility requirements for the program are included in Section 320.7. The definition of the term "institution of higher educatrion" is significant to this section as is the requirement to certify sources, availability and commitment of cost-sharing funds to meet requirements stipulated in Sections 802(b) and 804(b) of the Act. Information is also presented on the acceptability of consortium proposals.

Sections 320.8 and 320.9 provide requirements for proposal content and application procedures for the submission of proposals by eligible insitutions of higher education following the issuance of a Program Announcement by DOE. The Act specifies that 90 days shall be available for the preparation and submission of these proposals. Information is presented on the evaluation and selection procedures to be followed by the Department upon receipt of proposals. All eligible proposals will be reviewed, evaluated, and ranked by a technical review panel in accordance with the evaluation criteria of Section 320.11. Following the completion of the review and evaluation process and the consideration of programmatic factors (Section 320.12), DOE will designate the thirteen institutions at which university coal research laboratories will be established and operated (Section 320.10). These designations will be made within 90 days from the submission of porposals.

Section 320.11 lists the evaluation criteria against which the proposals will be reviewed and ranked. These criteria shall include but not necessarily be limited to: (a) Understanding of the Objectives of the UCL Program and Functions of the UCL; (b) Qualifications of the Eligible Institution; (c) Scientific and Technical Merit of the Proposed Program; (d) Program Management Plans; and (e) Fiscal Management.

Following the designation of the thirteen laboratories and subject to the availabilility of funds, DOE will initiate the grant award process. As described in Section 320.13, specific funding to be provided each laboratory will depend on such factors as the availability of appropriated funds, the nature and proposed costs of each designated laboratory's program and DOE administrative judgment. Awards will be made as grants following the procedures developed in the DOE *Federal Assistance Regulation*. The proposed DOE *Federal Assistance Regulation* was published in 43 FR 36962 on August 4, 1978.

Proposed Section 320.14 lists the limitations on the funding any coal research laboratory may receive as specified by the Act. Depending on the level of appropriated funds, DOE allocation of funds to the UCL's will be in accordance with the following priorities: (a) research operating expenses; (b) movable research equipment; and (c) construction of facilities and related acquisition of fixed equipment and startup costs.

Procedures for continuation awards are included in proposed Section 320.15. Tentative budget levels for subsequent year operations of the designated laboratories will be agreed to for planning purposes by DOE and the individual laboratories at the outset of the program. Specific funding levels for each coal laboratory in subsequent years will depend on program performance, proposed research and program plans for the next program year and the availability of approrpriated funds.

DOE's interpretation of the Act's cost sharing requirements is included in proposed Section 320.16. Specifically, 50 percent cost sharing is required for the operating expenses portion of each laboratory's program. Such cost-sharing must be in cash, in property, or in service of equivalent value. Proposers must certify as to the source, availability, and commitment of cost-sharing funds.

Subsequent sections of the proposed regulation provide for the allocation of invention and patent rights under the program. The preparation of reports and dissemination of information and the termination of the overall program if the present authorization is not extended beyond FY 1984.

IV. Opportunity for Public Comment

Interested individuals and groups are invited to submit written comments with respect to the proposed regulation to the University Coal Research Laboratories Program, Office of Field Operations Management, Office of Energy Research, Department of Energy, 400 First Street, Rm. 501, Washington, D.C. 20545. All comments and related information should be received by March 19, 1979, in order to ensure consideration.

A public hearing on the proposed regulation will be held at 9:30 a.m. on February 23, 1979, in Room 3000A, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, D.C., to receive oral presentations from interested persons. Any person who has an interest in the proposed regulation may make a written request for an opportunity to make an oral presentation or to ask specific questions about this proposed regulation. Such a request must be received not later than three days prior to the public hearing.

Conduct of Hearings. DOE reserves the right to arrange the schedule of presentations to be heard at the public hearing and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

A DOE official will be designated as presiding officer to chair the hearing. This will not be a judicial or eveidentiary-type hearing. Any participant who wishes to ask a question at the

hearing may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant and material, 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 DOE and made available for inspection at the DOE Freedom of Information Office, Room GA-152, Forrestal Building, 1000 Independence Avenue, NW., Washington, D.C. 20585, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

In accordance with DOE's obligations under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321 et seq., an evaluation of the potential environmental impacts of the proposed regulation has been prepared by DOE. Based on an environmental assessment of the proposed regulation, DOE has determined that this regulation will not constitute a major Federal action having a significant effect on the quality of the human environment. Accordingly, an environmental impact statement will not be prepared. However, DOE has an obligation to review specific programs proposed for funding under this regulation and determine whether a site-specific environmental review is required.

In accordance with its plans for implementing Executive Order 12044, Improving Government Regulations (43 FR 18634, May 1, 1978) DOE has determined that this proposed regulation is significant because Congress and the DOE regard expanded utilization of coal to be of widespread concern and that the proposed University Coal Research Laboratories can make important contributions to this national objective. DOE has also determined that this proposed regulation will have no major economic impacts, as defined in DOE Order 2030.1, December 12, 1978, and that a regulatory analysis of this program is not required.

V. Text of the Authorizing Legisilation

For convenience, the texts of the provisions of Title VIII of the Surface Mining Control and Reclamation Act and the amending legislation authorizing the University Coal Research Laboratories Program are reprinted below.

Surface Mining Act—Title VIII—University Coal Research Laboratories

Establishment of University Coal Research Laboratories

Section 801(a). The Administrator, Energy Research and Develop Administration (hereafter referred to as "Administrator" in this title), after consultation with the National Academy of Engineering, is authorized and directed to designate ten institutions of higher education at which university coal research laboratories will be established and operated.

(b) In making designations under this section, the Administrator shall consider the following criteria:

(1) The institution of higher education shall be located in a State with abundant coal reserves.

(2) The institution of higher education shall have experience in coal research, expertise in several areas of coal research, and potential or currently active, outstanding programs in coal research.

(3) The institution of higher education has the capacity to establish and operate the coal laboratories to be assisted under this title.

(c) Not more than one coal laboratory established pursuant to this title shall be located in a single State and at least one coal laboratory shall be established within each of the major coal provinces recognized by the Bureau of Mines, including Alaska.

(d) The Administrator shall establish a period, not in excess of ninety days after the date of enactment of this Act, for the submission of applications for designation under this section. Any institution of higher education desiring to be designated under this title shall submit an application to the Administrator in such form, at such time, and containing or accompanied by such information as the Administrator may reasonably require. Each application shall—

(1) describe the facilities to be established for coal energy resources and conversion research and research on related environmental problems including facilities for interdisciplinary academic research projects by the combined efforts of specialists such as mining engineers, mineral engineers, geochemists, mineralogists, mineral economists, fuel scientists, combustion engineers, mineral preparation engineers, coal petrographers, geologists, chemical engineers, civil engineers, mechanical engineers, and ecologists;

(2) set forth a program for the establishment of a test laboratory for coal characterization which, in addition, may be used as a site for the exchange of coal research activities by representatives of private industry engaged in coal research and characterization;

(3) set forth a program for providing research and development activities for students engaged in advanced study in any discipline which is related to the development of adequate energy supplies in the United States. The research laboratory shall be associated with an ongoing educational and research program on extraction and utilization of coal.

(e) The Administrator shall designate the ten institutions of higher education under this section not later than ninety days after the date on which such applications are to be submitted.

Financial Assistance

Sec. 802(a) The Administrator is authorized to make grants to any institution of higher education designated under section 801 to pay the Federal share of the cost of establishing (including the construction of such facilities as may be necessary) and maintaining a coal laboratory.

(b) Each institution of higher education designated pursuant to section 801 shall submit an application to the Administrator. Each such applicant shall—

(1) set forth the program to be conducted at the coal laboratory which includes the purposes set forth in § 801(d);

(2) provide assurances that the university will pay from non-Federal sources the remaining costs of carrying out the program set forth;

(3) provide such fiscal control and funds accounting procedures as may be necessary to assure the proper disbursement of an accounting for Federal funds received under this title;

(4) provide for making an annual report which shall include a description of the activities conducted at the coal laboratory and an evaluation of the success of such activities, and such other necessary reports in such form and containing such information as the Administrator may require, and for keeping such records and affording such access thereto as may be necessary to assure the correctness and verification of such reports; and

(5) set forth such policies and procedures as will insure that Federal funds made available under this section for any fiscal year will be so used as to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available for the purposes of the activities described in subsections 801(d)(1), (2), and (3), and in no case supplant such funds.

Limitation of Payments

Sec. 803(a) No institutions of higher education may receive more than $4,000,000 for the construction of its coal research laboratory, including ini-

tially installed fixed equipment, nor may it receive more than $1,5,000,000 for initially installed movable equipment, nor may it receive more than $500,000 for new program startup expenses.

(b) No institution of higher education may receive more than $1,500,000 per year from the Federal Government for operating expenses.

Payments

Sec. 804(a) From amounts appropriated pursuant to section 806, the Administrators shall pay to each institution of higher education having an application approved under this title an amount equal to the Federal share of the cost of carrying out that application. Such payments may be in installments, by way of reimbursement, or by way of advance with necessary adjustments on account of underpayments or overpayments.

(b) The Federal share of operating expenses for any fiscal year shall not exceed 50 per centum of the cost of the operation of a coal research laboratory.

Advisory Council on Coal Research

Sec. 805 (a) There is established an Advisory Council on Coal Research which shall be composed of

(1) The Administrator ERDA, Who shall be Chairman;

(2) The Director of the Bureau of Mines of the Department of the Interior;

(3) The President of the National Academy of Sciences;

(4) The President of the National Academy of Engineering;

(5) The Director of the United States Geological Survey; and

(6) Six members appointed by the Administrator from among individuals who, by virtue of experience or training, are knowledgeable in the field of coal research and mining, and who are representatives of institutions of higher education, industrial users of coal and coal-derived fuels, the coal industry, mine workers, non-industrial consumer groups, and institutions concerned with the preservation of the environment.

(b) The Advisory Council shall advise the Administrator with respect to the general administration of this title, and furnish such additional advice as he may request.

(c) The Advisory Council shall make an annual report of its findings and recommendations (including recommendations for changes in the provisions of this title) to the President not later than December 31 of each calendar year. The President shall transmit each such report to the Congress.

(d)(1) Members of the Council who are not regular officers or employees of the United States Government shall, while serving on business of the Council, be entitled to receive compensation at rates fixed by the Administrator but not exceeding the daily rate prescribed for GS-18 of the General Schedule under section 5332 of title 5, United States Code, and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently.

(2) Members of the Council who are officers or employees of the Government shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in carrying out their duties on the Council.

(e) Whenever a member of the Council appointed under clauses (1) through (5) is unable to attend a meeting, that member shall appoint an appropriate alternate to represent him for that meeting.

Authorization of Appropriations

Sec. 806. There are authorized to be appropriated not to exceed $30,000,000 for the fiscal year ending September 30, 1979 (including the cost of construction, equipment, and startup expenses), and $7,500,000 beginning with the fiscal year 1980 each fiscal year thereafter through the fiscal year ending June 30, 1983, to carry out the provisions of this title.

PUBLIC UTILITY REGULATORY POLICIES ACT

Section 604. Coal Research Laboratories

(a) Designation—So much of section 801 of the Surface Mining Control and Reclamation Act of 1977 as precedes subsection (b) of paragraph (2) thereof is amended to read as follows: "Establishment of University Coal Research Laboratories"

"Sec. 801(a) The Secretary of Energy, after consultation with the National Academy of Engineering, shall designate thirteen institutions of higher education at which university coal research laboratories will be established and operated. Ten such designations shall be made as provided in subsection (e) and the remaining three shall be made in fiscal year 1980.

"(b) In making designations under this section, the Administrator shall consider the following criteria:

"(1) Those ten institutions of higher education designated as provided in subsection (e) shall be located in a State with abundant coal reserves."

(b) Authorization of Appropriations—Section 806 of such Act is amended to read as follows:

Authorization of Appropriations

Sec. 806(a) For the ten institutions referred to in the last sentence of section 801(a), there are authorized to be appropriated not to exceed $30,000,000 for the fiscal year ending September 30, 1979 (including the cost of construction, equipment, and startup expenses), and not to exceed $7,500,000 for the fiscal year 1980 and for each fiscal year thereafter through the fiscal year ending before October 1, 1984, to carry out the provisions of this title.

(b) For the three remaining institutions referred to in the last sentence of section 801(a), there are authorized to be appropriated not to exceed $6,500,000 for the fiscal year 1980 (including the cost of construction, equipment, and startup expenses), and not to exceed $2,000,000 for each fiscal year after fiscal year 1980 ending before October 1, 1984, to carry out the provisions of this title.

(c) Conforming Amendment—Title VIII of such Act is amended by striking out the terms "Administrator" and "Administrator, ERDA" in each place they appear and substituting "Secretary of Energy" in each such place.

In consideration of the foregoing, it is proposed to amend Chapter II of Title 10 of the Code of Federal Regulations by establishing Part 320 as set forth below.

Issued in Washington, D.C., January 17, 1979.

JOHN M. DEUTCH,
Director of Energy Research.

Subchapter B, Chapter II of Title 10 is amended by establishing Part 320 as follows:

PART 320—UNIVERSITY COAL RESEARCH LABORATORIES PROGRAM

Sec.

320.1 Purpose and scope.
320.2 Definitions.
320.3 Establishment of the program.
320.4 Program objectives.
320.5 Functions of a university coal research laboratory.
320.6. Management.
320.7 Eligibility requirements.
320.8 Content of application.
320.9 Application Procedures.
320.10 Evaluation and selection Procedures.
320.11 Evaluation criteria.
320.12 Programmatic factors.
320.13 Program implementation.
320.14 Limitations on the use of funds.
320.15 Program continuation.
320.16 Cost sharing.
320.17 General requirements.
320.18 Inventions and patents.
320.19 Reporting and dissemination of information.
320.20 Proposal information.
320.21 UCL program termination.

AUTHORITY: Surface Mining Control and Reclamation Act of 1977, Pub. L. 95-87, Title VIII, as amended by the Public Utili-

ties Regulatory Policies Act of 1978, Pub. L. 95-617, Title VI, Sec. 604, Department of Energy Organization Act, Pub. L. 95-91, Section 644, et seq.

§ 320.1 Purpose and scope.

This part contains the requirements for the conduct of a University Coal Research Laboratories Program, the selection of thirteen institutions of higher education at which the laboratories are to be located and grant awards to establish the laboratories as authorized by Title VIII, Section 801 of the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87) as amended.

§ 320.2 Definitions.

As used in this chapter, the term—

(a) "Abundant Coal Reserves" means a state with a demonstrated coal reserve base in excess of 1.5 billion tons.

(b) "Act" means the Surface Mining Control and Reclamation Act of 1977, as amended by the Public Utility Regulatory Policies Act of 1978, Pub. L. 95-617, Title VI, Sec. 604, Coal Research Laboratories.

(c) "Coal Research" means research that will advance efforts to expand the use of coal as a source of energy. The research may include, but not necessarily be restricted to, investigations relating to resource development, mining, beneficiation, direct utilization, conversion, environmental and health effects, transportation, and institutional impacts. The research may relate to coal of any rank and grade.

(d) "DOE" means the Department of Energy.

(e) "DOE Selection Official" means the Secretary of Energy or his designee vested with the final authority and responsibility to select and designate the University Coal Research Laboratories.

(f) "Institution of Higher Education" means a four-year university or college with established programs in several areas of coal research and related educational activities and accredited master's and/or doctoral degree programs in disciplines related to coal research. An institution of higher education for purposes of eligibility includes single institutions meeting the above qualifications, or a consortium or partnership of institutions which are collectively qualified. A consortium or partnership of institutions must clearly designate a lead institution for fiscal and reporting purposes. The location of the lead institution shall be considered the "home state" for purposes of meeting limitations of the Act.

(g) "Major Coal Provinces" means the division of the coal fields of the United States into coal provinces as determined by the U.S. Geological Survey (USGS). The USGS has determined the following coal provinces: (1) Alaska, (2) Eastern, (3) Gulf, (4) Interior, (5) Northern Great Plains, (6) Pacific, and (7) Rocky Mountains.

The following table further defines the "Major Coal Provinces" by listing all of the states which fall within each province regardless of the abundance of coal reserves. States meeting the abundant coal reserve criteria (in excess of 1.5 billion tons) are italicized:

(1) Alaska Province
Alaska
(2) Eastern Province
Alabama
Connecticut
Florida
Georgia
Kentucky
Maine
Maryland
Massachusetts
Mississippi
New Jersey
New Hampshire
New York
North Carolina
Ohio
Pennsylvania
Rhode Island
South Carolina
Tennessee
Vermont
Virginia
West Virginia
(3) Gulf Province
Georgia
Florida
Kentucky
Louisiana
Mississippi
Missouri
Tennessee
Texas
(4) Interior Province
Arkansas
Illinois
Indiana
Iowa
Kansas
Kentucky
Michigan
Minnesota
Missouri
Nebraska
New Mexico
North Dakota
Ohio
Oklahoma
South Dakota
Texas
Wisconsin
(5) Northern Great Plains Province
Colorado
Kansas
Montana
Nebraska
North Dakota
South Dakota
Wyoming
(6) Pacific Province
Arizona
California
Idaho
Nevada
Oregon
Washington
(7) Rocky Mountains Province
Arizona
Colorado
Idaho
Montana
Nevada
New Mexico
Oregon
Texas
Utah
Washington
Wyoming

(h) "Operating expenses" includes such costs associated with the development and operation of an ongoing research and related education program as salaries and wages, fringe benefits, travel, publication, computer supplies, research equipment up to $500 in value and other direct and indirect costs associated with the operation of a coal research laboratory. This item does not include costs associated with the construction of laboratory facilities and buildings or the acquisition and installation of major equipment.

(i) "State" means the states of the United States.

§ 320.3 Establishment of program.

There is established a University Coal Research Laboratories Program under the direction of the Office of Energy Research of DOE for the purposes of expanding research on coal and the training of advanced students and others through participation in such research.

This program shall consist of thirteen coal research laboratories located at institutions of higher education which have the potential for and are capable of establishing and operating such a facility. At least ten of the network of thirteen authorized coal research laboratories will be located in states with abundant coal reserves. There will be at least one University Coal Research Laboratory designated in each of the coal provinces but not more than one in any state. The University Coal Research Laboratories Program will build upon and strengthen existing coal-related research capabilities at the selected universities.

§ 320.4 Program objectives.

The broad objectives of the University Coal Research Laboratories Program (hereafter referred to as the UCL Program) are as follows:

(a) The establishment of a network of coal research laboratories at institutions of higher education which are committed to conducting coal research;

(b) The stimulation of coal research in institutions of higher education;

(c) The training of advanced students and others through participation in coal-related research;

(d) The establishment of test laboratories for the characterization of coal in support of UCL research efforts; and

(e) The promotion of exchange of coal research information.

§ 320.5 Functions of a university coal research laboratory.

Within the scope of the UCL Program objectives, each UCL shall conduct a research program which addresses significant coal-related research problems and which provides coal research experience to advanced students and others. The coal research program shall build on existing or potential institutional capabilities and resources and focus a majority of the research effort in one or more programmatic research areas reflecting these institutional strengths. Each UCL coal research program shall represent a balance between research and training and, within institutional capabilities, shall address coal research problems of general and/or regional nature. To bring the broadest range of capabilities to bear on its research problems, each UCL shall engage in collaborative research where appropriate through cooperative arrangements with other academic institutions, laboratories, industry or other organizations. Each UCL shall propose a program for a test laboratory for coal characterization to perform in support of its research activities. This test laboratory may be used as a site for the exchange of coal research activities by representatives of private industry engaged in coal research and characterization but shall not provide services in competition with commercial laboratories capable of offering these services. Each UCL shall establish and maintain regular communication with the public and private sectors, including state and local governments, the coal producing industry, coal users, the general public and other institutions and organizations concerned with the problems and issues of research on coal as a source of energy. Through such interactions, each UCL shall disseminate information on its research accomplishments and seek inputs concerning research needs and problems.

§ 320.6 Management.

(a) The UCL Program shall be managed by a Program Director, University Coal Research Laboratories Program, located within the Office of Energy Research, DOE.

(b) Each UCL shall be managed by a director selected by the institution.

§ 320.7 Eligibility requirements.

(a) To be eligible to be designated for participation in the UCL Program, the applicant must be an institution of higher education and have accredited masters and/or doctoral degree programs in disciplines related to ongoing and proposed areas of coal research and education. The institution must have experience in coal research, and expertise in several areas of coal research and the potential for, or currently active, outstanding programs in coal research. The institution must have the demonstrated capacity to establish and operate a coal research laboratory.

(b) To be eligible, an institution shall have or propose to establish such policies and procedures as will insure that the Federal share of funds made available under the UCL Program will be used to supplement and, to the extent practical, increase the level of funds that would, in the absence of such Federal funds, be made available for the purposes of the activities proposed for the UCL and in no case supplant such funds.

(c) As a condition of eligibility, an applicant must submit a certification of the source, availability and commitment of non-Federal funds to meet cost-sharing requirements.

(d) Only one proposal will be accepted from a single institution. An institution which is part of a consortium or partnership shall be subject to this restriction if that institution has been designated as the lead institution in a consortium or partnership proposal.

§ 320.8 Content of application.

(a) Institutions of higher education meeting the eligibility requirements as set forth in § 320.7, may submit an application prepared in compliance with this regulation and the UCL Program Announcement to compete for designation and Federal assistance as a university coal research laboratory. Ten copies of the application proposal must be submitted to the Program Director, University Coal Research Laboratories Program, Office of Energy Research, DOE.

(b) The application proposal shall contain, but not necessarily be limited to the following information;

(1) A summary statement of institutional eligibility for application to the UCL Program.

(2) A summary of scope, quality and history of established coal research and education activities including ongoing coal research and education programs, faculty involvement, student participation, publications, facilities and equipment.

(3) A statement of goals and objectives of the proposed UCL.

(4) A description of the organizational structure and management proposed for the UCL.

(5) A summary of the general plan for research and education activities proposed for the UCL through FY 1984, including a summary of technical projects to be undertaken, investigators and facilities to be committed, involvement of advanced students, a program for a test laboratory for coal characterization, facility and equipment needs, levels and man-years of effort and projected budget requirements.

(6) Detailed project proposals for each individual program activity proposed in the summary general plan to permit separate peer review and evaluation of these projects.

(7) Institutional certification of the source, availability and commitment of proposed non-Federal funds to meet cost participation requirements.

(c) The contents of the application proposal described under (b), above, shall be approximately sixty pages in length, exclusive of appendices which shall include specific project proposals (Subsection 6, above), supportive information concerning ongoing coal-related research and education activities and other relevant information.

(d) Additional information on the format and content for application proposals are contained in a University Coal Research Laboratories Program Announcement, notice of which shall be published in the FEDERAL REGISTER.

§ 320.9 Application procedures.

An eligible institution of higher education may submit a proposal to DOE in response to the UCL Program Announcement. This Program Announcement will specify the closing date for the submission of proposals. No more than 90 days will be provided for the preparation and submission of proposals.

§ 320.10 Evaluation and selection procedures.

(a) Proposals submitted in response to the UCL Program Announcement will be reviewed and evaluated in accordance with the following procedures:

(1) An initial review will be conducted by the UCL Program Office to determine if the proposing institution meets the eligibility requirements contained in Sec. 320.7 and to determine if the proposal is complete as required by this regulation and the Program Announcement.

(2) Applications from institutions that do not meet the eligibility requirements shall be rejected.

(3) Proposals from institutions meeting the conditions of eligibility shall be reviewed, evaluated, and ranked in accordance with the evaluation criteria (§ 320.11) by Technical Reviewers appointed by the Director, Office of Energy Research, from among qualified technical experts in areas related to coal research.

(4) Subsequent to the review, evaluation, and ranking of all proposals by the Technical Reviewers, a further analysis of programmatic factors

(§ 320.12) will be carried out in the selection process by a DOE Selection Panel appointed by the Director, Office of Energy Research.

(5) The DOE Selection Official, assisted by the DOE Selection Panel and based on the evaluation of selection criteria and programmatic factors, will designate thirteen institutions which individually and collectively are considered to have the greatest potentiality for meeting the objectives of a balanced national UCL Program of coal research and research-related training.

(6) At the discretion of the DOE Selection Official, ten UCL institutions in states with abundant coal reserves may be designated initially in the selection process and three additional institutions may be designated subsequently without regard to the abundance of state coal reserves.

(7) After designation of the UCL's, the UCL Program Office will enter into negotiations with such proposer to select and establish support levels for those program activities to be included in the grant award. Projects to be supported will be subject to the level of appropriated funds and UCL programmatic considerations.

(b) The DOE Selection Official shall announce the designated institutions at which University Coal Research Laboratories will be established and operated within 90 days of the closing date for the submission of proposals.

§ 320.11 Evaluation criteria.

(a) Proposals from institutions which meet the requirements of eligibility (§ 320.7) will be evaluated and ranked by DOE using criteria which may include, but not necessarily be limited to the following:

(1) Understanding of Objectives of UCL Program and Functions of the UCL.

(i) Perceptions of coal related needs, problems and issues to be met through research and training.

(ii) Awareness of the state-of-the-art in the principal areas of coal research proposed for the UCL.

(iii) The relationship of the proposed research to and the differences from current work in the same field(s).

(iv) Institutional rationale for participation in the UCL Program including relevance to the various programs and missions of the institution.

(v) Relationship of proposed plan to the functions of a UCL as set forth in § 320.5.

(2) Qualifications of Eligible Institution

(i) Scope, quality, and history of established coal research and education programs such as ongoing research and education programs, faculty involvement, student participation, publications, facilities and equipment.

(ii) Potential for attracting qualified advanced students.

(iii) Qualifications of the investigators committed to the UCL Program.

(iv) Role and qualifications of UCL Director.

(v) Existing facilities and equipment to be committed to UCL programs.

(3) Scientific and Technical Merit of the Proposed Program

(i) The quality of the proposed research.

(ii) The role of proposed research in the training of advanced students.

(iii) The degree to which the proposed research will advance scientific and technical understanding of the coal-related problem(s) under study.

(iv) The role of the test laboratory for coal characterization in support of proposed UCL research and education activities.

(v) Provisions for communicating research results and for interaction with various segments of the public and private sectors concerning UCL activities.

(4) Program Management Plans

(i) Program management plan proposed for UCL.

(ii) Plans for managing research and training activities carried on in collaboration with other organizations and institutions.

(iii) Reasonableness and appropriateness of the proposed cost plan specifically for UCL program administration.

(iv) Nature of institutional commitment to the UCL Program, including provisions for institutional support, cost-sharing, program continuity and the relationship of the UCL to the overall academic mission of the institution.

(v) Provisions for coordination between the UCL and, if present, a Mining and Mineral Resources Research Institute established and funded under provisions of Title III, Pub. L. 95-87, including program planning, organization, management, and avoidance of program duplication.

(5) Fiscal Management.

(i) The reasonableness and appropriateness of the total costs proposed for the UCL program including research, program operations, facilities, and equipment.

(ii) The justification presented for the major cost categories proposed (operating expenses, facilities, major equipment, etc.) with reference to § 320.14, Limitations on the Use of Funds.

(iii) Documentation of cost-sharing to meet the specific requirements on laboratory operating expenses and such cost-sharing as may be appropriate to facilities and equipment requests.

(b) All eligible UCL proposals will be reviewed and evaluated technically with respect to the above-listed evaluation criteria.

§ 320.12 Programmatic factors.

In making the final selection of the institutions to be designated as the site of a UCL, the following programmatic factors will be considered by the DOE Selection Panel:

(a) The ranking of proposals with respect to the evaluation criteria.

(b) The relative need for research on coals of different types and qualities distributed within the various coal provinces.

(c) Geographic distribution of the applicants with respect to coal provinces, coal reserves, and coal utilization.

(d) The best overall mix of research specialities, educational potential, and geographic distribution as determined by DOE of coal research programs among those proposed by the designated UCL institutions.

§ 320.13 UCL program implementation.

Subsequent to the designation of the UCL institutions and subject to the availability of UCL Program funds, the UCL Program Office shall initiate the grant award process. Funding of designated UCL's will depend on the funding requested and the nature of the proposed program by each UCL, the best mix of research and educational activities among the UCL's and the availability of appropriated funds to the UCL Program with the amount of the grant being determined through negotiation as cited above in Section 320.10. All awards will be subject to the availability of appropriated funds.

§ 320.14 Limitations on the use of funds.

(a) No UCL may receive more than the following total amount of Federal funds:

	Limit
Construction and fixed equipment.	$4.0 million
Movable equipment	$1.5 million
Start-up expenses	$0.5 million
Program operations (annual)	[1] $1.5 million

[1] Federal share shall not exceed 50 percent of the total operating costs for any fiscal year.

(b) The Director of the UCL Program will determine the amount of funds to be advanced to each designated UCL for the initial grant year based on estimates of amounts required to conduct all or parts of the proposed program as agreed to through negotiation with the UCL. Depending on levels of appropriation, the following priorities may apply in the allocation of UCL funds: (1) research program operating expenses; (2) acquisition of movable equipment; and (3) construction of facilities, acquisition of related fixed equipment and start-up costs.

§ 320.15 Program continuation.

(a) The budget levels for subsequent year funding of a UCL beyond the initial year will be agreed to for planning purposes during the negotiation of the initial UCL grant. Specific funding levels for subsequent years will be contingent upon (1) technical performance, (2) proposed continuation program plans and (3) availability of appropriations to the UCL Program. Renewable proposals will be required of each UCL at a time and in a format mutually agreed to between DOE and the UCL.

(b) Technical performance and technical program plans of each UCL will be reviewed by qualified review panels at intervals to be specified by the UCL Program Office.

(c) The UCL Program Office will determine the scope and level of continued support to each UCL based on program reviews and the allocation of available UCL Program funds.

(d) Subsequent year support to a UCL may be refused at the discretion of the DOE UCL Program Office based, for example, on past performance; failure to agree on a mutually acceptable continuation program plan; or the level of available UCL Program funds. In such instances, terminal funding at a reduced level for one (1) year may be authorized by the UCL Program Office.

§ 320.16 Cost sharing.

(a) DOE is authorized to make grants to pay a Federal share of the costs of establishing and maintaining a UCL, including construction of such facilities as may be necessary, to those institutions of higher education designated in the UCL Program.

(b) The Federal share of UCL operating expenses for any fiscal year shall not exceed 50 per centum of the cost of operation of a UCL.

(c) Cost sharing stipulated by the Act will be governed in accordance with prevailing OMB regulations, FMC 73-3, "Cost Sharing on Federal Research" and Circular A-110 "Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organization." Cost sharing may vary in amount from project to project but the aggregate of cost sharing for the operating expenses portion of the UCL program must be of equivalent value and match or exceed expenditures of DOE funds in any given grant period. The grantee contributions to the costs of operating the UCL may be in any form, including cash or in-kind contributrions (the value of which is determined by DOE), from the institution or third parties, and for any category costs, direct or indirect, provided they are non-Federal and are not otherwise counted as cost sharing on other Federal projects. Institutions or organizations participating in collaborative projects of the UCL under a subgrant may make cost-sharing contributions which meet the cost-sharing requirement. Grantees must maintain adequate cost-sharing records as well as records of all expenditures.

§ 320.17 General requirements.

(a) Applicants for participation in the Program are required to comply with the provisions of the DOE Assistance Regulations applicable to grants awarded to institutions of higher education, and, as applicable, such other procedures applicable to grants under the program as DOE may from time to time to prescribe, and any Federal requirements applicable to grants awarded under the UCL program.

(b) Each grant under this part shall require that a recipient of support under the UCL program submit a final written report of activities supported in whole or in part by Federal funds made available under the program.

§ 320.18 Inventions and patents.

Each grant under the program shall be governed by the provisions of Section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974, 42 U.S.C. 5908, and any agreements by DOE to waive title to inventions that may be made under the program shall be pursuant to the policies and procedures of the applicable provisions of the DOE Assistance Regulations.

§ 320.19 Reporting and dissemination of information.

(a) Each designated UCL shall submit semiannual and annual program performance reports to the DOE UCL Program Office. The annual report shall be submitted concurrent with the renewal proposal and shall include a description of the activities and such other information as may be required by DOE.

(b) The UCL institutions and DOE shall disseminate to the public in an appropriate manner information on coal research findings resulting from program activities of the UCL program. Prompt dissemination of UCL research results to the scientific and technical community shall be encouraged.

§ 320.20 Proposal information.

Information contained in proposals submitted in response to the subsequent UCL program solicitation shall be treated, handled, and disclosed, and information shall be provided to unsuccessful proposers, in accordance with the policies and procedures set forth in applicable DOE Assistance Regulations and the UCL Program Announcement.

§ 320.21 UCL Program termination.

The UCL Program is authorized to continue until the end of FY 1984. Continuation of the program will depend on the extension of the authorizing legislation and the availability of appropriated funds.

[FR Doc. 79-2231 Filed 1-19-79; 8:45 am]

Federal Register

MONDAY, JANUARY 22, 1979
PART VIII

DEPARTMENT OF TRANSPORTATION

Coast Guard

WATERFRONT FACILITIES REGULATIONS UPDATE

[4910-14-M]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 78-023]

PART 126—HANDLING OF EXPLOSIVES OR OTHER DANGEROUS CARGOES WITHIN OR CONTIGUOUS TO WATERFRONT FACILITIES

Waterfront Facilities Regulations Update

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: This amendment corrects regulations governing waterfront facilities which handle dangerous cargoes. Certain citations and definitions in the current regulations became outdated when parts of the code of Federal Regulations referred to in the current regulations were changed or relocated. This amendment updates the regulations to reflect these changes without changing the substantive content.

EFFECTIVE DATE: January 22, 1979.

FOR FURTHER INFORMATION CONTACT:

Lieutenant (Junior Grade) David G. Dickman, Port Safety and Law Enforcement Division (G-WLE-1/73), Room 7319, Department of Transportation, NASSIF Building, 400 Seventh Street S.W., Washington, DC 20590 (202-426-1927).

SUPPLEMENTARY INFORMATION: No notice of proposed rulemaking is being published because this rule is an editorial correction to current regulations and does not change the substantive content of these regulations. Therefore, public comment is impracticable and unnecessary. 5 U.S.C. 553(b)(3)(B).

DRAFTING INFORMATION

The principal persons involved in drafting this rule are: Lieutenant (Junior Grade) David G. Dickman, USCG, Project Manager, Office of Marine Environment and Systems, and Mr. Stephen Barber, Project Attorney, Office of the Chief Counsel.

DISCUSSION OF THE NEW REGULATIONS

In a separate rulemaking proceeding, the Coast Guard is currently involved in revising waterfront facilities regulations to reflect new initiatives under the Ports and Waterways Safety Act (33 U.S.C. §§ 1221-1227). As a part of this revision project an Advance Notice of Proposed Rulemaking for waterfront facilities was published on April 10, 1978 (43 FR 15107-15116). It is anticipated that this project will be completed in approximately two years. In the interim, this amendment corrects outdated references in the current waterfront facilities regulations pending publication of the revised regulations. No changes in the substantive content of the current regulations are made by these amendments.

The old 46 CFR Part 146 referred to in the current 33 CFR Part 126 has been split up into the following: 46 CFR Parts 146 and 148 covering shipment of dangerous cargoes by water; and 49 CFR Parts 170-179 covering shipment of "hazardous materials". References to the old 46 Part 146 are changed by this amendment to references to the current regulations. It should be noted that the current regulations include some cargoes not covered by the old 46 CFR Part 146. Only those cargoes in 49 CFR 172.101 classified as dangerous for transportation by vessel are covered under this amendment. This is done by excluding from regulation those materials preceded by an "A" in the Hazardous Materials Table, 49 CFR 172.101. These materials are subject to the provisions of 49 CFR 170-179 only for transportation by air; all other materials in the Table are classified as dangerous for transportation by vessel.

As a result of the new regulations pertaining to dangerous cargoes, several terms and definitions have also changed. In order to maintain consistency throughout the regulations pertaining to dangerous cargoes, definitions and terms used in 33 CFR Part 126 are amended to reflect these changes. Also, certain definitions formerly referred to by citation are now set forth in full in this amendment.

The regulation entitled "Captain of the Port Authority Update" (42 FR 48022) of 22 September 1977 changed the authority for 33 CFR Part 126 to the Ports and Waterways Safety Act of 1972. That Act has been superseded by the Ports and Waterways Safety Act (Pub. L. 95-474, October 17, 1978). The authority citation is amended to reflect this change. The Ports and Waterways Safety Act provides for the assessment of civil or criminal penalties for violations of regulations issued under its authority. It also authorizes regulations to promote safety and protect the marine environment. Thus, 33 CFR Part 126 now covers not only security concerns, but also safety concerns. Editorial changes are included in this amendment to reflect the new penalty provisions and the new safety concerns.

This final regulation has been evaluated under the Department of Transportation Policies for Improving Government Regulations published on March 8, 1978 (43 FR 9582). The final evaluation is available for public review at the above address. In consideration of the foregoing, 33 CFR Part 126 is amended as follows:

1. By revising the "Authority" heading in the table of contents to read:

AUTHORITY: 92 Stat. 1475 (Ports and Waterways Safety Act, as amended, 33 USC 1225); 49 CFR 1.46(n)(4).

2. By revising § 126.01 to read as follows:

§ 126.01 General definitions.

"Commandant" means the Commandant of the United States Coast Guard.

"Captain of the Port (COTP)" means the officer of the Coast Guard, under the command of a District Commander, so designated by the Commandant for the purpose of giving immediate direction to Coast Guard law enforcement activities within an assigned area.

"District Commander" means the officer of the Coast Guard designated by the Commandant to command a Coast Guard District.

"Net tons" means the net weight of a materials in tons.

"Net weight" means a measure of weight referring only to the contents of a package, tank or container and does not include the weight of any packaging material, or containing devices.

"Waterfront facility" means all piers, wharves, docks, and similar structures to which a vessel may be secured; areas of land, water, or land and water under and in immediate proximity to them; buildings on such structures or contiguous to them and equipment and materials on such structures or in such buildings. This term does not include facilities directly operated by the Department of Defense.

3. By revising § 126.05 to reads as follows:

§ 126.05 Designated waterfront facility.

(a) Designated waterfront facility. The term "designated waterfront facility" means a waterfront facility designated by § 126.13 for the handling and storage of, and for vessel loading and discharging of: any flammable or combustible liquid in bulk (46 CFR Parts 30-38); any hazardous material subject to the Dangerous Cargoes Regulations in 46 CFR Parts 146 and 148; and any hazardous material subject to the Hazardous Materials Regulations (49 CFR Parts 170-179), except for those materials preceded by an "A" in the Hazardous Materials Table, 49 CFR Part 172.101.

(b) Facility of particular hazard. The term "facility of particular hazard" means a designated waterfront facility

which is authorized to handle in bulk quantities any of the commodities listed in Section 124.14(b) or any commodity for which a permit or written permission is required by 46 CFR 146.29-100; 49 CFR 176.100; or 49 CFR 176.415.

4. By revising § 126.07 to read as follows:

§ 126.07 Dangerous cargo.

The term "dangerous cargo" means all explosives and other hazardous materials or cargo covered by—

(a) Dangerous Cargoes, 46 CFR Parts 146 and 148;

(b) Tank Vessels, 46 CFR Parts 30-38; or

(c) Hazardous Materials, 49 CFR Parts 170-179, except for those materials preceded by an "A" in the hazardous Materials Table, 49 CFR 172.101.

5. By revising § 126.09 to read as follows:

§ 126.09 Designated dangerous cargo.

The term "designated dangerous cargo" means Explosives (commerical or military), Class A, as classified in 46 CFR Part 146 and 49 CFR Part 172.

6. By revising the text of § 126.11, and deleting the authority citation to the Dangerous Cargo Act (R.S. 4472, as amended, 46 U.S.C. 170) at the end of the section as follows:

§ 126.11 Waiver authority based on local or unusual conditions.

Whenever the Commandant, the District Commander, or the Captain of the Port finds that the application of any provisions contained in Sections 126.15 and 126.16 is not necessary to the safety or security of the port and vessels and waterfront facilities therein, or that its application is not practical because of local conditions or because the materials or personnel required for compliance are not available, or because the requirements of the national defense justify a departure from such provision, the Commandant, the District Commander, or the Captain of the Port may waive compliance with such provision, to the extent and under such requirements as they determine.

7. By revising § 126.13(b) to read as follows:

§ 126.13 Designation of waterfront facilities.

* * * * *

(b) Handling, storing, stowing, loading, discharging, or transporting dangerous cargo at any waterfront facility other than one designated by this section in hereby prohibited, and violation of this prohibition will subject the violator to the civil or criminal penalties provided in Section 13 of the Ports and Waterways Safety Act (33 U.S.C. § 1232).

8. By revising the text of § 126.15(g), (o)(2)(i) and (vii), and by deleting the authority citation to the Dangerous Cargo Act (R.S. 4472, as amended, 46 U.S.C. 170) at the end of the section as follows:

§ 126.15 Conditions for designation as designated waterfront facility.

* * * * *

(g) Maintenance stores and supplies. That supplies classified as dangerous by the provisions of the Hazardous Materials Regulations (49 CFR 170-179) except those materials preceded by an "A" in the Hazardous Materials Table, 49 CFR 172.101, to be used in connection with operation or maintenance of the property or facility, are not stored on any pier or wharf within the waterfront facility and are not stored elsewhere on the waterfront facility except in amounts necessary for normal current operating conditions; that these supplies are stored in a compartment remote from combustible material, constructed so as to be readily accessible and provide safe storage; that storage compartments are kept clean and maintained free of scrap materials, empty containers, soiled wiping rags, waste, and other debris; that covered metal containers are provided for disposal of used wiping cloths and are emptied at the end of each working day; and that clothing lockers are maintained clean and orderly and properly ventilated.

* * * * *

(o) * * *

(2) * * *

(i) Warning signs are displayed on the facility at the point of transfer facing shoreline and facing each way along the shoreline, without obstruction, at all times during the coupling, transfer operation, and uncoupling. The warning signs chall conform to 46 CFR 151.45-2(e)(1) or 46 CFR 153.955.

* * * * *

(vii) Has in his possession a cargo information card for the specific cargo to be transferred. The information card shall conform to the specifications of 46 CFR 151.45-2(e)(3) (unmanned barges) or 46 CFR 153.907 (self-propelled vessels) and shall list all of the following items:

(A) Cargo identification characteristics.

(B) Emergency procedures.

(C) Firefighting procedures.

* * * * *

9. By revising § 126.25 to read as follows:

§ 126.25 Penalties for handling designated dangerous cargo without permit.

Handling, loading, discharging, or transporting any designated dangerous cargo without a permit, as provided under § 126.17, being in force, will subject persons responsible therefore to the civil or criminal penalties provided in Section 13 of the Ports and Waterways Safety Act, as amended (33 U.S.C. § 1232).

10. By revising the text of § 126.27, and by deleting the authority citation to the Dangerous Cargo Act (R.S. 4472, as amended, 46 U.S.C. 170) at the end of the section as follows:

§ 126.27 General permit for handling dangerous cargo.

A general permit is hereby issued for the handling, storing, stowing, loading, discharging or transporting of dangerous cargo (other than designated dangerous cargo) in bulk, portable tanks, containers, or packagings, at designated waterfront facilities, conditioned upon the observance and fulfillment of the following:

(a) The conditions set forth in § 126.15 shall at all times be strictly observed.

(b) The following classes of hazardous materials classified as dangerous for transportation by vessel as listed in the Hazardous Materials Regulations Table (49 CFR 172.101), in the amounts specified, shall not be handled, stored, stowed, loaded, discharged, or transported, except when contained within railroad or high vehicles being transported across or on waterfront facilities used primarily for the transfer of railroad or highway vehicles to or from a railroad car ferry or highway vehicle ferry, or carfloats, without prior notification to the Captain of the Port:

(1) Explosives, Class B, in excess of 1 net ton at any one time.

(2) Explosives, Class C, in excess of 10 net tons at any one time.

(3) Flammable liquids, in excess of 10 net tons at any one time.

(4) Flammable solids or oxidizers, in excess of 100 net tons at any one time.

(5) Flammable gases, in excess of 10 net tons at any one time.

(6) Poisons (Class A).

(7) Large quantities of radioactive materials as defined in 49 CFR 173.389(b) and Fissile Class III radioactive materials as defined in 49 CFR 173.389(a)(3).

(8) Bulk shipments of dangerous cargo considered to involve a particular hazard. A specific list of such commodities which by virtue of their properties would create unusual hazard if released, is found in § 124.14(b)(1) of this chapter.

(c) Explosives or other dangerous cargo prohibited from or not permitted for transportation by 46 CFR Parts 146 and 148 or 49 CFR Parts 70-179 shall not be present on the waterfront facility.

(d) Flammable liquids and compressed gases shall be so handled and stored as to provide maximum separation from acids, corrosive liquids, or combustible materials. Storage for flammable solids or oxidizers shall be so arranged as to prevent moisture coming in contact therewith.

(e) Acids and corrosive liquids shall be so handled and stored as to prevent such acids and liquids, in event of leakage, from contacting any organic materials.

(f) Poisonous gases, poisonous liquids, and poisonous solids shall be so handled and stored as to prevent their contact with acids, corrosive liquids, flammable liquids or flammable solids.

(g) Dangerous cargo which may be stored on the waterfront facility shall be arranged in such manner as to retard the spread of fire. This may be accomplished by interspersing dangerous cargo with inert or less combustible materials.

(h) All dangerous cargo stored on the waterfront facility shall be packaged, marked, and labled in accordance with 49 CFR Parts 170-179.

(i) Storage of all radioactive materials shall be so arranged as to preclude a gamma radiation in excess of 200 milliroentgens per hour or physical equivalent at any readily accessible surface.

11. By revising § 126.28 to read as follows:

§ 126.28 Ammonium nitrate, ammonium nitrate fertilizers, fertilizer mixtures, or nitro carbo nitrate; general provisions.

(a) When any item of ammonium nitrate, ammonium nitrate fertilizers, fertilizer mixtures, or nitro carbo nitrate, described and defined as an oxidizer by the regulations of 49 CFR Part 173 is handled, stored, stowed, loaded, discharged or transported on a waterfront facility, the following provisions shall apply:

(1) All outside containers shall be marked with the proper shipping name of the nitrate packed within the container.

(2) The building on a waterfront facility used for storage of any of these materials shall be of such construction as to afford good ventilation.

(3) Storage of any of these materials shall be at a safe distance from electric wiring, steam pipes, radiators or any heating mechanism.

(4) These materials shall be separated by a fire resistant wall or by a distance of at least 30 feet from organic materials or other chemicals and substances which could cause contamination such as flammable liquids, combustible liquids, corrosive liquids, chlorates, permanganates, finely divided metals, caustic soda, charcoal, sulfur, cotton, coal, fats, fish oils or vegetable oils.

(5) Storage of any of these materials shall be in a clean area upon clean wood dunnage, or on pallets over a clean floor. In the case of a concrete floor, storage may be made directly on the floor if it is first covered with a moisture barrier such as a polyethylene sheet or asphaltic laminated paper.

(6) Any spilled material shall be promptly and thoroughly cleaned up and removed from the waterfront facility. If any spilled material has remained in contact with a wooden floor for any length of time the floor shall be scrubbed with water and all spilled material shall be thoroughly dissolved and flushed away.

(7) An abundance of water for firefighting shall be readily available.

(8) Open drains, traps, pits or pockets which could be filled with molten ammonium nitrate if a fire occurred (and thus become potential detonators for the storage piles) must be eliminated or plugged.

NOTE.—See 49 CFR 176.415 for permit requirements for nitro carbo nitrate and certain ammonium nitrates.

§ 126.29 and § 126.31 [Amended].

12. The authority citations to the Dangerous Cargo Act (R.S. 4472, as amended, 46 U.S.C. 170) following § 126.29 and § 126.31 are deleted.

13. By revising § 126.33 to read as follows:

§ 126.33 Penalties for handling dangerous cargo without permit.

Handling, storing, stowing, loading, discharging, or transporting any dangerous cargo covered by § 126.27 under circumstances not covered by the general permit granted in § 126.27 or when such general permit is not in force will subject persons responsible therefor to the civil or criminal penalties provided in Section 13 of the Ports and Waterways Safety Act, as amended (33 U.S.C. § 1232).

(92 Stat. 1475 (Ports and Waterways Safety Act, as amended, 33 USC 1225); 49 CFR 1.46(n)(4)).

Dated: January 15, 1979.

J. B. HAYES,
Admiral, U.S. Coast Guard
Commandant.

[FR Doc. 79-2239 Filed 1-19-79; 8:45 am]